Section B. Authority to Waive Prohibitions on Conflicts of Interest

(1) The Assistant Secretary for Public and Indian Housing redelegates to HUD State and Area Office Directors of the Offices of Public Housing and to the Administrators of the Offices of Native American Programs (waiver officials) the following authority to waive conflict of interest prohibitions in contracts executed under the Section 8 Rental Certificate and Rental Voucher Programs and the Section 8 Moderate Rehabilitation Program:

(a) In the case of the Section 8 Rental Certificate and Rental Voucher Programs, the authority to waive the conflict of interest prohibition for good cause in accordance with section 982.161, including the authority to waive related contractual conflict of interest prohibitions for non-HUD

employees.

(b) In the case of the Section 8 Moderate Rehabilitation Program the authority to waive contractual conflict of interest prohibitions for non-HUD employees.

- (2) Paragraph (1) does not grant authority to waive;
- a. Any statutory or regulatory provision.
- b. Program contracts and other forms required by HUD Headquarters.
- c. A directive that requires a HUD Office action;
- d. Requirements to maintain complete and accurate accounts and other records for a program in accordance with HUD requirements and in the form required by HUD.
- e. Reporting requirements.
- f. Provisions in a Notice of Funding Availability and associated processing instructions;
- g. Any actual or potential conflict of interest on the part of a HUD employee.
- C. Procedures for Approval of a Waiver of a Directive or a Section 8 Conflict of Interest Prohibition
- 1. Before approval of a request for a waiver of a directive or a conflict of interest prohibition, the waiver official must consult with and obtain the concurrence of the HUD counsel in the HUD Field Office.
- 2. HUD Offices shall advise public housing agencies and Indian Housing Authorities (housing agencies) to submit the following documentation when requesting a waiver of a conflict of interest prohibition for Section 8 Rental Certificate and Rental Voucher Programs or the Section 8 Moderate Rehabilitation Program:
- a. A complete statement of facts in the case.

b. Justification for the waiver of the conflict of interest prohibition.

If the case involves a hardship for a particular family, a statement of facts of the case, including: (a) circumstances of hardship, and (b) alternative housing available under the same or other forms of assisted housing. A "hardship" case includes a case where an eligible inplace family is handicapped, elderly or includes many minors, and moving would be a burden or very difficult because of a shortage of available units meeting housing quality standards.

If the case involves a public official, member of a governing body, State or local legislator, or any member of the Congress of the United States, an explanation of the individual's duties under Federal, State or local law, including reference to any responsibilities that involve the Section 8 program to which the requested waiver relates. Where relevant, the interrelationship of city, county, State and Federal governments should be discussed.

If the case involves an employee or a tenant of the housing agency, there should be an explanation of the responsibilities and duties of the job involved. (An employee would be permitted to receive Section 8 assistance or participate as a Section 8 owner, if the employee is not serving in a capacity which would influence housing agency decision or formulate policy with respect to the Section 8 program. Also, Section 8 tenants may be employed by the housing agency in such nonpolicy and nondecisionmaking positions.) The explanation must describe whether the employee formulates policy or influences decisions with respect to the program. (A PHA employee who is not serving in a capacity to influence housing agency decisions or formulate policy with respect to the Section 8 program may receive assistance or participate as a Section 8 owner.).

If the case involves an investment on the part of an officer or employee of the PHA, or any other non-HUD employee covered by the conflict of interest provisions, the nature of the investment should be described, and any divesture plans specified.

c. Written evidence that the waiver, if granted, would be consistent with State law and local ordinances. Where appropriate, a legal opinion should be obtained from the State Attorney General or housing agency attorney.

d. In cases where a waiver is approved to permit an individual to occupy a specific unit, the waiver should terminate when that tenant vacates the unit. In addition, no person

for whom a waiver is approved shall be given any preferential treatment, nor shall any such person be permitted to exercise functions or responsibilities with respect to a contract to which that person is a party or recipient of a benefit resulting from the contract.

3. HUD Office processing of requests for waiver directives or conflict of interest prohibitions shall be guided by

the following:

a. A waiver shall be granted only on a case-by-case basis. For each request, there must be a showing or other evidence of "good cause" which demonstrates that the major interest of providing low income housing overrides the purpose of the directive or conflict of interest prohibitions. The HUD Office shall permanently maintain a fully documented separate file for each

b. The Field Office must inform the housing authority in writing of its decision regarding the waiver request, and of the basis for the HUD Office determination. Within 30 calendar days after issuance of the waiver, waiver officials must submit a copy of each determination granting a waiver to the Departmental Directives Management Office, Office of Administrative and Management Services-ACES, Office of Administration. A copy should be provided to the Office of Public and Indian Housing, Attention: Directives Management Officer. Copies of waivers of conflicts of interest do not require submission to Headquarters.

c. The Field Office letter approving the waiver must cite the specific directive or conflicts prohibition being waived, the specific conduct being permitted, the time period the waiver shall be in effect (if not indefinitely), as well as the reason(s) for granting the waiver. This is because HUD maintains a record of all such waivers