REFER TO
42 USC 3374 - 32 CFR 239 - AR 405-16
FOR ADDITIONAL RELEVANT INFORMATION

CHAPTER 7
HOMEOWNERS ASSISTANCE PROGRAM
SECTION I. GENERAL

7-1. Purpose. This chapter sets forth the rules and procedures to be followed in the administration of the Department of Defense (DOD) Homeowners Assistance Program (HAP). The HAP is a special relief program available to eligible military and civilian employee homeowners. It provides some financial assistance to these homeowners when they are unable to sell their homes under reasonable terms and conditions because the closure, partial closure or reduction in scope of operations (hereafter referred to as closure) at a military installation so adversely affects the real estate market. HAP is neither a procurement program nor a land acquisition program. Although HAP does provide for acquisition of dwellings under certain circumstances, there is no governmental need for this property and the government must resell the property. HAP is not a claims program in an adversary sense and there is no provision for judicial review. Therefore, in order to carry out the intent of Congress, it is essential every effort be made to ensure that each applicant is treated fairly and receives the maximum benefit as quickly as practicable and with a minimum expenditure of time and money for administration. Reasonable doubts should be resolved in favor of the applicant.

7-2. Applicability. These procedures are applicable to Headquarters United States Army Corps of Engineers (HQUSACE), all major subordinate commanders and district commanders having military real estate responsibilities. This program has worldwide application; however, no properties in foreign countries may be acquired except certain property located on a base or installation. HAP applies to members of the Armed Forces of the United States, Federal civilian employees, other employees of a non-appropriated fund instrumentality who are U.S. citizens, and Coast Guard members, who meet the eligibility requirements. Temporary employees and independent contractors and their employees are not eligible.

7-3. Authority. Public law 89-754, Section 1013, (80 Stat. 1255, 1290), as amended, authorizes the Secretary of Defense, under specified conditions, to acquire title to, hold, manage, and dispose of, or, in lieu thereof, to reimburse for certain losses upon private sale of, or foreclosure against, any property improved with a one-/or two-family dwelling which is situated at or near a military base or installation which the Department of Defense has, subsequent to 1 November 1964, ordered to be closed in whole or in part. AR 405-16 delegates and authorizes the Chief of Engineers (COE) to administer, manage, and execute the HAP in accordance with applicable laws and regulations and further delegates authority to the COE to redelegate this authority to MSC and District Commanders and to their respective Chiefs of Real Estate. Such authority has been redelegated to the MSCs and Districts and their respective Chiefs of Real Estate.

7-4. Responsibilities.

a. ODCSRE. The Deputy Chief of Staff for Real Estate, (DCSRE), acting for the Chief of Engineers, has been delegated authority and responsibility for the administration of HAP. The Military Division, Office of the Deputy Chief of Staff for Real Estate (ODCSRE), as the central office for HAP, is responsible for supervision, interagency coordination, development of procedures, policy guidance, and acting as a congressional liaison. The Realty Services Division is responsible for development of policy and processing of appeals forwarded from the districts and Major Subordinate Commands (MSCs).

b. Major Subordinate Commands. MSCs have been delegated the authority to perform oversight and review of district program management, and based upon that review, or in response to specific requests, to provide local policy guidance to the districts and recommend program changes to ODCSRE. MSCs also are responsible for review of appeals that have not been resolved at district level, or forwarding those appeals to ODCSRE, if resolution cannot be reached at MSC level.

c. Districts. Districts designated by ODCSRE, and the Chiefs of their real estate divisions, have been delegated the authority to administer, manage and execute the HAP on behalf of all claimants in accordance with the provisions of this regulation. It is contemplated that the district will dispose of all cases, except appeal cases on which agreement cannot be reached with the applicant. Such appeal cases will be forwarded, in turn, to the MSC and ODCSRE for consideration, and if necessary, forwarded by ODCSRE to the Deputy Assistant Secretary of the Army for Installations and Housing (DASA(I&H)) for final decision.

7-5. Funding.

a. Revolving Fund Account. The following special revolving fund accounts have been established: 97x4090 – Homeowners Assistance Fund, Defense, and 97x4090.0100 – Allocation to Army. Definitive instructions and requirements are contained within Finance and Accounting regulations.

b. Appropriation, Receipts and Allocation. This fund contains money appropriated in accordance with the Military Construction Act, and receipts from the management, rental, or sale of the properties acquired. Funds required for administration of the program will be made available by DOD to the Department of the Army (DA), for reallocation to ODCSRE. Funds provided will be used for purchase or reimbursement as provided herein, and to defray expenses connected with the acquisition, management, and

disposal of acquired properties, including payment of principal, interest, and mortgages or other indebtedness thereon, as well as the cost of staff services, contract services, insurance, and other indemnities.

c. Obligation of Funds. The purpose of this paragraph is to briefly outline how the requirements for commitments and obligations of funds are fulfilled for HAP. Funds will be committed for a period not to exceed 45 days when the government's offer to purchase the applicant's property is conveyed to the applicant. The obligation will occur upon receipt of the accepted offer returned by the applicant. Commitments for government purchase are valid for only 45 days, the length of the offer. If the government purchase is not completed, funds are to be decommitted/deobligated under HAP and made available to fund other government acquisitions.

d. Assumptions. If the government is assuming a mortgage, the amount of the outstanding mortgage(s) must be processed for obligation through Resource Management Office (RMO) after the deed is executed, but before the deed is released for recording. However, prior to this stage, verify the current available balance for mortgage assumption authority with the Real Estate Program Office and RMO servicing the district. The total mortgage balance of homes assumed cannot exceed the ceiling on the district Fund Authorization Document (FAD). Mortgage assumption authority is a separate limitation on the district Finance and Accounting office and is not included in any other obligation authority. Any questions concerning mortgage assumption should be directed to HQUSACE (CERM-B). The obligation to complete the acquisition takes place at the time of settlement.

7-6. Provision of Information and Assistance.

a. Secretaries of the Military Departments. The Secretaries of the Military Departments and the Directors of Defense Agencies are responsible for disseminating information on the program, rendering assistance to applicants, receiving and verifying statements regarding employment, and forwarding applications to the appropriate district after the program is approved. The personnel officers of other Federal agencies having custody of an applicant's personnel records will verify statements regarding employment. If personnel files are not readily available, documentation such as PCS orders, discharge orders, SF50s, or other official documents may be used to establish eligibility.

b. Applications. Applications for Homeowners Assistance, DD Form 1607, have been distributed to DOD installations and activities. The application explains the objective of the program, eligibility requirements, benefits available, and procedures to be followed in seeking assistance. DD Form 1607 is used to submit essential data needed to obtain requested assistance.

7-7. Overseas Bases. Personnel employed at or near overseas installations are eligible to receive HAP benefits. For property located off-post, one is eligible to receive private sale benefits after the property is sold. For housing located on-post, whether it is sold or not, one is entitled to receive financial compensation based on a specific statutory formula, even though government acquisition is not an option.

SECTION II. DEFINITIONS

7-8. Definitions. Unless otherwise defined in this chapter, the following terms and phrases are defined:

a. The Act. The "Act" refers to Section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966, Public Law 89 754 (80 Stat. 1255, 1290), approved 3 November 1966, as amended.

b. Base Closure Action "In Part." A base closure "in part" is defined as an action announced publicly by DOD or a component thereof, which involves one of the following: (1) termination of a separate and distinct mission or function at an installation, or (2) permanent relocation of a military unit from an installation, other than from an installation which includes in its basic mission the support or "homeporting" of various military units and has historically experienced repeated and sharp fluctuations in aggregate personnel strength.

c. Base Closure Action "In Whole." A base closure "in whole" is defined as an action announced publicly by the DOD or a component thereof, which involves the complete closing of an military base or installation, or termination of all existing functions (other than caretaker functions) at an installation.

d. Closure or Reduction Action. A closure or reduction action, as contemplated by the Act, is defined as a publicly announced action by DOD, or a component thereof, which involves complete or partial closure of an installation, or reduction in the scope of operations.

e. District Commander. The term "district commander" means any district commander or his chief of real estate.

f. Employment Near the Installation. For otherwise eligible personnel whose place of duty is not on the installation, employment or assignment within a normal commuting distance of an installation will be considered to be "near" an installation.

g. Equity. The remaining interest belonging to an applicant who has secured debt(s) with his/her dwelling, or the surplus of value which may remain after the dwelling has been disposed of for the satisfaction of such debt, or the amount or value of the dwelling above the total secured debt.

h. Housing Market Area. The housing market area is a geographic area in which the supply/demand of dwelling units is in competition based on available transportation facilities, local commuting habits, and the pattern of urban development. Location of the employees dwellings affected by the announced action should be considered in determining the market area.

i. Installation. Installation means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

j. Liquidation. Satisfaction of the applicant's primary mortgage and such other eligible debts secured by the applicant's dwelling so that title is passed to the government with no money encumbrances.

k. Location of Dwelling Property "at or near" the Installation. Dwellings located within the normal commuting distance of an installation will be considered to be "at or near" that installation.

l. Market Impact Zone. The market impact zone is defined as a residential district, neighborhood, or subdivision within the housing market area, or a category of dwellings by price, which is sufficiently impacted by an announced action to enable homeowners to qualify for assistance. The market impact zone should normally be a finite geographic area. Applicant dwellings which fall outside a predetermined market impact zone may be included depending on individual factors and circumstances, but may require an amendment to the original impact study. It is recognized that in many cases only a portion of a market area, or dwellings in a certain price bracket, will be adversely affected by an announced action. An approved market impact zone is identified in the program approval letter.

m. Normal Commuting Distance. Normal reasonable commuting distance is to be determined from all relevant factors including, but not limited to, geography, commute patterns, demographics and availability of local transportation and will be defined in each program approval letter.

n. Public Announcement Date. The public announcement date is the date the

Secretary of Defense or the Secretary of the military department concerned notifies the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives of the proposed closing or realignment of an installation under 10 U.S.C. 2687. It is also the date that a partial closure, which includes a reduction in scope of operations, has been announced by DOD or a component thereof. In some instances, multiple announcement dates may be required due to multiple reductions in force, or DOD announcements and subsequent Base Realignment and Closure Commission recommendations. Any requests for multiple public announcement dates must be submitted to ODCSRE for determination.

o. Realignment. A realignment includes any action which both reduces and relocates functions and personnel positions, but does not include a reduction in force resulting from work-load adjustments, reduced personnel or funding levels, skill imbalances, or other similar causes.

p. Reasonable Effort to Sell. Terms, such as “reasonable effort to sell,” or similar phrases, relate to the amount of time available to the applicant (by direction of the employer or by personal choice) to sell the dwelling. Applicants should not be encumbered by a requirement to market the property beyond a reasonable time. This permissive definition of “reasonable effort to sell” is not to be construed as encouragement for private sale below apparent market value. Evidence of the applicant’s efforts to sell should include a signed statement detailing his/her efforts to sell the house privately, along with a copy of receipts for advertisements placed in local newspapers or a copy of the listing agreement with a real estate broker. The applicant accepts the burden of demonstrating that when an offer is rejected it is because the offer was not reasonable.

q. Reduction in the Scope of Operations. A significant reduction in the scope of operations is defined as an action publicly announced by DOD, or a component thereof. This involves the permanent elimination of military or Federal civilian personnel from an installation, but does not necessarily involve, as in the case of a closure, termination of any mission or function, permanent relocation of any military unit, or permanent closing of all or part of the physical plant. A Reduction-In-Force, as defined in AR 5-10, Reduction and Realignment Actions, is a reduction in the scope of operations.

r. Sale. The term “sale” means an executed exchange of title and possession of real property for consideration of determinable value. A private sale is deemed to have occurred once legal title and equitable title have passed to the buyer.

s. Program approval letter. A program approval letter is prepared by ODCSRE and submitted for approval by the DASA (I&H). It will set forth the applicable closure

date(s), market impact zone, and affected installations. Such letters will normally provide that amendments to the letter may be made by the Deputy Chief of Staff for Real Estate or his designated representative.

SECTION III. ECONOMIC IMPACT

7-9. Announcement of Base Closure or Reduction.

a. Initial Actions. As soon as possible after a public announcement of a closure or realignment of an installation within its jurisdiction, the district will send a letter to the Commander of the installation briefly explaining HAP benefits, how a program is implemented, and information the district will need from the installation. A point of contact within the district should also be included. Follow up telephone calls to the installation's personnel officer (IPO), public affairs office (PAO) and directorate of engineering and housing (DEH) should be made.

b. Collection of Real Estate Market Data. The district should begin to gather and assemble real estate market data on pre-announcement market activity in the general geographic area of the potentially affected installation. Such data may be obtained from the installation housing office, local Board of Realtors' multiple listing service (MLS), real estate agents, real estate appraisers, mortgage brokers, local tax assessors, county courthouse records and utility companies. Individual appraisals will not be required until the district determines that an adverse market impact has begun or appears imminent.

c. Record of Potential Impact. Districts will maintain a file documenting potential impacts from the date of announcement to the date a HAP is approved or denied. The file must include documentation of the district's actions in monitoring the market. Newspaper articles or press releases from DOD and/or the installation should be requested from the PAO in order to establish a public announcement date.

d. Potential Impact Report (PIR). Within 30 days after the announcement, a PIR will be submitted to ODCSRE estimating the resulting impact on the real estate market. PIRs will include:

(1) Total installation population and affected area population;

(2) Estimated number of military and civilian personnel affected, listed by rank/grade level; including contractors and other personnel who will not be eligible applicants but would contribute to adverse market conditions;

(3) Estimated number of homeowners in each category, military and civilian;

(4) Estimated number of personnel involved in routine transfers each year;

(5) Current and projected real estate market conditions;

(6) Average price of houses in the affected area;

(7) Other proposed actions by private and/or Federal employers that might also affect the impact or increase the number of applications;

(8) The estimated impact; and

(9) If the installation has prepared an Economic Impact Study (EIS) or Environmental Assessment (EA), a copy should be included.

(10) The estimated cost. (See Addendum 1).

e. PIR Updates.

(1) If the district finds the announced action will probably not adversely impact the market, the district will continue monitoring the market with annual reports to ODCSRE until relieved of this requirement by ODCSRE.

(2) If it is determined the announced action may have an adverse impact in the area, the district will prepare a Market Impact Study (MIS) within 90 days in lieu of PIR updates.

f. Market Impact Study (MIS). See Addendum 2 for format. District will forward the report, along with a recommendation for approval or denial of a program, to ODCSRE within 90 days of identifying a potential program. If no impact has been shown for the installation, updates to the MIS will be furnished not later than every six months until an impact is evident, or ODCSRE directs otherwise. The report, must address the following:

(1) Element No. 1: The data gathered must support a conclusion that affected personnel will be unable to sell their homes upon reasonable terms and conditions. This conclusion will include part or all of the following information:

(a) A decline of at least 5 percent in the market value of houses in areas where personnel affected by the announcement reside as measured by one or more market indicators.

(b) Appraisals of at least six houses in market areas with a population under 50,000, and 12 houses in market areas over 50,000, in a cross section of prices and areas, will be necessary to gauge the effect on market value. The appraisals should estimate the

fair market value (FMV) of each house before the announcement (six to twelve months prior), on or immediately before the public announcement date, and current appraisal date;

(c) A significant increase in inventory of unsold houses after the announcement as compared to the same months or quarters in the previous four years prior to the announcement;

(d) A significant increase in area foreclosures, particularly Department of Veterans Affairs (DVA) loans, as compared to four years prior to the announcement;

(e) A decrease in the number of home sales when compared to the same months or quarters in the previous four years prior to the announcement;

(f) An increase in the average number of days a house remained on the market after the announcement as compared to the same time in the previous four years;

(g) Number of building permits issued for new homes compared to same period in the previous four years prior to the announcement, and

(h) The inability of affected personnel to sell their homes for the amounts of existing mortgages. Complete a Multiple Regression Analysis for large metropolitan areas comparing the current data to same time periods in the four years prior to the announcement.

(2) Element No. 2: There must be a causal relationship between the announced closure or reduction and the adverse market conditions. Although the closure or reduction may not be the only reason for the current market conditions, the data collected must clearly reflect an incremental downward trend in the market as a direct result of the announced actual closure or reduction.

(3) The above two elements together should prove or disprove a market impact; however, there are other statistics and information that may support approval or denial of a HAP. The following should be addressed in the MIS:

(a) Number of affected personnel and homeowners in relation to area population;

(b) Rental occupancy rates; on the increase or decline;

(c) Unemployment rates;

(d) Number or percent of new homes for sale;

(e) Whether a rise in interest rates or availability of mortgage money relates to the significant decline in the market;

(f) Any other factors affecting the real estate market, i.e., sales/resales; sales of dwellings that sold near the announcement date as compared to the resale of the same dwelling at the current date.

(4) In addition to a discussion of the factors demonstrating an adverse impact, charts should be furnished showing the timing of adverse market conditions as related to the public announcement date, and where appropriate, the effect of the actual closure or reduction on the market.

(5) Based on the data compiled for the MIS, the normal commuting distance for homeowners at the installation should be addressed and furnished as part of the report.

(6) Estimated cost of a program should accompany the MIS. This estimate should follow the budgeting format provided separately by CERM-B. This estimate should be based on factual information; i.e., number of estimated homeowners, as well as the average price of homes owned by affected personnel.

g. Market Impact Reports. A Market Impact Report (MIR) may be used to expand the area of eligibility for HAP applicants who reside outside the market impact zone of an approved MIS.

(1) Districts will make a determination regarding the normal commuting distance for each installation under their purview. The normal commute should be identified in miles or time from an installation. A normal commute may be dependent upon a number of factors. The factors include, but are not limited to, geography, commute patterns, demographics and availability of local transportation. The District Chief of Real Estate is authorized to approve the normal commuting distance for each affected installation. Each District must provide the normal commuting distance for each currently active program to CERE-A.

(2) For individuals assigned and commuting on a daily basis to the affected installation, whose dwellings are outside of the pre-approved market impact area, but within the normal commuting distance of the installation, eligibility should be considered if there has been at least a five percent decline between the prior fair market value and the current fair market value, and this decline was the result of the actual or pending closing of such base or installation. The decline in value will be determined by appraisals of the

individual homes. The causal relationship must be shown by at least one of the criteria as identified in the MIS criteria. A MIR may be used to approve multiple units at one time. The District Chief of Real Estate has authority to approve eligibility for such individuals.

(3) A MIR establishing the causal relationship of a market decline must be completed for groups of individuals, (more than five); however, prior to completing the MIR, appraisals must establish that the dwellings declined in value at least five percent between the prior fair market value (PFMV) and the current fair market value (CFMV). The district must make a finding of the direct causal relationship between the announced closure or realignment (DOD action) and the adverse market conditions.

(4) A MIR must prove two factors:

(a) The causal relationship between the installation closure and realignment and the decline in real estate values in a specific area, and

(b) A decline of at least five percent in the market value of an applicant's dwelling.

(5) A MIR must include a statement that the DOD announcement of closure or realignment caused, or contributed substantially to the decline in market values in the area, and include the following:

(a) A description of the area and its boundaries;

(b) Distance from the installation;

(c) Number of affected homeowners in the area, if known, and

(d) A minimum of one of the criteria as found in Section III(1)(a) through (g) of the MIS criteria, and any other factors as found in Section III(3)(a) through (g) affecting the real estate market.

(6) A minimum of one property must be appraised in the area, and ordinarily that property will be the one owned by the applicant who initiated the MIR. The appraisal should estimate the prior fair market value of the dwelling on or immediately before the announcement date, and the current fair market value.

h. Announcement of Program Approval, Denial, Extension, or Termination. Announcement of such actions should be coordinated with the installation and the appropriate congressional delegation prior to release.

SECTION IV. ELIGIBILITY

7-10. Requirements. An applicant must meet the requirements set forth below to be eligible for benefits under an approved HAP:

a. Type of Employment or Service. The applicant must be a member of the Armed Forces; a Federal employee; or an employee of a Non-appropriated Fund Instrumentality (NAFI) operated at, or in connection with, the affected installation, who is a U.S. citizen. Temporary employees serving under a time limitation, including reservists serving less than 180-consecutive day tours (10 U.S.C. section 101 (d)(6)(a)), and private contractors and employees of private contractors are not included.

b. Place of Employment. The applicant must have been:

(1) a member of the Armed Forces assigned at or near the installation;

(2) a Federal employee employed at, near, or in connection with the affected installation;

(3) an employee of a Non-appropriated Fund Instrumentality (NAFI), operated at or in connection with the installation, or

(4) a civilian employee, or NAFI employee who is a U.S. citizen, serving overseas at the time of the announcement, who is entitled to reemployment rights at the affected installation.

c. Time of Employment. The applicant must have been:

(1) assigned to, or employed at, near, or in connection with the installation at the time of the announcement;

(2) transferred, or terminated as a result of a Reduction-In-Force, within six months prior to the public announcement;

(3) transferred from the installation or activity on an overseas tour within three years prior to public announcement of the closure action;

(4) a member of the Armed Forces transferred from the installation within three years prior to the public announcement, and in connection with the transfer, informed of a future, programmed reassignment to the installation, or

(5) serving overseas as a Federal employee, with existing reemployment rights to the affected installation at the time of the announcement.

d. Owner-Occupant.

(1) At the time of the public announcement, or at the time of transfer or termination giving rise to eligibility, the applicant must have been either: the owner and occupant of property improved with a one- or two-family dwelling, situated within a normal commute of the affected installation; or, have vacated the owned dwelling as a result of being ordered into on-post housing within six months prior to the announcement.

(2) Spousal ownership is allowed, where either the applicant or a spouse is the fee simple owner of the property. Applicant must have been married to spouse at the time of the announcement.

(3) Where the applicant has an ownership interest with someone other than a spouse, the remaining owners must deed their interest to the applicant prior to government acquisition.

(4) When the applicant has an ownership interest with someone other than a spouse, private sale benefits will be paid in accordance with the amount of interest the applicant has in the property.

(5) Applicants must hold fee simple title or have a contract to purchase in fee simple a qualifying residential dwelling, unless the dwelling is part of a cooperative association. Members of the Armed Forces or Federal civilian employees may be considered owners of property without regard to the technical form or description by which an ownership interest is evidenced: provided, that, consistent with local practices and procedures, the applicant can be shown substantially to have the rights and duties of a person with an ownership interest in the property, e.g., depending on relevant circumstances an applicant who holds title to a long-term ground lease rather than to the fee.

(6) Ownership interest in a cooperative home ownership association will be recognized under the cooperative home ownership laws of the State where the affected property is located. Ownership of a mobile home constitutes home ownership if the mobile home is affixed to the land in accordance with local and state laws and regulations, and the underlying realty is held in either fee simple, long-term lease (27.5 years or longer), or contract-to-purchase. The interest of a mere security holder, whether by mortgage, deed of trust, or other security instrument, does not constitute an ownership

interest for purposes of HAP.

(7) An applicant who was the owner, but not the occupant at the time of announcement, due to temporary absence i.e., a valid governmental purpose such as temporary duty, is considered eligible if the applicant would have returned to the house after the temporary absence.

(8) An applicant may meet the owner-occupancy requirement for a dwelling in the market impact zone of an approved program, while meeting the employment requirement of a different approved program, provided that the applicant commutes from the dwelling for which compensation is sought on a daily basis to the affected installation. The prior fair market value is to be determined from the public announcement date of the HAP where the dwelling is located.

e. Relocation or Financial Hardship. As a consequence of the closure, an applicant must relocate because of military transfer or acceptance of employment, or be unemployed, not as a matter of personal choice, and able to demonstrate such financial hardship. Additionally, for reasons other than the closure action, one may be eligible for benefits if they relocate, due to transfer, reassignment or involuntary termination of employment.

(1) For purposes of satisfying the relocation requirement, the applicant must relocate because of military transfer or acceptance of employment beyond a normal commuting distance from the dwelling for which compensation is sought. The new place of residence must result in a decreased commute distance as identified in the Joint Travel Regulation (JTR). The distance from the new place of residence to the new place of employment must be a shorter distance than the distance from the dwelling for which compensation is sought to the new place of employment. However, districts have the discretion to determine distances based upon local commuting patterns. (See paragraph 7-8f.(5)).

(2) Financial Hardship. As a consequence of the closure or realignment, the applicant's employment or service must have been terminated. The applicant need not relocate in order to be eligible under this subparagraph, but must meet the following additional requirements:

(a) As a result of such termination, the applicant must be unemployed, not by personal choice, and be able to demonstrate financial hardship, and unable to meet the mortgage payments and related expenses. Financial hardship due to unemployment in the area of the affected installation is a determination that must be made by the district. The applicant may be considered unemployed even though he/she was offered a

comparable position at another location beyond normal commuting distance. In support of the hardship allegation, the applicant is required to state why employment is not available or has not been accepted, the amount and frequency of all income, amount of debts, number and amount of all installment payments, including mortgage payments in arrears. Where current income for the 90-day period preceding the date of application is less than the current enforceable obligations against the applicant, including mortgage payments, it may be determined that unemployment and financial hardship, as required by the Act, have been established. Determination of hardship is to be based upon the relationship between income and obligations prior to and after termination of employment. Obligations incurred after termination of employment will not be included in the computations to establish hardship. The financial worth of the applicant need not be taken into account. In making the hardship determination, doubtful cases should be resolved in favor of the applicant.

(b) Applicants requested to furnish supporting information to establish financial hardship will be given sufficient notification of the provisions of the Privacy Act of 1974

f. Termination or Transfer. The definition of termination or transfer varies according to whether it is a consequence of the closure, or it is for reasons other than the closure. In either case, the applicant must relocate beyond a normal commuting distance from the dwelling for which compensation is sought.

(1) Personnel Affected by the Closure Action. If the installation is closing entirely, all personnel will be affected eventually as a consequence of the closure as all positions will be terminated. If there is less than an entire closure, only certain personnel will be affected. The issue is whether one's position has been or will be terminated because of the closure action. If this is the case, one may elect to retire or not to reenlist; voluntarily or involuntarily resign from a position; elect to accept other employment, i.e., through normal rotation, reassignment or transfer.

(2) Personnel Not Affected by the Closure Action. If one's position at an installation is not affected by the closure action, one may transfer, be reassigned or have their employment involuntarily terminated. This includes normal rotations and involuntary retirements, which are not a result of the announced action.

g. Employees who retire and relocate beyond a normal commuting distance will be presumed to have relocated in order to seek employment and, therefore, will be eligible for benefits.

SECTION V. BENEFITS

7-11. Types of Benefits.

a. Private Sale.

(1) For dwellings privately sold, eligible applicants may be compensated for the difference between 95 percent of the appraised fair market value (FMV) of the property prior to the announcement date, and the appraised FMV of property at the time of sale, or the sales price, whichever is greater. Closing costs are reimbursable for private sales occurring after 5 October 1994. Closing costs reimbursable under chapter 14 of the Joint Travel Regulation (JTR) are eligible for reimbursement under the HAP. Payment of closing costs may be made to individuals who elect to sell their homes privately, but do not receive a cash payment under the private sale option. However, if the program implementation letter advises that applicants must suffer a loss to receive benefits, this loss must occur to receive reimbursement for closing costs for private sale benefits.

(2) When the applicant has sold their property for less than the mortgage balance (a short sale), and the mortgagee forgives any remaining obligation, private sale benefits will be calculated in an amount not to exceed the difference between 95 percent of the appraised FMV prior to the date of the announcement date and the total of the short sale plus the amount of the forgiven obligation. Reimbursement for closing costs will be calculated under paragraph 7-29, below. If the difference between the sales price and the remaining obligation is covered by a promissory note, payment should be made directly to the mortgagee. If the benefit payment is not sufficient to satisfy the promissory note, the applicant must pay the difference. The mortgagee must be paid and a release of liability obtained prior to any benefit payment directly to the applicant. (See paragraph 7-29 a. and b.).

(3) Benefits available in connection with off-base overseas property are limited to private sale relief. In the case of private sale of property located on an overseas installation, the formula set forth in paragraph b(4) below is applicable, except that in computing benefits due, the sale price of the property will be added as a deduction under part (ii) of the formula.

(4) Where the district determines that improvements on the subject property have been destroyed or damaged by 75 percent or more by acts of God, theft or vandalism, fire, flood, and/or other like casualty, after the date of the public announcement, the applicant will be entitled only to private sale benefits. The government will not purchase the applicant's land. Benefits will be computed as follows:(a) Determine the prior fair market value (PFMV) of the land and improvements in an undamaged condition.(b) Determine the current value of the land and improvements in an undamaged condition.(c) Multiply the prior undamaged value, (a), by 95 percent and deduct the current value (b);

this is the amount of benefits to be paid to the applicant. Applicants will also be reimbursed for closing costs in accordance with subparagraph a(1) above.

(5) Where the district determines that the improvements have been damaged after the announcement to the extent of 25 percent or less by acts of God, theft or vandalism, fire, flood, or other like casualty, the applicant will be notified that they may elect to receive benefits on the basis of a private sale, as computed above, or sell the property to the government on the following basis: Multiply the PFMV by 75 percent and deduct the amount or percent of damage calculated on the current value in the undamaged condition less the amount of insurance payments received by applicant for the loss. Applicant may sell to the government for the amount of the outstanding mortgages, provided that the damages are repaired, or if insured, assignment of any insurance recovery for repairs may be made to the government.

(6) Where the district determines that the improvements have been damaged after the announcement by acts of God, theft or vandalism, fire, flood, or other like casualty, more than 25 percent but less than 75 percent, the applicant will be notified that they may receive benefits on the basis of a private sale, as computed above. Purchase of this property by the government will require the approval of ODCSRE. If the applicant desires to sell their property to the government, the district will prepare a disposal plan for submission to ODCSRE.

b. Government Purchase.

(1) An eligible applicant may elect to sell the property to the government and receive, as the purchase price, an amount not to exceed 75 percent of the FMV prior to the date of the announcement, or the current total amount of outstanding mortgages, whichever is greater. Mortgages refinanced after the announcement date are accepted if, at the time of government acquisition, the balance does not exceed what it was at the time of refinancing. Eligible applicants may also be reimbursed for mortgage interest, property insurance and taxes, from the date of receipt of the application, or the date the dwelling is vacated, or the date of program approval, whichever is later through the date of acquisition. (See paragraph 7-29d.)

(2) Junior mortgages or equity loans secured by the premises which are existing and current at the time of the public announcement are subject to the same limitations as primary mortgages.

(3) When the improvements are damaged, whether undiscovered or undisclosed, after determination of benefits under a government purchase, but before the closing, the purchase will be recalculated using the formulas set out in paragraphs 7-11a(4)(5)(6).

Applicant may repair, or assign any insurance proceeds sufficient to cover the cost of repairing the damage to the government prior to being entitled to government acquisition.

(4) Eligible owners of property located on an overseas installation who are unable to find a purchaser for the property may surrender their interest in the property to the government and be paid the following amount: 90 percent of the sum of the purchase price of the dwelling and improvements thereon, and all costs of ownership, including interest on notes, and cost of utilities, service, maintenance and insurance; less the amount equal to the total of all housing allowances received from the government during ownership and occupancy of the dwelling, plus rents or other benefits collected. However, the maximum compensation shall not exceed 90 percent of the unamortized portion of the cost of the property, including improvements, at the time ownership is terminated, as reflected in the amortization schedule, relating to such property. The government may not acquire overseas off-post property.

(5) For refinanced mortgages refer to paragraph 7-29g.

c. Foreclosure or Deeds in Lieu of Foreclosure.

(1) If foreclosure proceedings have commenced, an applicant may elect to receive either foreclosure benefits or private sale benefits. Foreclosure benefits may be paid directly to the applicant to reimburse for foreclosure costs paid by the applicant, or paid to third parties on the applicant's behalf. These costs may include direct costs of judicial foreclosure, expenses and enforceable liabilities according to the terms of the mortgage or promissory notes, and the amount of debts, if any, established against the applicant by a Federal agency for loans made, guaranteed, or insured by such agency following liquidation of the security for such loans. Any foreclosure entered into after the program approval date must have an enforceable liability in order for the applicant to receive benefits. Benefits may be paid to restore VA eligibility.

(2) Conveyance of a residence by deed in lieu of foreclosure is considered a private sale. However, if an applicant is required to execute a promissory note as a condition precedent to acceptance of a deed in lieu of foreclosure, and foreclosure proceedings have commenced, the applicant can elect between private sale and foreclosure benefits. Outstanding judgment liens, encumbrances of a personal nature, or junior mortgages acquired after the announcement date, will not be paid.

(3) Foreclosure benefits are not available in foreign countries; however, foreclosures or a procedure similar to a deed-in-lieu of foreclosure may be considered a private sale and computed as such.

(4) In situations where the insuring agency indicates the foreclosure is a "No Bid," the agency does not reacquire the dwelling, but makes a partial settlement with the lien holder. It is possible that the sale of the dwelling by the lien holder will not completely satisfy the balance on the mortgage. In "No Bid" situations, a settlement with the insuring agency and the lien holder may be necessary, with a release obtained from each.

(5) If private sale benefits have not been paid, an applicant may request foreclosure assistance. If the time period for filing has elapsed, the case will be forwarded to ODCSRE for approval to reopen the file. If private sale benefits were paid, the beneficiary may not later apply for foreclosure benefits in the event that he/she is liable upon the purchaser's foreclosure.

(6) The foreclosure must have commenced on or after the public announcement date. The date of commencement of foreclosure is to be determined under applicable state law.

(7) VA Compromise sales, where the applicant signs a promissory note, will be treated as foreclosures for the purpose of paying benefits. The veteran and the VA agree to a sale of the property to another party at the current fair market value, as determined by a VA appraisal. VA will pay off the mortgagee to eliminate the veteran's obligation to the mortgagee. The difference between the sale price and the remaining obligation is covered by a promissory note. The HAP benefit will be the pay off of this note. If VA waives payment of the promissory note, the applicant may elect to receive private sale benefits but the amount of the debt waived is added to the sale price of the property.

7-12. Property Subject to Mortgages.

a. Grant of Release. If the applicant is due compensation for private sale losses, the district must obtain written documentation that the mortgagee has released the applicant from their liability. Applicants will be advised that private sale benefits or reimbursement for closing costs cannot be made until the mortgagee is paid off. Documentation, such as a full reconveyance or letter from the mortgagee, releasing the applicant from any liability under the mortgage is required. This is a statutory requirement for Federally insured mortgages and is a matter of policy for other mortgages.

b. VA Loans. For VA loans made prior to 1 March 1988, the Department of Veteran's Affairs issues the release. For loans made on or after 1 March 1988, the mortgagee issues the release.

SECTION VI. APPLICATION PROCESSING PROCEDURES

7-13. Acceptance of Applications. The district will accept applications for HAP benefits. Application numbers may be assigned, but applications will not be processed until DASA (I&H) has approved a program. Potential applicants should be advised that in the early stages of a closure or realignment action, adverse housing market impact may not be immediate. Indicators such as sales prices, increased inventory and decreased sales, may initially be inconclusive as to whether the closure or realignment has caused a depressed or stagnant market. The applicant's experience in trying to sell his/her property may be the best early indication of the lack of a market. The applicant must be advised that the government cannot acquire the property or process any application for benefits until a determination of adverse economic impact has been made and a program has been approved. The applicant should further be informed that the public announcement date, not the date of the finding of applicability, will be used retroactively to set eligibility.

7-14. Application Form (DD Form 1607). If the DD Form 1607 does not provide all of the information required to process an application, the applicant may be requested to provide supplemental information. Addendum 3 is a Privacy Act Information Statement that should be furnished to the applicant whenever information is requested.

7-15. Filing Period. Applications for HAP benefits should be presented to the appropriate district within the time frame authorized by the directive approving the program at the installation. Districts may receive late applications submitted up to six months after the approved time period with appropriate justification. MSCs may receive late applications for six months after the district's extended approval period with appropriate justification. Any application filed after this time must be submitted to ODCSRE, WASH DC 20314-1000, with an explanation and justification for late filing. ODCSRE will make determinations, on an individual basis, as to whether late applications may be accepted. Only ODCSRE may disapprove late applications.

7-16. Review of Application. After a determination has been made that the applicant meets the appropriate eligibility requirements stated in Section IV of this chapter, the district will verify the applicant's employment. Incomplete applications will be returned in a timely manner for proper completion.

7-17. Ineligibility. When an applicant fails to meet any of the eligibility requirements (see Section IV), no further action will be taken on the application except to notify the applicant in writing of his/her ineligibility, and of the procedure for appeal.

7-18. Certified Mail. In sending official notifications to applicants, districts may use

certified mail, return receipt requested, for delivery of decisions that may be disputed. Use of overnight mail is authorized for delivery of deeds, closing documents, and payments.

7-19. Withdrawn, Closed, and Reopened Applications.

a. Failure to Accept Benefit Amount. After the district advises the applicant of the benefit amount, the applicant will be given 45 days to either accept the benefit or appeal. If there is no action within the 45-day period, the application will be considered withdrawn.

b. Applicant's failure to respond to Requests for Information. Where an applicant has failed to respond after 45 days to requests for additional information, the district shall advise the applicant in writing that the application is considered withdrawn. Applicant will also be informed of the specific time limitation within which an application, or request to reopen a file, must be made.

c. Ineligibility. If it is determined that an applicant is ineligible for benefits, or that a private sale applicant is eligible under the program but is not entitled to benefits, and no appeal has been filed within 180 days from the date of delivery of written notice of such decision to the applicant's last known address, the case will be considered closed.

d. Private Sale after Application for Government Acquisition. If the applicant elects government acquisition and then sells the house privately before government acquisition occurs, the application may be processed as a private sale, regardless of the time limitations for filing. The applicant must notify the district in writing of this decision, and furnish necessary documentation of the sale.

e. Withdrawal of Application to Pursue Private Sale. An eligible applicant may decide to withdraw their application to pursue a private sale. They may later decide to sell the house to the government as long as the request to reopen the file is made before the program expires. Requests to reopen files will be processed in accordance with paragraph 7-13 above.

f. Action Taken Following Determination of Appeal. If an appeal has been filed, the case will be considered closed once action has been taken in conformity with the final decision made on appeal, as prescribed in the appeal procedures. See Section X.

g. Reopening of Settled Cases. Applications, which have been settled with benefits, in accordance with the Act and this regulation, will not be reopened or reviewed for the purpose of applying a different benefit formula, without the prior specific

approval of ODCSRE. Closed cases settled without benefits may be reopened if the applicant is eligible for foreclosure benefits.

h. Reopening of Withdrawn Cases. Withdrawn applications may be reopened by written request from the applicant within the time period allowed for filing applications in accordance with paragraph 7-15, above. The date the file is reopened will be considered the date of the application.

i. Long-term Leases Entered After Application. Applicants should be advised to enter only into month-to-month leases, after submission of the application. Otherwise the application may be made inactive pending the end of the lease term. At that time, the application will be reactivated.

7-20. Records/HAPMIS. Each application received must be entered in HAPMIS, and reflect its current status as Active, Appeal, Complete, Withdrawn, Denied, or Suspended.

a. Active. Active cases are those in the process of being paid or denied, including foreclosure cases where the enforceable liabilities have not been established.

b. Appeal. Appeal cases are those that have been listed as any of the other categories, including, but not limited to, Active, Complete, or Denied, that have been appealed on any grounds. These cases will ultimately become Active, Suspended, Denied, or Complete, depending on the outcome of the appeal.

c. Complete. Completed applications are cases in which either payment or payments have been made to the applicant and/or third party or applicants for private sale benefits, or those for which the applicants have sold their homes for more than 95 percent of PFMV (therefore receiving a zero benefit).

d. Withdrawn. A withdrawn application is one that has been withdrawn by written request of the applicant, or if the applicant has failed to respond to a request for additional information. Those applications that have been withdrawn by written request of the applicant, or the applicant has failed to respond to a request for additional information. A written request from the applicant for reinstatement must be received before the end of the program date. After the program has ended, only an approved request to reopen a withdrawn file would necessitate changing the status code to Active. The date the file is reopened will be considered the date of the application.

e. Denied. Denied status is reserved only for those applicants who do not meet the program eligibility requirements.

f. Suspended. Suspended cases are those cases which have been placed on the Suspended list due to an undue delay in processing caused by an action, or lack of an action, by the applicant. These cases include, but are not limited to, applicants whose permanent change of station orders have not been issued, applicants with tenants remaining in the property, applicants who have requested a delay to pursue a possible private sale, and applicants who wish to remain in the property until after the completion of a school year. Applicants for private sale benefits who are unable to furnish a release of liability are also placed in Suspended status. A written notification from the applicant is required to change the application status. An application may be suspended indefinitely. Any application still in Suspended status at the end of the program date will be changed to Withdrawn. Only an approved request to reopen the file would necessitate changing the status to Active.

7-21. Application Numbers.

a. Assignment of Application Numbers. When a district receives an application, they will assign the application a number and will develop and maintain an individual file for each property. Applications for programs located in another district will not be assigned a number but will be forwarded immediately to the district having jurisdiction. A number, once assigned, will not be reassigned, regardless of the disposition of the application. Reactivation or reopening of a withdrawn application does not require a new application or application number.

b. Method of Assignment. Applications will be numbered in the following manner:

(1) Agency code to indicate the Federal agency accountable for the installation being closed:

1 – Army
2 - Air Force
3 – Navy
4 - Marine Corps
5 - Defense Agencies
6 - Non-Defense Agencies

(2) District Code. Refer to ER 405-1-12, Figure 14-1.

(3) Military/Civilian Code: 1 for Civilian or 2 for Military.

(4) State/Country Code: Refer to ER 405-1-12, Figure 14-2 for numeric state code

or alpha country code.

(5) Installation Number: The last three digits of the installation number reflected in the Army and Navy/USMC Real Property Inventory publication, preceded by a zero, will be used to identify Army, Navy, and USMC installations. The four-letter code in the USAF Installations Directory will be used to identify USAF installations. Installation numbers may be obtained from ODCSRE. Installation numbers for Coast Guard installations will be obtained from ODCSRE.

(6) Applicant Number: Sequential beginning with 0001.

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EXAMPLE:  2  E  3  2  3  3  S  Z  D  T  0  0  0  1
          |  |  |  |     |        |
          |  |  |  |     |        |
         Air  | Mil  |     |        |
        Force |     N.H.    |     Applicant #
              |        Pease AFB
          NY Dist
```

SECTION VII. PROPERTY VALUATION

7-22. Real Estate Appraisals.

a. Preparation of Individual Appraisals. Individual real property appraisals will be prepared by staff or contract appraisers as guides to the determinations of fair market values (FMV), except as set out in paragraph e.(2) below. An appraisal will be prepared by a staff or contract appraiser to determine the FMV of the property prior to the announcement, and at the time of the sale of the property. Appraisals may be waived where foreclosure benefits only are to be paid. (See Addendum 4 for a general information sheet on HAP appraisals). Care should be exercised to avoid the expense of appraisals that are elaborate or more detailed than necessary for HAP appraisals. Existing valid appraisals may be used in lieu of ordering new appraisals. As an exception to Chapter 4 of this regulation, FNMA Form 1004, with attachments as required by said form, or a reasonable variation, may be used. The purchase price and the selling price should be made available to the appraiser. Substantial differences between the “before” appraisal and the applicant’s purchase price should be fully explained, as well as substantial differences between the “after” appraisal and the applicant’s selling price, if an amount other than the selling price is used to determine benefits.

b. Provision of Appraisal Information to Applicant. Applicants will be notified of the determinations of value made for their property. Appraisals will not be provided to

applicants beyond the same level provided in other proceedings (e.g., acquisitions under Chapter 5).

c. Contract Appraisers. District offices should acquire contract appraisers once a program has been approved for a location. Contracts, in accordance with the Federal Acquisition Regulation, or blanket purchase agreements with several contract appraisers, should be negotiated when circumstances warrant. The contract should establish a firm deadline for return of completed appraisals. The district will monitor contract performance under Corps guidelines and establish a tracking system to ensure appraisals are completed in a professional and timely manner.

d. References. See Chapter 4 of this regulation.

e. Determination of Fair Market Value (FMV). The district will make determinations of FMV using the real estate appraisal report, loan commitment documents, and any pertinent information contained in records on the value of this property.

(1) Date of Determination of Prior Fair Market Value, (PFMV). The PFMV will be determined as of the date of the announcement or immediately prior to the date of announcement. For programs with multiple announcement dates, the prior fair market value will be determined as of the purchase date for purchases between program dates.

(2) Fair Market Value Determined by Private Sale. If the applicant has made a reasonable effort to sell his/her property and there is no reason to believe that the transaction misrepresents the FMV of the applicant's property at the time of the transaction, then the sales price should be used as the "after" value. Reasonable doubts should be resolved in favor of the applicant. Although the sales price normally will be used as the "after" value, it must be recognized that some applicants may make poor bargains and sell their dwellings at prices well below the current market value for comparable properties. Individual appraisal of current FMV should be used as a guideline to ensure that private sale payments are reasonable. If the appraised value exceeds the sales price by ten percent or more, the reviewing appraiser will review the appraisal for completeness and accuracy. After the reviewing appraiser confirms the appraisal report, the appraised FMV may be substituted for the sales price in calculating the benefits. However, if the applicant has made a reasonable effort to obtain the highest value available, the benefit of the doubt should be accorded the applicant and the sales price may be used as the after value. All records should accurately and fully document the reasons supporting substitution of the appraised value.

7-23. Residential Property.

a. Property To Be Included. A one- or two-family dwelling, which is located on a farm or on many acres, only includes land as would reasonably constitute a residential property within the area. Land owned by the applicant that does not adjoin his residence will not normally be considered a part of the property. Whether an adjoining lot should be included as part of the residential premises will depend on whether it is, a part of the residential premises and was used as such, and if it can be readily severed and disposed of economically without affecting the disposal of the residential premises. The method generally used in the market for selling and purchasing residential premises will be considered. Applicants should not be left with a lot which is less than the size required for a dwelling, similar to those in the area, or which would be considered unmarketable except as part of the residence. These are judgment factors to be determined and applied to individual cases by the district.

b. Dwelling Unit. The Act refers to "any property improved with a one- or two-family dwelling". Therefore, the property must include a dwelling unit as of the date of the public announcement. The dwelling must be, or have been, an integral part of the property. Individual units in condominiums or cooperatives qualify. Mobile homes will qualify if the mobile home is affixed to the land in accordance with local and state laws and regulations, and the underlying realty is held in either fee simple, long-term lease (27.5 years or longer), or contract-to-purchase.

c. Permanent Structures on Leased Land. Buildings on leased land or on land not owned by the owner of the buildings will be considered real estate and are entitled to private sale benefits only.

SECTION VIII. ACQUISITION - CLOSING PROCEDURES

7-24. Acquisition Limitations. The procedures set forth in Chapter 5, Section I of this regulation should be used for acquisition of HAP properties, except as otherwise provided herein, or where the procedure is clearly not necessary for HAP; i.e., Negotiator's Report, Notification Letters required by Public Law 91-646, etc. The applicant should be made aware of the following:

a. Procedures. An eligible applicant should be advised of the acquisition procedures, conditions of a sale to the government, and the estimated time to complete the acquisition.

b. Time Limitation. Election to sell one's dwelling to the government is voluntary. The decision must be made within 45 days after the applicant has been advised of the FMV or the application will be considered withdrawn. The government

will take title only by a direct purchase transaction since condemnation is not authorized.

c. Benefit Determination by Government. The government will determine benefits. All efforts will be made to afford the full benefits authorized by the Act.

d. Balance on Public Announcement Date. HAP benefits paid by the government will be limited to the outstanding mortgage existing on the day of the public announcement. (See paragraph 7-8n.).

e. Government Purchase is not Displacement. Government purchase of the property is not considered displacement under Public Law 91-646 (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970) since the government does not require the property.

f. Deteriorated Properties. The district commander may decide not to acquire a home where the applicant has allowed the home to deteriorate beyond normal wear and tear. If the property has been abused, the applicant should be given an opportunity to rectify the deficiencies.

7-25. Environmental Inspection. The requirement to perform an Environmental Baseline Survey (EBS) has been waived. Inspections for defective paint and friable asbestos will no longer be a part of the acquisition process. Dwellings will be acquired “as-is”, unless there is something readily apparent which would make the properties difficult to market for disposal. In those cases, guidance from ODCSRE should be expeditiously obtained. Either the Corps or another agency will accomplish mitigation after acquisition. Routine inspections will identify any lead-based paint as defined in Addendum 5 and any friable asbestos. Although the Corps is not required to inspect or test for other contaminants, the inspector should document any observed or suspected contaminants or environmental hazards. (See Addendum 5).

a. Method of Performance. The inspection may be performed by qualified district personnel or by contractors.

b. Format and Use. No particular format is required for the reports, which become part of the application file.

c. Other Environmental Inspections. Any inspections or certifications required by state law or by local custom, such as radon screening or well water certification, will be obtained prior to government acquisition.

7-26. Acquisition Procedures.

a. Conditions of Sale. The applicant will be advised in writing of the prior market value, his/her options under HAP, and the conditions under which the government will purchase his/her property. Applicant must then respond in writing within 45 days whether he/she wishes to withdraw his/her application, appeal the appraised value(s) or request that the government purchase his/her dwelling. Both applicant and spouse should sign the request and state that they understand the conditions of sale.

b. Preparation and Processing of Deed and Closing Documents. Upon receipt of the request from the applicant, the deed and other closing documents will be prepared and sent to the applicant with a cover letter explaining the financial details, including tax liabilities, and specific instructions on completing and returning the documents.

c. Pre-Closing Inspection. Prior to closing, a pre-closing inspection of a property being acquired will be made.

7-27. Outstanding Rights.

a. Rights of Third Parties in Property. Rights of third parties in the property, such as easements for public highways and utilities, will be left outstanding, provided that this is consistent with good real estate practices in the community and will not prejudice the marketability of the property. Mineral and water rights may also fall within this category. Restrictive covenants must be satisfied or removed by the owner unless they are of a nature which will not prejudice the marketability of the property.

b. Waiver of Outstanding Rights. District Commanders, and/or MSC Real Estate Chiefs, will determine whether any outstanding right or interest in the property should be administratively waived.

7-28. Assumption of Primary Mortgage. When the applicant's dwelling is purchased, the primary mortgage may be assumed by the government and other mortgages existing on the public announcement date will be paid off as part of the closing of the purchase transaction. Where the government has assumed the mortgage indebtedness, the benefits accorded by the Act are considered fulfilled, even though the primary mortgage is left outstanding. The Office of the Secretary of Defense has authorized liquidation of mortgages in those cases where the district considers it to be in the public interest. Each case will be considered on its individual merits. Loan assumption fees and any other costs incident to assumption of mortgages should also be considered in determining whether to liquidate.

7-29. Closing and Settlement Costs - Government Purchase.

a. Release of Liability. When the government assumes a mortgage, it must release the applicant from liability in the event of a subsequent foreclosure.

b. Release of Mortgages. All mortgages, which the government has agreed to pay, will be released of record after delivery of the deed conveying the property to the United States. The applicant is ineligible for direct purchase unless unpaid judgments, liens, encumbrances, and pending public improvement assessments are satisfied and a release obtained.

c. Costs Paid by the Government. The government will pay closing and settlement costs. That portion of the sellers closing costs which represent the normal closing costs required to be paid by the seller at closing are a taxable benefit and must be separately identified as such.

d. Reimbursements. The government will reimburse the applicant for mortgage interest (not principal payments), taxes, and hazard insurance premiums that have been paid for the period from the date of receipt of the application for benefits, the date of vacation of the premises, or the date the program is approved, whichever is later through to the date the government acquires the property. A determination of the pro rata share of taxes and insurance premiums should be based on information received from the tax assessor and insurance company for the actual amounts payable or paid, without reference to payments to the escrow account, which will eventually be returned to the applicant. Districts should advise the applicant of the projected closing date, and that he/she will not be reimbursed for interest or other expenses incurred by delays in closing, if such delays were caused by, or at the request of, the applicant, and if such delays were unreasonable. If an applicant has previously withdrawn an application, settlement and closing costs will be prorated only from the date an applicant reapplies for benefits. The applicant must be fully informed that the consequence of withdrawal of a government acquisition application is loss of reimbursable expenses from the date of the application. The applicant is responsible for all mortgage payments, including interest, to the date of closing and the government will not assume any responsibility to avert a foreclosure.

e. Rental Income. Income received by the applicant for rental of the property during the period from the date of receipt of his/her application, the date of vacation of the premises, or the date the program is approved, whichever is later, will be deducted from the closing and settlement costs. HAPMIS will compute these payments when the necessary dates, interest, etc., are entered.

f. Amount of Outstanding Mortgages. The amount of the outstanding mortgages as contemplated by Section 1013(c) of the Act will be the total amount which the

applicant, as the mortgagor, owes pursuant to the mortgage agreement(s). This will include taxes, hazard insurance, and interest and penalty charges which have accrued and have been added to the total indebtedness, adjusted to provide for the costs for which the applicant is responsible, as set forth in subparagraph c. above. Outstanding mortgages include equity loans and other open-line-of-credit loans that are secured by the subject dwelling. The assumption or payoff of the outstanding mortgage balance of equity loans is limited to the balance due and owing as of the public announcement date.

g. Refinanced Mortgages. Refinanced mortgages will be acceptable if, at the time of government acquisition, the principal balance does not exceed the mortgage balance of the superseded mortgage. Homeowners who incorporate the costs of refinancing into the mortgages will have to "buy-down" the principal balance before government acquisition.

h. Property Taxes. Property taxes are prorated at the time of acquisition. Sometimes the amount collected is greater than that owed. All property tax refunds belong to the government.

7-30. Title Evidence.

a. Procurement of Title Evidence. For purposes of this chapter, districts may contract with a title company to record the deed after making a title update. Districts are responsible for verifying that the deed is properly recorded. If a survey showing the location of the buildings on the property is available from the lender or other source at little or no cost, it should be included as part of the title evidence. Where reasonable grounds exist to believe that some irregularity in title might be disclosed by a survey, the district should obtain a survey.

b. Use of Preliminary Title Evidence. When a determination is made that an applicant is eligible for assistance by government acquisition, preliminary title evidence for the property may be obtained from the applicant or the mortgagee, and furnished to the title company in an effort to reduce the costs by requesting the re-issue rate.

7-31. Hazard Insurance.

a. Prior to Closing. Properties to be acquired by the United States will usually be covered by hazard insurance. Owners should be advised that improvements on the land remain their property until title has been vested in the United States. Loss or damage to the property caused by fire, acts of God, flood, theft, or vandalism, will be borne by the applicant, subject to verification by inspection of the property before vesting title.

b. After Closing. After title has vested in the United States, losses to improvements not caused by the willful act or gross negligence of the former owner will be borne by the United States. The government will not carry insurance of any nature on the property except to the extent explained in paragraph 7-30c. The time and method of cancellation, and negotiation for refund of premiums paid, will be the responsibilities of the former owner.

c. Insurance for Mortgagee's Benefit. Upon assumption of a mortgage by the government, the mortgagee will be advised that the insurance coverage should be canceled and that the United States does not intend to carry insurance of any nature on the property. If the mortgagee will not agree, a property insurance policy in an amount equivalent to the unpaid balance of the mortgage assumed by the government will be purchased at DOD expense. The mortgagee may then cancel the existing property insurance policy or release it to the former owner for cancellation. Any unearned premiums will be the property of the former owner. Insurance claims arising after closing must be assigned to the government.

7-32. Occupation of Property. Generally, the applicant should arrange for tenants to vacate the property before the pre-closing inspection is made. Prior arrangements must be made if the District chooses to allow the tenants to stay after the government's acquisition. A lease authorizing the occupancy will be completed in accordance with the guidance in Chapter 8 of this regulation and will require the tenant to carry a personal and liability insurance policy for the term of the lease. If the property is acquired with the tenant in occupancy, the tenant must sign a "disclaimer" agreeing to vacate the premises upon demand.

SECTION IX. MANAGEMENT AND RESALE

7-33. Purpose. This section governs the management and resale of properties that have been acquired by the Department of Defense under the Homeowner Assistance Program, and sets forth responsibilities, procedures, methods and guidance for the management and resale activities for these properties. The sale of HAP homes will be in accordance with accepted real estate practices and procedures within the State where said properties are located, unless where prohibited by Federal law. Districts may use this section to develop a management and resale program to provide for the required activities. The purpose of the property management and resale program is to reduce the inventory of acquired properties in a manner that maximizes the net return to the government while mitigating the adverse impact on the affected residential areas and communities.

7-34. Basic Policies. The following guidelines are the basic policies for the management and resale of HAP properties.

a. Competition. Unless otherwise permitted herein, competition is required to provide an equal opportunity for all to purchase HAP properties through an open bidding process.

b. Contracting. All contracting will be accomplished in accordance with applicable laws and regulations.

c. Bidding. HAP properties will be sold to the general public through the open bidding process unless the District determines that advertising and open bidding will not serve a useful purpose. Then, direct sales may be negotiated. Sales authorized to other Federal, state and local governments may be directly negotiated, as provided in this section, without an open bidding process when determined appropriate by the district, when bidding would not serve any useful purpose, or when it is no longer in the best interests of the government.

d. Price. All initial list prices will be no less than the current fair market value as determined by the district. In establishing the price, consideration should be given to the necessity to expedite resale of the property. List prices may be periodically adjusted without appraisals, taking into consideration the necessity for rapid sales, based on the market where the property is located.

e. Distribution of Listings. Sales brokers approved to submit bids will be furnished copies of all listings concurrently to allow each broker an equal time allotment for selling the properties.

f. Advertising. All advertising will be accomplished through the local Multiple Listing Service (MLS) and/or news media to ensure the greatest practical readership and to provide as many buyers as possible in the market for such properties an equal opportunity to bid. Brokers may and are encouraged to advertise the listed properties at their own expense, but at no cost to the government. Properties may not be advertised for sale until they are officially listed for sale by the government.

g. Eligible Brokers. Brokers must sign a nondiscrimination certification and a participation agreement acknowledging that they are aware of and will adhere to the laws and regulations pertaining to the HAP. All participating brokers must be licensed real estate brokers in the state where the properties are located.

h. Ineligible Buyers. Government employees associated with the HAP, or those who would otherwise have an advantage over the general public, are prohibited from purchasing properties under this program. No member of or delegate to Congress is

eligible to buy or benefit from a purchase of a government-owned property acquired under the HAP program. No sales will be approved that may show a conflict of interest.

i. For Sale Signs. No signs will be placed on the property except those supplied or authorized by the Corps of Engineers.

j. Warranty. All properties are sold "as is", and no warranty whatsoever will be provided regardless of method of sale. The government does not make any guaranty or warranty, express or implied, with respect to the property as a quantity, quality, character, or condition, size or kind, or that the property is in condition or fit to be used for the purpose intended by the buyer. Properties having known environmental contamination, historical significance, located in flood plains, in an airport clear zone, or other significant matters or potential impediments or conditions to resale will be advertised to reflect these issues. The Corps will make no repairs to the property, except as identified in paragraph 7-35q., after execution of the contract unless stated in the contract and/or required by the lending institution as a condition of the loan.

k. Responsibility of Bidder.

(1) The failure of any bidder to inspect, or to be fully informed regarding the condition and location of all or any portion of the property, or negligence, or mistake on the part of the bidder in preparing the bid, will not constitute grounds for any claim or demand for adjustment or withdrawal of a bid. This and the following condition, or conditions that are substantially the same, will be a part of the sales contract submitted as a bid by the broker.

(2) It is the duty of each bidder and the broker to ensure that the bid is delivered by the time and at the place prescribed in the advertisement or announcement.

l. Financing. All properties are sold for cash. Certified checks, cashier's checks, electronic funds transfer, or checks drawn upon the mortgage company's escrow account are forms of acceptable payment. Loan financing is the responsibility of the broker and the buyer. Financing is open to all legally authorized loan institutions. Government insured loans are acceptable.

m. Conveyance Document. All conveyance documents will be by quitclaim deed, unless prohibited by state and/or local laws. Conveyance documents other than by quitclaim deed must be forwarded to ODCSRE for approval by the Department of Justice. The district Chiefs of Real Estate are authorized to execute both quitclaim deeds and leases of HAP properties on behalf of the government.

n. Exemptions. The HAP resale and management program is exempt from the following programs:

(1) The law authorizing HAP grants an exception to the reporting requirements of Title 10, U.S.C., Section 2662, for properties acquired, managed, and sold under the HAP. This includes both sales and rentals of properties.

(2) Screening HAP properties by HUD for possible use by the homeless in accordance with provisions of the McKinney Act.

(3) Federal Property and Administrative Services Act of 1949.

(4) Real property accountability requirements of AR 735-5 and those of chapter 16 of this regulation.

o. Deposit and Expenditure of Funds. All receipts and expenditures in connection with the HAP management and resale program will be deposited and processed in the Homeowners Assistance Fund, Defense account in accordance with DA PAM 37-100-XX, as may be modified from time to time by the Corps of Engineers Resource Management element. This includes all receipts and expenditures from sales, rental collections, repairs, contract payments, earnest money deposits, etc. associated with this program. Funds may not be used for programs other than HAP.

p. Property Accountability. Properties will be accounted for through use of the Homeowners Assistance Program Management Information System (HAPMIS).

7-35. General Requirements and Procedures for Administering All Management and Resale Methods.

a. Nondiscrimination Policy. All contracting, occupancy, rental, and sales activities referred to in this section must be conducted without regard to race, color, creed, religion, sex, national origin, age, familial status, or handicap. Contractors are required to agree to and execute a nondiscrimination certification.

b. Environmental Requirements and Standards. Sales, leasing and management of properties acquired under the HAP are not subject to Preliminary Assessment Screening requirements. However, actions will be taken to satisfy legal requirements for properties containing contamination by lead-based paint, friable asbestos and other contaminants. Radon testing will be appropriately performed and evaluated where it is customary for the specific program area. Properties known to be contaminated will be managed and remedial actions taken prior to resale in accordance with applicable laws

and regulations.

c. Lead-based Paint Poisoning Prevention. Properties constructed before 1978 are subject to the lead-based paint poisoning prevention requirements contained in 24 CFR part 35 and 40 CFR part 745. Purchasers of properties with potential lead-based paint hazards will be required to complete an Addendum to Sales Contract which will assure the purchaser is notified of and the risks of potential hazards of lead-based paint and that all required disclosures to the purchasers have been made.

d. Net Offer Bid. The net offer is the amount of the bid minus all deductible expenses to be paid by the government. Such deductions may include, but are not limited to: customary closing costs; cash bonuses; sales commission; repairs to property; taxes; title insurance; attorney's fee; termite inspection fee; etc. If requested by the purchaser in the bid, the government may pay all or a portion of the financing and loan closing costs not to exceed the percentage as determined appropriate by the lender. The broker's sales commission will not exceed the percentage of the purchase price which is customary for the area, except for cash bonuses as described herein. The amount requested by the purchaser to be paid by the government will be deducted from the amount bid for the property to determine the net offer. Where the actual financing and loan closing costs exceed the amount determined appropriate by the lender, the amount in excess must be paid by the purchaser and is not included in the deduction from the bid in determining the net offer.

e. Cash Bonuses. Cash bonuses may be awarded to brokers as determined necessary for purposes of accomplishing sales in hard-to-sell market areas. Any cash bonus offered to brokers by the government for the sale of hard-to-sell properties is an amount in addition to the sales commission, and is included with the commission and deducted from the amount bid for the property to determine the net offer. Districts may award cash bonuses of $1,000 and MSCs may approve those between $1,000 and $2,000. All cash bonus requirements over $2,000 will be forwarded to ODCSRE for prior approval.

f. Acceptable Bid. Criteria for determining an acceptable bid must be determined prior to the public opening of bids. Minimum amounts for accepting net offers should be established so bidders may be informed at the time of the bid opening whether their bid is acceptable. The definition of an acceptable bid will vary from program to program depending on the market conditions and other variables. The district will accept the most responsible bid producing the greatest acceptable net offer, as defined above, to the government and otherwise meeting the terms of the government's listing of the property. A net offer tie will be settled by a drawing.

g. Bid Period. Bid periods are to be established by the districts to ensure fair and equal competition and to maximize execution of the HAP. Ten days after the property is publicly advertised is the recommended bid period in most cases and the bid opening should follow on the eleventh day or the next business day. After properties are initially advertised, bids are accepted for a specified period, with all offers received during that period considered to have been received simultaneously, except for "full list price offers" which may be accepted as described in the following paragraph. Offers received on a property before the specified bidding period begins will be returned for resubmission during the advertised bidding period. Offers received after the period will not be considered at the bid opening, but will be considered during the extended listing period if no acceptable bid was received during the specified period. If no acceptable bids are received after all reasonable efforts have been made to advertise, direct negotiated sales are authorized and, as last resort, leasing of properties may be necessary in the best interests of the government.

h. Full List Price Offers. The Corps district offices may operate under a "full list price offer" program by opening offers periodically at specified times, predetermined and publicly announced, during a specified bidding period. A full price offer is an offer for the full price listed minus the broker's sales commission, the government's customary closing costs, related fees that would be paid for any and all bidders and are customary for payment by the government in the program area, and, if applicable, minus the broker's cash bonus. If an offer for the full list price or greater than list price offer and otherwise meeting the terms of the listing is received, it will be accepted at the time of the opening and the remainder of the bid period canceled. A backup offer representing the next highest offer may be accepted and held pending closing of a transaction. Districts utilizing this program will establish procedures to ensure fair and equitable treatment to all bidders and sales brokers. Brokers should be instructed to label the envelope containing the offer as a "Full List Price Offer" when applicable.

i. Extended Listing Period. Properties not sold during a specified time for bidding may remain available for an extended listing period. All bids received on each day of the extended listing period will be considered as being received simultaneously, and will be opened together at the next scheduled bid opening. If no acceptable bids are received after a reasonable period of time, the property will be reanalyzed and managed according to the determinations after the review. The list price and conditions of the property listing will be adjusted to obtain expeditious resale of the property while also maintaining the best interests of the government. If a property fails to generate an acceptable bid or offer during the specified bidding period, it may remain on the market as an extended listing until it is either sold or readvertised under different terms, or alternative management becomes necessary.

j. Bid Requirements.

(1) All bids submitted, whether during the specified bid period or the extended listing period, must be in the form of a fully completed sales contract, in a form provided to all participating brokers as prescribed by the district, and be signed by both the submitting real estate broker or authorized agent and the prospective purchaser. The bid must be submitted with deductions from the offering price, resulting in a net offer to the government. If the purchase is to be financed by an insured mortgage, a district office may also require that supporting exhibits for mortgage credit analysis pre-qualified by the broker accompany the initial submission of the bid.

(2) Bids submitted during the scheduled bid period must be received in a sealed envelope and must properly indicate the property for which the bid is being submitted by being marked with the property number, address, and return address of the broker. The envelope may contain any other markings considered necessary by the district for absolute identification.

(3) Bids received during an extended bid period may be submitted and processed by facsimile.

(4) Noncomplying bids will be returned to the broker with an explanation as to why the bid was considered to be in noncompliance and information about whether the property is still available and, if still available, the terms for resubmitting an offer.

k. Earnest Money Deposits.

(1) The amount of earnest money deposit will be that amount which is customary for the area as determined by the district. In determining the amount of earnest money deposits, a district should consider comparable practice in the locality, area real estate market conditions, the type of offers generally received, and the ability of the area's typical buyers to secure financing. The district to each participating real estate broker will furnish information on the amount of the required earnest money deposit.

(2) All bids must be accompanied by earnest money deposits in the form of a cashier's or certified check or money order made payable to the appropriate Corps of Engineers finance and accounting office, or a certification from the real estate broker that the earnest money has been deposited in an escrow account. If a bid is accepted by the district, the earnest money deposit will be credited to the purchaser at closing; if the bid is rejected, the earnest money deposit will be returned.

(3) To the extent practicable, districts will establish an earnest money certification

system with participating brokers. Such a system is to allow brokers to hold the earnest money until bid rejection or closing which will eliminate the cumbersome requirement for the Corps finance and accounting office to process these payments when received by the district.

l. Forfeiture of Earnest Money Deposits. Failure to Close Transaction. The failure by a purchaser to close on the sale of property within the allowable time period, including any extensions granted by the government, will result in the total or partial forfeiture of the earnest money deposit, except where the purchaser presents documentation to the government that one of the special circumstances described below:

(a) In those instances where, despite good faith efforts by the purchaser, there is an inability to obtain a mortgage loan from a recognized mortgage lender.

(b) For other good cause, as determined by the district office.

m. Multiple Bids by One Buyer. Real estate brokers may submit unlimited numbers of bids on an individual property provided each bid is from a different prospective buyer. If a buyer submits multiple bids on the same property, only the bid producing the best net offer to the government will be considered. A buyer may be asked to indicate a priority for properties when submitting multiple bids thus allowing the district to award the first acceptable net offer based on the bidder's priority list. If an offeror submits a bid on more than one property, the first of those bids that produces the best net offer to the government will be accepted and all other bids from that offeror will be eliminated from consideration. If the prospective owner-occupant purchaser submits the only acceptable bid on another property, without providing a priority list, then that bid must be accepted as if the bidder wishes to purchase all properties for which a bid was submitted. All participating brokers must be made aware of this policy.

n. Opening Bids.

(1) All sealed bids will remain sealed and safeguarded until the specified public opening date, which normally is the first business day following the specified listing period. The bids will be opened publicly at a time and place designated by the district office. A public bid opening is defined as a bid opening available for attendance by the general public and may be at a location within a district office or at other places deemed appropriate by the district.

(2) Each bid will be announced when opened, and acknowledgment made of the apparent highest net offer to the government. Successful bidders will be notified through their real estate brokers by mail, telephone, or other means. Official acceptance of a bid

is final and effective only upon the government's execution of the sales contract and mailing of a copy of the executed contract to the successful bidder or the bidder's agent. Formal government bid acceptance and certified mail procedures should be established to ensure proper and effective notification to successful bidders.

(3) All bids not accepted will be promptly returned to the broker by mail. The earnest money deposit will also be returned, either by the district office or the broker, as applicable. Copies of all bids will be retained by the district for purposes of record keeping and to provide a means for communication with unsuccessful bidders should the successful bidder for any reason fail to close on a particular property or to notify bidders of additional properties available for HAP resale.

o. Counteroffer. In cases where all bids received on a property are unacceptable, a district office may, after rejecting and returning all bids and earnest money deposits, notify all bidders or their brokers, including any bidders who have submitted unacceptable bids during the listing period, that the government would be willing to accept an offer equaling a predetermined net acceptable price. Bidders must submit an acceptable offer before the newly established bid cut-off period, to be determined by the district office. The highest acceptable offer received within the specified period of time, including any offer received from a bidder who did not submit a bid during the original bid period, will be accepted, thus terminating the counteroffer negotiations. In case of identical bids, awarding a sales contract will be determined by a drawing. All drawings to determine the successful bidder will be open to the public during the bid opening. Written notification of the successful offer will be provided to all bidders.

p. Closing.

(1) Time Allowed for Closing the Sale. The number of days allowed to close the sale of a property generally will not exceed 60 days from the date of acceptance of the offer to purchase, and will be set by the district office depending on the amount of time necessary in the area to obtain financing.

(2) Extensions. In the event a scheduled closing cannot be met for reasons beyond the control of the purchaser, an extension period will be appropriately granted where the district has reason to believe the sale will close within a reasonable time. A request for an extension must be submitted in writing.

(3) Closing Agent.

(a) The government will provide a closing agent with qualifications as required by state and local laws to ensure the government's interests are protected. The closing agent

may be a district employee or bonded representative as set forth in this section.

(b) Although it may be legally acceptable in some jurisdictions for the closing agent to represent both purchaser and seller, purchasers may, at their own costs, obtain representation if desired.

(c) If required by the district, the closing agent's functions may include reviewing and ordering title information; preparing and recording deeds and related documents; explaining all closing papers and documents to the purchaser; administering requests for closing extensions; providing an estimate of closing costs; and collecting and disbursing funds related to the sale.

(4) All assessments, including improvement assessments that are available for payment without interest or penalty for advance payment, taxes, rent, and ground rent, if any, will be prorated between the government and the purchaser as of the date of the closing. On assessments for which a payment plan has been approved, only assessment amounts required to be paid during the current tax year will be prorated, with the following years' payments to be the responsibility of the purchaser.

q. Property Damage After Sale, Before Closing. The government assumes the risk of any damage or loss to the property occurring after acceptance of the sales contract and before closing, provided the damage or loss is not the fault of the purchaser. Any substantial damage after the effective date of the sales contract but before closing may be authorized for immediate repair, at the government's option; or the government may reduce the sale price as a result of the damage. The purchaser has the option to cancel the sales contract, with all earnest money deposits refunded.

r. Occupancy Before Closing.

(1) General Policy. Occupancy of the property by the purchaser before closing is prohibited, except where authorized on a case-by-case basis under the following circumstances:

(a) When failure to permit occupancy would create an extreme hardship on the purchaser;

(b) Where permission to occupy is necessary to meet competition; or

(c) Where occupancy would protect against vandalism and theft.

(2) Occupy Under Lease Agreement.

(a) If occupancy before closing is permitted because it would protect the property against vandalism and theft, occupancy will be rent-free or at a nominal rate in exchange for caretaker services that the purchaser agrees to perform.

(b) If occupancy before closing is permitted solely to meet the needs of the purchaser, full market rent will be required, and the purchaser will be required to assume the risk of loss in the event there is damage to the property before closing.

s. Rental of Acquired Property.

(1) General Policy - Leases. Leasing of acquired property will be as a last resort in determining management of HAP resales. However, it is an authorized management option when the district determines that it is in the best interest of the government or as local market conditions warrant. Leases may include an option to purchase in appropriate circumstances. Situations where the government will lease property include, but are not limited to, the following:

(a) A sales closing is delayed at length;

(b) Occupancy is essential to prevent vandalism or rapid deterioration of the property;

(c) The inventory in an area exceeds sales market absorption capability for an extended period of time;

(d) The property is a one or two family dwelling and occupancy would improve marketability;

(e) The property is leased as temporary housing for disaster victims;

(f) The property is leased by other government agencies for defense, law enforcement, or other purposes, or

(g) The property is leased by a nonprofit organization or governmental entity, including a public housing authority.

(2) Tenant Selection. In selecting tenants for any lease program, discrimination by race, color, religion, sex, national origin, age, familial status, or handicap is prohibited.

(3) Preparation of Leases. Leases will be prepared in accordance with local requirements as well as applicable Federal laws and regulations. Rental will be appropriately charged and clearly cited in the lease document and receipts will be deposited in the HAP account. Public Law 89-754 is the leasing authority.

(4) Conditions of Occupancy.

(a) Lease Term and Rent. The lease term and the amount of the rent is dependent on the circumstances under which the property is leased. The fair market rental value will be the basis for charge. Appropriate other forms of compensation in lieu of the fair market value are also authorized on a case-by-case basis when it will prove beneficial to the government. Terms will generally be on a month-to-month basis and revocable at will by providing a 30-day notice.

(b) Continued Occupancy.

- Occupancy of acquired property is temporary in all cases and is subject to termination when necessary to facilitate preparing the property for sale and completing the sale.

- The government will notify the occupant to vacate the property and, if necessary, will take appropriate eviction action, in any of the following situations:

- Failure of the tenant to execute a lease, or to comply with the lease;
- Failure of the tenant to allow reasonable access to the property upon proper notice;
- Necessity to prepare the property for sale; or
- Assignment of the property by the government to a different use or program.

t. Competitive Sales Procedure.

(1) General. Properties are sold to the general public on a competitive bid offer basis through local real estate brokers. Properties are advertised in the area in which they are located through appropriate media. If a property fails to generate an acceptable bid or offer, during the specified bidding period, it will remain on the market for an extended listing period, as described in this section.

(2) Qualified Purchaser.

(a) Anyone, regardless of race, creed, color, religion, sex, national origin, familial status, age, or handicap may offer to buy a government-owned property acquired under the HAP program; and

(b) Except as provided below, tenants in occupancy will not be offered the right of first refusal to purchase the property. They may submit an offer, or bid, to purchase the property when it is publicly listed, which will be treated in the same manner as other offers received from other prospective purchasers during the listing period.

(c) Tenants in occupancy will be offered the right of first refusal to purchase the property where:

- The tenant has a recognized ability to acquire financing and a good rent-paying history, and has made a request to Corps to be offered the right of first refusal; or

- State or local law requires that tenants be offered the right of first refusal.

(3) List Price.

(a) All initial list prices will be no less than the current fair market value as determined by the district. In establishing the price, consideration should be given to the necessity to expedite resale of the property. List prices may be periodically adjusted without appraisals, taking into consideration the necessity for rapid sales, based on the market in the market impact zone.

(b) Properties that fail to sell within a reasonable market period as determined by the district, should be reanalyzed and the price may be reduced by the district.

(4) Financing. The purchaser is entirely responsible for obtaining financing for purchasing a property.

(5) Open Listings. Properties may be sold on an open listing basis with participating real estate brokers. Any real estate broker who has agreed to comply with DOD regulations and requirements may participate in the sales program. Purchasers participating in the competitive sales program must submit bids/offers through a participating broker. Offers for groups of properties available for bulk sales may be submitted directly to the district.

u. Closing Agent Contract. District offices may contract for the services of a closing agent. This contract must include the following elements:

(1) Liquidated Damages. A provision calling for an established daily amount of liquidated damages for each day the sales closing package is delivered beyond the date specified in the sales contract. There must also be a damages provision involving the late delivery of the sales proceeds due the government. If either or both of the liquidated damages provisions become effective for a specific case, the closing agent shall attach to that closing package their check for the full amount(s) due.

(2) Bonding. The closing agent is required to obtain bonding in an amount equal to the value of the cases assigned by the government during a normal two-month period. The bond may be surety or fidelity, provided the government is fully protected against acts involving misappropriation of funds by the principal, employees of the contractor, and any subcontractor the closing agent may be utilizing. The bonding is required to be in place prior to contract award.

(3) Closing Date. The district office or closing agent shall establish a firm closing date within the time specified in the sales contract. For extensions of closing date see paragraph 7-35p. 2.

(4) Preparing the Closing Package.

(a) District offices should provide the closing agents with all necessary documents and information needed to close a sale, including the following, in sufficient time to permit preparation for closing:

- Title evidence.

- Executed deed from the government.

- Tax Information.

- Copy of lease, if applicable.

- Rental status, if applicable.

- Utility bills, if applicable.

(b) Closing documents should, whenever possible, be picked up personally by the closing agent. If closing documents must be mailed, the appropriate government procedures must be followed. Method of transmittal must be used that provides positive proof of receipt.

(5) Closing Agent Responsibilities.

(a) Completion of Documents by Closing Agent. The closing agent shall complete all documents in accordance with the contract requirements. These documents may include but are not limited to:

- Settlement Statement

- Promissory Note

- Trust deed or mortgage

(b) Establishment of Escrow Account. The closing agent shall establish a separate escrow account for all proceeds in the name of the closing agent, with the restriction "As Trustee for the United States of America". The escrow account must be established in a Federally insured bank that gives credit for the deposited check immediately upon clearance. Exceptions to this requirement are:

- Infrequent closing in remote areas

- Closing being handled by district staff

- Where formal contracts for closing services are not required.

(c) Accounting Records. The closing agent shall maintain complete and accurate accounting records which, as a minimum, include a cash receipts and disbursement register. This register will be reconciled monthly to the bank account. For each receipt and disbursement, the register must identify, by address and case number, each property to which the receipt or disbursement applies and the purpose for each disbursement. Review of the register will be performed by the district office during each on-site review.

(d) Status Report of Cases Assigned to Closing Agent. The closing agent is required to provide a status report as required by the district.

(e) Purchaser's Inspection. The completed Settlement Statement must be made available to the purchaser for inspection, upon request, on the business day preceding settlement.

(f) Receipt of Deposits of Payments. The closing agent is responsible for obtaining from the purchaser the amount due to close the sale at the time of closing. All

funds paid by the purchaser must be in cash, certified funds, cashier's check, or check drawn upon a mortgage lender or attorney's escrow account made payable to the closing agent. The closing agent shall deposit these funds in the escrow account on the day of closing or the next banking day.

(g) Authorized Payments from Proceeds. Payments for the following expenses are to be made from the closing agent's escrow account. If funds are not available from the proceeds to pay any of the authorized expenses, the closing agent is to submit an invoice for each individual expense to the district office along with the closing documents.

- Sales commissions in the amount specified in the Sales Contract and any authorized bonus to the sales broker. Reflect this payment on the Settlement Statement.

- Accrued utility bills of former owners or tenants if the bills are or will become liens against the property or if restored and continued service is contingent on payment.

- Refunds. Payments made by purchasers for closing extensions may be refunded in accordance with the terms specified by the district.

- Credits. Credits given to the purchaser for services, repairs, or other items negotiated between the district and the purchaser.

- Miscellaneous closing expenses such as closing agent's fee, unless paid under other arrangements and any other such expense agreed to or approved by the district office.

(h) Transfer of Sales Proceeds. No later than the next banking day after sales closing, the closing agent must send all funds to the district office, either by hand delivery, express mail, or electronic transfer. Closing agents must obtain confirmation.

(i) Forwarding Closing Documents. A facsimile of the executed closing documents must be received in the district on the day of closing. All original closing documents must be forwarded to the district office within the time frames stated in the closing agent's contract. Such time frames must conform to the overall requirement that the certified closing documents be received by the district office within 14 calendar days from the date of closing.

(j) Recording Sales Documents. The closing agent must ensure that the deed, note, deed of trust (mortgage), and all other documents that require recording are recorded immediately following closing.

(k) Monitoring of Closing Agents' Contracts. The district office must carefully monitor closing agents to ensure that closing occurs within the proper time frames; that all documents are completed accurately; that sales proceeds are sent to the district office in an accurate and timely manner and that closing documents are forwarded to the district office within the time required by the contract.

- Review of Assigned Closing Status Report. Review the report to ensure that closing agents are properly closing sales and whether any delay or failure to close is the responsibility of the closing agent.

- Delayed Deposit of Proceeds. When the district office learns that funds for a closed case were not sent promptly, the closing agent should be contacted immediately. Determine the cause for the delay, verify that the mailing has taken place, remind the closing agent of the contractual requirements and, where appropriate, demand the applicable liquidated damages. If the situation is not resolved satisfactorily within a short time, do not assign additional closings to the agent until the problem has been resolved. Where appropriate, contact the district office counsel, Inspector General and bonding company, advising them of the situation.

- Delayed Transmission of Closing Documents. When the district office does not receive the closing documents within the time specified by the contract, contact the closing agent to determine the cause of the delay.

- Corrective Action. Appropriate corrective action and measures must be taken to ensure closing agent compliance with all contractual responsibilities.

- Periodic Reviews. Periodic on site reviews of each closing agent's records and procedures will be conducted. A checklist for monitoring closing agents during each review will be completed. The review findings will be maintained in the district office file.

- Retain Review Records. The district office responsible for audit and litigation must retain copies of all documents pertaining to performance by the closing agent, including periodic status reports, reviews and correspondence.

(l) Review and Approval of Closing Documents. All closing documents are to be reviewed, corrected and certified by the district office as soon as possible after their receipt. In conducting the review the district office shall assure that:

- All applicable closing documents show the correct HAP case number.

- The sales price, earnest money deposit, sales commission, settlement costs, and any additional costs authorized by the government sales contract are accurately recorded on the settlement statement.

- If the earnest money was deposited in the district office, the full amount of such deposit was shown on the settlement statement.

- The full amount of any extension fee and the amount of any refund are to be shown on the settlement statement.

7-36. Management and Resale Options. The specific procedures for management and resale of acquired properties should be tailored to the particular requirements of individual projects and the resources available to the district to accomplish the mission. The Corps of Engineers will manage and sell acquired properties or contract for such services in a manner consistent with, but not limited to, the following: transfer to other government agencies and direct sales; management and resale by Corps of Engineers; and management and resale by private contractors.

7-37. Transfer to Other Government Agencies or Direct Sales. Transfers to other government agencies may be necessary for certain projects as required by law or special legislation and to provide relief to or in cooperation with other government projects. Direct sales may be pursued, at discounts, to other entities listed below for purposes of providing assistance to local communities or to expedite sales of hard-to-sell properties.

a. Transfer. Transfer of acquired properties to Federal agencies will be in accordance with agreements, if any, between the Department of Defense and the respective Federal agency. Transfer of acquired properties will not be made to governmental agencies without prior approval from ODCSRE. Full justification and plans for transfers will be submitted for approval.

b. Direct Sales. At the discretion of the district, direct sales may be authorized for the following:

(1) Direct sales to Federal agencies, private nonprofit organizations, state and local governments, and public agencies, may be accomplished for use in HUD and local housing or homeless programs. Sale discounts will be determined on a case by case basis in accordance with the particular program authorizing the conveyance. The amount of the discount will be that amount necessary to expedite sales in depressed markets and to reduce the governments inventory of HAP properties.

(2) Direct sales to displaced persons.

(a) At the discretion of the district office, properties may be offered for direct sale, at a discount, to displaced persons that will occupy the properties. Properties offered will be only those in the general area in which the displacement is occurring.

(b) For purposes of this section, "displaced person" means any household (family or individual) that moves permanently and involuntarily as a direct result of:

- Acquisition, rehabilitation, demolition or code enforcement for a government (Federal, state or local) project or government-assisted project;

- A determination that the income of the household exceeds the limitations for the government-assisted housing that the household occupies; or

- A major disaster, as declared by a state or Federal Government.

7-38. Management and Resale by Corps of Engineers.

a. Management by the Corps of Engineers. Management of acquired properties may be performed by contract. Districts have been delegated the authority to utilize Corps of Engineers or installation personnel to perform maintenance and management functions if, in the opinion of the District Engineer, such utilization is in the best interests of the mission. Such management functions may include, but are not limited to:

(1) Participation in joint inspections,

(2) Security and winterizing of properties,

(3) Installation of signs and warning notices,

(4) Coordination with local utilities, homeowners associations, local law enforcement authorities, and other agencies as required by law or regulation,

(5) Care, maintenance, and repair of the property,

(6) Rental of properties prior to resale,

(7) Periodic inspection of property, at least monthly,

(8) Other management functions as determined by the District Engineer.

b. Rental of Acquired Property.

(1) Leases. The authority for leasing is Public Law 89-754, 42 U.S.C. 3374 (d). See paragraph 7-35s.

(2) Management of Rental Properties. Management of rental properties, unless in small quantities or otherwise infeasible, may be by property management contractors obtained through an invitation for bids/proposals process. No contract will be awarded to businesses otherwise associated with the resale of HAP properties because of the conflicts it will present in selling versus rental by the same contractor. A contractor wishing to slow the resale program to continue receiving funds under a rental management contract may impede the government's goal of a fast resale.

c. Resale by Corps of Engineers.

(1) Sales through Real Estate Brokers. The Corps of Engineers is charged with the responsibility of obtaining the maximum recovery of its investment in all properties. HAP properties may be sold to the general public on a competitive basis through participating real estate brokers. All licensed real estate brokers in the program area will be notified that they may, by directing a letter to the district office, with a photocopy of their broker's license, and by signing a nondiscrimination agreement, be placed on the district mailing list for sales of all properties in their area of interest. Brokers will be furnished keys or other method of access upon their approval and execution of a participation agreement. Brokers will be required to sign a participation agreement detailing whom they represent and the requirements and obligations of all parties. A home sales guide will be developed by the district for each project and furnished to each participating broker to be used as a reference in implementing the resale program.

(2) Open Listings. Properties sold through an open listing program will be available to all brokers approved for participation.

(3) Notification of Listing. A complete listing of all properties available for sale is mailed simultaneously to all participating brokers on a nonexclusive listing basis as the properties are acquired. All brokers have an equal opportunity to inspect, show, and submit offers to purchase. The district will notify all participating brokers of the dates the properties will be advertised, dates for accepting bids, the bid opening dates and locations of bid openings.

(4) Advertising. The Corps will solicit bids by actively and publicly advertising all available properties to ensure the broadest practicable coverage via newsprint, posting

of notices in public places and/or other media the district deems appropriate. Participating brokers may advertise HAP properties at their expense without cost to the government. Any broker advertising in newspapers or elsewhere shall not use wording that would tend to indicate distressed sales or foreclosed loans. The phrase "Equal Housing Opportunity" must be inserted in every advertisement of HAP properties for sale. If a property fails to generate an acceptable bid or offer, during the specified bidding period, it may remain on the market for an extended listing period. The length and conditions of the extended listing period will be as determined appropriate by the district for accomplishing the HAP resale mission.

7-39. Management and Resale by Private Contractor. This paragraph sets forth responsibilities, procedures, methods and guidance for the contracting of management and resale services for acquired HAP properties. Districts may use this paragraph to develop a management and resale program to provide for contracting for part or all of the required services to accomplish the HAP mission.

a. Property Management by Contract.

(1) Policy. The Corps of Engineers may contract for the management of all acquired HAP properties. The terms Property Manager (PM) and Management Broker (MB), as used herein, are synonymous. Instructions in this chapter regarding either the PM or MB apply equally.

(2) Determination of Need and Area. The district office must recognize situations which dictate the need for contracting management/broker services and comply with the Federal Acquisition Regulations (FAR) and this chapter in obtaining these services.

(3) Training of Management Brokers. Within 30 days of contract award, the MB must be trained and/or provided instructions on at least the following:

(a) Contract services the MB is to perform or obtain.

(b) Preparation and submission of all required forms.

(c) Policies and methods of disposition.

(d) Procurement of supplies, materials, repairs, and services.

(e) Policies and requirements of repair programs.

(f) Determination of property values.

(g) Determination of property condition.

(h) Accounting procedures and requirements.

(i) Causes for contract termination.

(4) Property Manager's Responsibilities. The property manager will be required to perform services which include managing one-/or two-family homes (including condominiums) and all improvements located on the property assigned by the district, including maintenance, repairs, and reporting. Management objective is to maintain the acquired properties, keeping them clean and ready for sale in the local real estate market.

(5) Supervision and Monitoring of MBs. The overriding responsibility of the district is to supervise and monitor the activities of the MB. To properly fulfill this responsibility and to ensure that the government is receiving proper return for its management contract expenditure, the following must be performed on a continual basis:

(a) Review Documents Submitted by the MBs. Determine that each form required of the MB is submitted on a timely basis, contains essential and accurate information, and that recommended prices and methods of sale are reasonable and in keeping with current policy.

(b) Inspection of Properties. Conduct field inspections, as warranted, of properties assigned to the contractor. It is recommended that a minimum of ten percent of the properties receive these inspections. Increase inspection, up to 100 percent, if necessary, where it is found that the contractor's performance is deficient.

(c) Review of MB.

- Quarterly. The MB's office records and procedures must be reviewed on a quarterly basis. Each review must include individual property files, and fiscal documentation and records. Based on performance, the review may include adequacy of staff, supplies, facilities, inventory controls, status records, follow-up systems, comparable data, and general office conditions. Problem areas/deficiencies are discussed with the MB and a follow-up on previous deficiencies is conducted.

- Annually. The district is to perform an in-depth evaluation of each MB annually.

- As Warranted. As the district is directly responsible for ensuring proper and

adequate MB performance, the district must visit and work with the MB when inadequate or deteriorating performance is noted. It is extremely important that each such visit be documented.

- Review Monthly Accounting Reports:

- Determine that broker's figures agree with totals of collections and disbursements.
- Check cash reconciliation for accuracy and correctness.
- Verify correctness of voucher.
- Forward payment request within four days.

- Document Unsatisfactory Performance.

- Document inadequate performance, including incorrect or incomplete forms. Place documentation in the District's MB's file.
- Compare MB's performance to other MB's working for the district at other locations.
- Discuss deficiencies personally with MB. District file should contain documentation of any instruction, guidance or monitoring provided each MB.
- Provide written documentation to MB regarding unsatisfactory performance items and corrective measures to be taken by the MB. Retain copy for MB's file.
- Follow-up on previously noted deficiencies.
- Provide additional training as necessary.

- Termination of MB Contract. When the MB, after reasonable time and assistance, fails to correct unsatisfactory performance, it will be necessary to terminate the contract. It is vital to any termination effort that the documentation highlighted above is maintained and that it reflects the efforts put forth to achieve a turnaround of the MB's performance. Documentation should reflect that the MB received proper notice by personal discussion and by letter detailing performance deficiencies and prescribing a schedule for correction. Unacceptable performance must be reflected in inspection

reports, letters to the MB, documentation of discussions, and work sheets measuring performance. It is the responsibility of the district to bring to the attention of the contracting officer those instances of continued or repeated non-compliance by the MB and to recommend actions to be taken, including termination where deemed appropriate. The decision to terminate will be made in accordance with the terms of the contract. Appropriate use will be made of administrative sanctions in the property disposition program in strict accord with 24 CFR Part 24. Areas of concern for irregularities include any procurement contract for goods and services between the government and MBs, repair contractors, selling brokers and purchasers.

b. Management and/or Resale by Contractor.

(1) A district office may invite firms experienced in property sales and management to compete for contracts that provide for an exclusive right to manage and/or list specified properties in a given area. This procedure is in lieu of management and resale by the Corps of Engineers as it will provide for administration of property management and resale by contract. In determining whether to enter into an exclusive contract, the district office will consider its staff resources, local market conditions, and location of properties.

(2) The contractor will provide a variety of management and/or resale services to assist the government in managing the properties prior to sale. The duties of the contractor may include: selling the properties, advertising the properties in a manner approved by the government, showing the properties to prospective purchasers, helping purchasers prepare and submit purchase offers and qualify for mortgages, explaining to purchasers the steps required to close the sale, providing the district office with a report on the reasons the properties have not sold after a reasonable period on the market, submitting bids/offers to the government on behalf of prospective purchasers for acceptance or rejection, coordinating closings, and managing rental properties. A competitive process is required as in other resale methods to offer the general public the right to make offers in a fair and equitable manner.

(3) In areas where a broker has an exclusive right to list properties, a purchaser may use a broker of his or her choice. At the District's option the purchaser's broker must submit the bid/offer to the government directly or through the exclusive broker.

7-40. Other Sale Procedures.

a. Razing for Lot Sales. The government will raze property and sell the vacant lot if required by local ordinance or agreement, or if it is determined to be in the best interest of the government. As an alternative, the government may sell the property with

a requirement that the purchaser raze the property after the sale. Specific requirements for demolition of improvements will be included in the sales contract in such cases. Properties may be razed for sale of the vacant lots if one or more of the following conditions exist:

(1) The property has already been unsuccessfully offered for sale in its “as is “ condition.

(2) A local ordinance or agreement prohibits “as is” sales of such properties.

(3) The property must immediately be razed to remove a health or safety hazard.

(4) Damage beyond repair or the cost of repairs exceeds the value.

(5) It is determined by the district to be in the best interest of the government to raze the property for a sale of the property.

b. Bulk Sales. The government may occasionally make groups of properties available for bulk sales in “as is” condition. Bulk sales of properties may be limited to governmental entities and private nonprofit organizations for a specific purpose. The terms and conditions for a particular bulk sale will be described fully in any public notice of the sale.

(1) General Features. Designed to boost sales in weak markets, the all cash, “as is”, bulk sales program features:

(a) The option to publish or not to publish the listing price.

(b) The requirement for purchasers to provide their own financing.

(c) Offers may be submitted directly to the district.

(2) Property Selection. Eligible properties include “as is” properties and vacant lots. Generally, properties should be marketed individually prior to being offered in bulk. However, this is not always practical. A bulk offering containing properties that have proven to be hard-to-sell could logically include new acquisitions which are comparable with regard to location and physical characteristics, but which have not been offered individually. This rationale may reasonably be extended to broader areas; e.g., to specific neighborhoods. In addition, better properties may be included in a bulk package of predominantly less attractive properties, if doing so would enhance the properties overall marketability.

c. Auctions. Districts may sell properties at public auction in lieu of other resale methods. In determining whether to hold an auction, consideration should be given to: the type and number of properties to be sold; property value; location; anticipated public interests; and administrative costs. Terms and conditions of the auction sales will be announced in the public notices of the sales. Auction sales may be accomplished by a contractor licensed in accordance with laws and regulation in the state and local community in which the property is located, or by qualified Corps of Engineers employees. Procedures for holding public auctions by Corps personnel will be in the spirit of fair competition and within applicable guidelines for the open bidding process. Auctions by contractors will be governed by the following:

(1) General. A professional auctioneer may be contracted by the government to hold an auction for resale of HAP properties. If the auctioneer is a licensed broker in the jurisdiction of the properties to be sold, he/she may function in that capacity. If the auctioneer is not a licensed broker, he/she must enter into an agreement with a licensed broker who will act in the auctioneer's behalf to show properties prior to the date of the auction and perform such other functions only a licensed broker may perform. To the extent that other selling brokers are used, it is the responsibility of the auctioneer to compensate them.

(2) Contract with Auctioneer. All services performed by the auctioneer must be set forth in a contract.

(3) Soliciting Auctioneers. Auctioneers must be solicited in accordance with the FAR.

(4) Bid Basis. If bid basis is percentage of sales, inform all prospective auctioneers the approximate total value of the offering. Where competitive negotiation is permitted, the fee should not exceed eight percent of the total received. It must be clear in the solicitation whether the auctioneer must pay advertising costs out of his commission or whether the government will provide an allowance for that and other expenses.

(5) Broker Compensation. The sales commission will be paid under the provisions of the contract. If the auctioneer permits the participation of other brokers, it is his/her responsibility to establish the terms for this participation and to compensate the brokers.

(6) Advertisement. Auctioneers may arrange for, procure and/or place all forms of advertising, subject to government approval. Advertisements should have all essential

information, such as, how the property may be shown, time, date and location of auction, list of properties, earnest money requirements, a statement as to whether properties are being offered individually or in bulk, the terms and conditions of sale and essential rules of the auction, a statement that the property must be viewed through a local broker, and a statement that the government reserves the right to reject any offer unless the auction is absolute.

(7) Costs. All costs, including advertising and fees for auction personnel should be included in the price ultimately arrived at in the contract. However, the district office may elect to extract the advertising costs, providing a separate allowance for it. A cost or price analysis will be made prior to execution of the contract along with a determination that the contract price is reasonable.

(8) Competition at Auctions. The contract must provide that the auctioneer cannot use unduly restrictive procedures or standards that tend to limit competition at the auctions. The auctioneer, as part of the contract agreement, must sign a nondiscrimination certification.

SECTION X. APPEALS

7-41. Appeals Policy. Section 1013(f) of the Act provides that the provisions of the Act will be administered in conformity with the requirements contained therein and under such conditions and regulations as the Secretary of Defense may prescribe, and that all determinations and decisions made pursuant to such regulations shall be final and conclusive and will not be subject to judicial review. The Administrative Procedure Act does not apply.

7-42. Authority. The Secretary of Defense delegated to the Secretary of Army the authority to establish an appeals procedure, with responsibility for final action assigned to a designated component of the Department of the Army. Accordingly, the appeal procedure in this section has been established. Authority to take final action on appeals has been vested in the DASA(I&H).

7-43. Notification to Applicant.

a. Notification of Decision. Each applicant will be notified of the decision made on his/her application and the reasons for such action.

b. Information to Be Included. The letter to the applicant providing notice of the decision should contain the following minimum information:

(1) References to the appropriate sections of the Act and the regulation under which the decision has been reached and the rationale for the decision.

(2) Notification of the applicant's right to question the district's decision, to then object to the decision, to have the MSC review the district's decision, and then file an appeal of the MSC decision. Applicants must be advised that an objection must be written and state the basis for the objection. Applicants should further be informed that if the issue is one of value they may submit a professional appraisal paid for by the applicant.

7-44. Objection Procedure.

(a) A written question regarding the applicant's case will not be considered an appeal. The district will reply to the applicant and explain the government's decision and the basis for that. [Note the restriction on appraisals in 7-22b above.] This reply will explain that the Applicant has a right to object to the district's decision and have it reviewed by the MSC or accept the district's decision. A second appraisal will not be obtained unless an objection is received, forwarded to the MSC and the MSC decides to request a second appraisal.

(b) The applicant may request that the MSC review the district's decision. The MSC will review the objection with supporting documentation and reply to the applicant. The reply will explain that the applicant may file an appeal from the MSC's decision(s) regarding (1) benefits payable and/or (2) eligibility. Applicants should be advised that an appeal will be considered by the district commander, the MSC commander, and ODCSRE. If favorable action cannot be taken by one of those, the appeal will be submitted to the DASA(I&H) for final decision.

7-45. Appeal Process.

(a) An appeal must be submitted in writing to the district within 180 days from the date of notice of the MSC's decision. The appeal must state the decision the applicant is objecting to and the basis for the objection with supporting documentation. The applicant may be represented by an attorney or other person if applicant so chooses.

(b) The district will review the applicant's appeal, and prepare an appeals package with recommendation to be submitted to the MSC.

(c) Appeals will be considered at the district level, and will be reviewed at MSC level. A determination will be made at each level as to whether or not favorable action can be taken. An appeal which has been forwarded to a higher level of review may not

be settled at a lower level without the concurrence of the highest level to which the appeal has been transmitted.

(d) If favorable action cannot be taken, the appeal will be forwarded by ODCSRE to the DASA(I&H) for further review and for final decision.

7-46. Appeals Procedure.

a. Investigation. Any decision objected to by the applicant will be investigated by the district.

(1) The investigation will be as extensive as necessary to clearly define the basis for the objection/appeal and to produce information required for its consideration.

(2) Upon completion of the investigation, the information submitted with the application will be reconsidered, together with the information obtained as a result of the investigation, and a determination will be made as to whether favorable action can be taken.

(3) For appeals, a signed report of the investigation and consideration will be prepared which will include the following tabbed headings:

(a) Applicant's Claim: A brief outline of the basis of the application for assistance, the initial decision by the district, the applicant's objection, and the MSC's decision from which the applicant has appealed, and the basis for the applicant's appeal. Copies of the benefit sheet and settlement sheet should be included, if applicable.

(b) Issue: A brief statement of the matter to be resolved;

(c) Findings and Decision: The scope of the investigation and consideration of the appeal; pertinent information necessary to determine the merits of the appeal; an Attorney's Opinion for eligibility appeals, the decision on the appeal;

(d) Besides review and certification of the appraisals for the appeal, an analysis of the applicant's appraisal issues should be included in the review; and

(e) Recommendations.

(4) Applicants will be notified by the district when an appeal has been forwarded to higher authority for review.

b. Forwarding of Appeals. If favorable action on an appeal cannot be taken by the district, a tabbed appeal assembly will be prepared in sufficient copies to provide one copy for the next higher level of review and two copies (including original papers where available) for submission to ODCSRE. A copy of the appeal containing the original papers will be returned to the district after a decision on the appeal has been reached. The appeal assembly will have a jacket cover of heavy paper backing with a suitable fastener at the top. It will consist of the following items, assembled in the order shown below, with such variations or additions as circumstances require:

(1) Investigation and consideration report;

(2) Written appeal and amendments;

(3) Application with attachments;

(4) Appraisal reports, if appropriate;

(5) Settlement sheet for appraisal issues;

(6) Pertinent correspondence in chronological order;

(7) the District's Attorney's Opinion; and

(8) Any other documents or information which have a significant bearing on applicant's claim for assistance.

7-47. Review of Appeal by MSC. This review is to ensure the following:

a. Compliance. The initial decision is in accord with the facts, the provisions of the Act, and existing regulations;

b. Notification. The applicant was properly notified as to the reason that favorable action could not be taken on his/her application; that he/she has filed an appeal from this decision and has submitted all of the information he/she intends to submit in support thereof;

c. Decision. The district engineer's decision on the appeal is supported by the record; and

d. Necessary Information. The appeal assembly contains the necessary information in support of the decision and has been assembled as stated in this section.

7-48. Action on Appeal by the MSC. Action by the MSC will be taken as expeditiously as possible. If the MSC concurs with the recommendation, additional comments and recommendations together with the reasons, and supporting documents if appropriate, will be forwarded to ODCSRE. If the MSC does not concur with the district engineer's recommendation, the matter will be returned to the district engineer for further consideration or with a directed solution. If the appeal is forwarded to ODCSRE for further review, the MSC will notify the District.

7-49. Action on Appeal by ODCSRE. ODCSRE may either:

(a) return the appeal for further consideration or with a directed solution or

(b) forward the package, and a proposed letter to the applicant denying the appeal, to the DASA(I&H) with the recommendation that it be signed and sent to the applicant.

7-50. Action by the DASA(I&H). Final decision on an appeal will be made by the DASA(I&H) based on recommendation from ODCSRE. In the event the recommendation is not approved, the appeal will be returned to ODCSRE for further consideration. If the recommendations are approved, the letter to the applicant will be signed by the DASA(I&H) and sent to the applicant.

7-51. Final Action by ODCSRE. If the DASA(I&H) has not approved ODCSRE recommendations on the appeal, the matter will be reconsidered and, if possible, objections will be resolved at ODCSRE level. Otherwise, the appeal will be returned to the MSC with appropriate instructions for further action. If the DASA(I&H) has approved the recommendations, copies of the letter to the appellant and the memorandum opinion, including a copy of the appeal assembly with original papers, will be sent to the MSC and the case will be closed.

7-52. Dissemination of Decisions. Copies of HAP appeal decisions by the DASA(I&H) are not disseminated by ODCSRE Corps-wide. A digest of decisions may be made available to any district. The district may refer to such decisions but may not disclose them to applicants.

SECTION XI. INCOME TAX

7-53. Tax Consequences. HAP benefits are considered to be payments attributable to employment and are, therefore, taxable as gross income. All HAP benefits are taxable including benefit options in which payments are made to a third party on the beneficiary's behalf. No taxes will be withheld the calendar year following death of an

applicant.

7-54. FICA Withholding - Applicability and Exemptions. HAP benefits are subject to Federal Insurance Contribution Act (FICA) withholding. The amount of withholding, if any, is determined by the applicant's employment status when they became eligible to receive benefits. FICA is not withheld from members of the armed forces since they pay taxes only on their basic pay. Civilian employees who belong to the Civil Service Retirement System are subject only to Medicare withholding, and are not subject to the OASDI portion of FICA taxes. Civilian employees who belong to the Federal Employee Retirement System are subject to withholding for both the OASDI and Medicare elements of FICA. If a member of the armed forces is eligible for HAP benefits because of active duty status, no FICA is withheld even if the benefit is received after the member retires. Any outstanding employee contributions for FICA must be paid prior to the time of closing of a government purchase or prior to a benefit payment on a foreclosure. This may be done by withholding reimbursable funds or direct payment by the employee prior to closing or prior to foreclosure payment. FICA withheld should not exceed the maximum annual limit.

7-55. Disclosure. Applicants should be informed that there are tax consequences of HAP benefits. Districts are responsible for providing complete disclosure to applicants on the taxability of HAP benefits, commencing with town hall meetings and continuing throughout the processing of applications or appeals.

7-56. Calculation of Taxable Benefit.

a. Private Sales. For private sales, the taxable benefit is the amount actually disbursed to the applicant.

b. Foreclosures and VA Compromises. For foreclosures, the taxable benefit is the amount actually disbursed, whether to the applicant or to third parties, to discharge the applicant's foreclosure related liabilities.

c. Mortgage Assumptions. Mortgage assumptions are taxed in the same manner as government acquisitions.

d. Acquisitions. The difference between the purchase price and the current fair market value is taxable as income to the applicant at the appropriate tax rate. Reimbursements for taxes, interest, and insurance premiums paid by the applicant, as well as closing costs paid by the government, are also taxed as income to the applicant at the appropriate tax rate. If the current fair market value is more than the purchase price, this will not be considered a negative benefit and only the reimbursements paid the

applicant will be taxed.

e. Taxable Liability. For mortgage assumptions and government acquisitions, the applicant should be notified of the taxable liability for the transaction.

7-57. Payment of Tax Obligation. Federal income tax and FICA (when applicable) will be withheld or collected in the following manner:

a. Withholding from Benefit Payment. Taxes due must be deducted from any benefit payment made to the applicant. When the payment to the applicant is insufficient to meet the overall tax and FICA liability, the amount of the FICA will be withheld first from the payment. The applicant must pay the entire FICA portion of the taxes due prior to closing or paying off enforceable liabilities.

b. Reporting of Taxable Benefit. The amount of the taxable benefit will be reported to the IRS and to the applicant.

7-58. Reporting. HAP entitlement received directly or indirectly by the applicant will be included in gross income on a W-2, Wage and Tax Statement. The total value of benefits will be shown in boxes 10 and 16 of the W-2. A separate W-2 reflecting only HAP benefits may be provided in lieu of including HAP benefits on the beneficiary's regular W-2. A Form 1099-S must be provided to the applicant and the IRS.

SECTION XII. FILES AND REPORTS

7-59. Policy. District offices will use a standard filing procedure that can be easily audited. The procedure must facilitate up-to-date records for district office actions based on thorough documentation, retrieval of specific information in the event of a dispute or complaint, or review by MSC and Headquarters' staff. All HAP personnel must be knowledgeable of the filing system.

7-60. Manual Property Records and Files.

a. Individual Property File. Correspondence, forms and related material must be filed in chronological order. A strict sign-out control system must be maintained for property case files.

b. File Maintenance. Active files must be maintained by property address, name, or by application number. Once completed the acquisition and Management & Resale files will be merged and filed by application number.

c. File Disposition. Files will be maintained with the Modern Army Record Keeping System (MARKS). The MARKS number for HAP is 405.

d. Files on Contractors. Contract files will contain the contracts, amendments, payments and related correspondence.

ADDENDUM 1

PRELIMINARY COST ESTIMATE

BASIC INFORMATION	
Installation Population	7,043
Expected Applicants (Instl Pop X 20% X 50%)	704
Average home value (Avg home val near instl)	$55,000
PROGRAM COST ESTIMATE	
Pvt Sale Est (Dif between 95% of PFMV & sales price)	
Est # of Pvt Sales (19% X expected applicants)	134
Est cost of Pvt Sales (8% X avg home value) X (Est # Pvt Sales)	$589,600
Govt Acq Estimate (Higher of existing mort. or 75% PFMV)	
Est # of Govt Acq (80% X expected applicants)	563
Est cost of Govt Acq (# acq X avg home value)	$30,989,200
Est cost of reimb (e.g., tax, interest, etc.) (Avg monthly mort pmt X 3 months X # govt acq) + (1% avg home value X 25% X # govt acq)	$774,730
Foreclosure Estimate (Amount of indebtedness)	
Est # foreclosures (1% of expected applicants)	7
Est cost of forecl. (Avg indebt. X # of forecl)	$19,368
Administrative Estimate (Travel, Salaries, Title, Travel, etc.) ($3,500 per applicant)	$2,465,050
Property Management & Disposal Estimate (Interest, Taxes, Insurance, Sales, Maintenance) (15% of Acquisition Cost)	$4,465,050
Total Cost Prior to Resale	$39,302,998
Recovered from Resale (75% of Acq Costs)	$23,241,900
Total Estimated Program Cost	**$16,061,098**

ADDENDUM 2

MARKET IMPACT STUDY (SAMPLE)

1. PURPOSE: A description of the announced closure/reduction; the date of the announcement or study; the recommended "public announcement date"; the effective date of the closure/reduction; and the installation functions affected.

2. INSPECTION: The date of neighborhood inspections and source of information; e.g., realtors, appraisers, Chamber of Commerce, local government planning agencies, and installation personnel.

3. SCOPE OF STUDY: A description of the types and locations of properties included in the study with an attached area map.

4. DESCRIPTION OF AREA: An overall discussion of the environmental, economic and location factors of the area, including cities and communities affected by the announcement. Economic factors such as plant closings and other adverse economic impacts must be addressed.

5. REDUCTION OR REALIGNMENT:

a. The total number of installation personnel, and the number of personnel affected by the reduction segregated by officers, enlisted personnel, and civilian personnel;

b. The estimated number of homeowners affected by the reduction;

c. A discussion of the future of the installation population and housing, including new assignments which may offset the reduction;

d. Installation payroll, before and after the reduction, along with the effect on the services provided by or to the community.

6. OVERALL ECONOMIC CONDITIONS: Use the economic data to measure the effect, both actual and potential, of the closure on the labor force, population, and payroll of the communities around the base. This section describes the adverse conditions which have impacted the area prior to and as a result of the installation closure or reduction. Interest rates, available mortgage funds, and their effect on the market should be discussed.

7. REAL ESTATE MARKET CONDITIONS: See paragraph 7-8f of ER 405-1-12 for the criteria that must be included.

a. Discuss the appraisals provided with the report and their significance. (See paragraph 7-21 for instructions on appraisals.) Normally the appraisals of individual houses should be obtained by contract with a local certified appraiser, who is a member of the local multiple listing service and one who has considerable experience appraising local residential properties.

b. Discuss local real estate listings, sales, average prices and whether they are increasing or declining, average days on the market, and building permits issued during the last four years. Include charts tracking these changes, where appropriate.

c. Include a discussion of the effect of the closure/reduction on the rental market. Indicate whether foreclosures are increasing or declining, efforts by agencies to avoid defaults, and efforts to market foreclosure houses.

d. Comments from brokers and/or applicants.

8. CONCLUSIONS: A summary of the data supporting your recommendation.

NOTE: Confidentiality: Market impact studies prepared as pre-decision documentation for potential HAP implementation must be treated as privileged information, and should not be routinely released to the press or the public until the HAP decision is made. Release of HAP information is sensitive and should be coordinated with the Public Affairs Staff.

Date of report Name and title of preparer

ADDENDUM 3

PRIVACY ACT INFORMATION FOR HOMEOWNERS ASSISTANCE PROGRAM APPLICANTS

The Homeowners Assistance program was authorized by Section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966, Public Law 89-754 (80 Stat. 1255, 1290), as amended. The Corps of Engineers administers the Homeowners Assistance Program. Individuals seeking benefits under the Act must file an application form (DD Form 1607) and, in addition, may be requested to furnish supplemental information to support their applications. The information requested will be used to identify the number of homeowners affected by the announced closure/realignment, and to determine the impact on the market, eligibility, and entitlement to specific program benefits. The application and supporting information will be retained for three years, except in appeal cases where the record is considered permanent. Information disclosed by applicants will be treated on a confidential basis and will not be disclosed except to personnel in the Department of Defense who have a need for the information. Sale of the property to the government and the amount thereof is also reported to the Internal Revenue Service (IRS). Deeds of conveyance to the government, which may contain data on mortgages assumed, and other documents relating to sufficiency of title, are furnished to the Department of Justice for review. Information contained in the application form and supporting documents is furnished voluntarily; however, if all required information is not furnished, eligibility for benefits may be affected and benefits

may be denied. Benefits under this program are considered "wages" for tax purposes. The Social Security Number on the application is for identification purposes and is used to report to IRS the sale of the property to the government and to report withholding for Federal income tax, FICA and Medicare purposes. Its non-disclosure may or may not affect payment of benefits.

Date: _____

ADDENDUM 4

INFORMATION TO APPRAISERS REGARDING THE HOMEOWNERS ASSISTANCE PROGRAM

1. The Homeowners Assistance Program (HAP) is authorized by an Act of Congress which provides that federal employee homeowners may be entitled to reimbursement for some of the real estate losses they incur when their job is transferred or terminated and they have to relocate due to an installation being closed or realigned.

2. If the homeowner is unable to sell his/her home, the government will acquire it. However, this is not an acquisition in the usual sense as there is no Federal requirement for the houses and the acquisition is solely for the benefit of the homeowners. There is no condemnation in this program, nor is there any judicial review of the determinations made.

3. In this program, fair market value appraisals of houses, one to two-family residences and condominiums will be needed to determine benefits to be paid to the applicant or to a third party on his/her behalf. For instance, where an applicant has sold his/her home, we take an amount equal to 95 percent of the FMV prior to the public announcement date that the installation is being closed, subtract the FMV at the time of the sale from the 95 percent figure, and pay the difference to the applicant. Where an applicant is unable to sell the house himself/herself, he/she may sell the house to the government for the amount of the outstanding mortgages or for 75 percent of the FMV prior to the public announcement date.

4. Although the government purchases the house at 75 percent of the prior FMV or the amount of the outstanding mortgages, we must also know the after value of the house for determining the applicant's tax liability.

5. The appraiser will invite the owner or his/her representative to accompany him in the detailed inspection of the property and give careful attention to all information and comments given by the owner. During owner contact, no commitments will be made as to valuation estimates.

6. Each appraisal report will contain, as a minimum, the following:

   a. A completed residential appraisal report, FNMA Form 1004.

   b. A floor plan sketch of each subject property.

c. Photographs of each subject property; front view, rear view, and street scene. Photographs of other major improvements and significant deferred maintenance or damage; front view of each comparable sale used.

d. For condominiums or two family residences, the appraisal will use FNMA Form 1073 or FNMA Form 1025, as appropriate.

e. For the prior FMV, include a brief discussion of the value in relation to original acquisition costs.

f. For after value appraisals, include a brief discussion of value in relation to the subject property's sale price or the foreclosure sales prices.

g. The contributory value of all improvements added by the owner/applicant will be considered and included in both the prior and after value appraisals. Capital improvements existing at the time of the property inspection must be utilized in both the prior and after value appraisals even if they did not exist at the time of the prior value appraisal or public announcement date. Any improvements made by a subsequent purchaser/owner, after a private sale or foreclosure, must be omitted in each the prior and after appraisal.

h. A general sales map showing the location of the subject and each comparable will be included in each report.

i. Other items as appropriate, particularly a narrative discussion of any item or factor that cannot be adequately covered or explained in a form report.

7. Each report shall be typed and submitted with an original and the number of copies needed depending on the dollar amount of the appraisal.

8. Delivery of the appraisals by a contractor should take no more than 21 days and the contract shall provide for liquidated damages for each day of delay, except when the delay arises from causes beyond the control or without fault or negligence on the part of the contractor.

ADDENDUM 5

SCREENING FOR ENVIRONMENTAL HAZARDS IN DWELLINGS ACQUIRED

1. Required Screening/Inspections. Two screening inspections must be performed after acquisition of a dwelling:

a. Lead-Based Paint (LBP) screening required by the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4821 et seq.;

b. Asbestos screening.

2. Methods of Performance. The method of performance of the screenings, i.e. whether performed by Crops personnel or by contractor, is at the district's discretion. If warranted by the volume of the program, the district may choose to have a contractor perform both screenings. However, LBP screening and asbestos screening should not be contracted for separately as LBP screening requires no special training or expertise and can be performed by any individual performing the asbestos screening.

3. Format of Reports. No particular form is required for reporting the results of LBP or asbestos screening.

4. Lead-Based paint Screening. The most recent law pertaining to the abatement of LBP in housing units is Public Law 102-550, Title X; commonly known as the Residential Lead-Based Paint Hazard Reduction Act of 1992. This Act broadly regulates LBP in housing units. Additionally, the Department of housing and Urban Development has not yet promulgated the requisite guidance and regulations called for by the Act.

a. Until the provisions of the 1992 Act take effect, the sale of Army-controlled houses which contain LBP will continue to be governed by the 1978 Lead-Based Paint Poisoning Prevention Act, Public Law 91-965.

b. The current Army policy for the elimination of LBP hazards in properties covered by BRAC actions is based substantially on the 1978 Act. Although directed at BRAC properties, it is prudent to apply the same policies to HAP acquired houses even though HAP properties are not acquired for an Army mission, but only for the convenience of the HAP applicants.

c. Accordingly, the Army has committed itself to ensure properties sold for residential habitation are free of immediate LBP hazards. A visual inspection of all

applicable surfaces in houses constructed prior to 1978 is required. All surfaces where the paint is cracking, scaling, chipping peeling, or loose, are termed a “defective paint surface”, are assumed to be immediate LBP hazards and must be covered or removed.

d. Covering may be accomplished by such means as adding a layer of wallboard to the wall surface. Paint removal may be accomplished by such methods as scraping, heat treatment (infra-red or coil type heat guns), chemicals, or replacement of the painted building component. Machine sanding, dry hand sanding, and use of propane or gasoline torches are not permitted. Washing and repainting without thorough removal or covering is not considered adequate treatment.

e. If no immediate LBP hazard exists, a prospective purchaser must be notified prior to the purchase (1) that the property was constructed prior to 1978 and that it may contain LBP; (2) of the hazards of LBP; (3) of the symptoms and treatment of LBP poisoning; (4) of the precautions to be taken to avoid LBP poisoning; and (5) of all results of inspection, assessment, or testing for LBP and LBP hazards.

5. Asbestos Screening. Asbestos screening will initially be accomplished by a determination of whether or not friable asbestos is suspected. If there is no crumbling or pulverized insulation, tiles, roofing, shingles or other construction materials which may contain asbestos, it may be assumed no friable asbestos is present. If, however, there is reason to suspect friable asbestos is present, an inspection will be performed by a qualified inspector, either Corps or contractor, proficient in asbestos detection and DA/DOD asbestos policy.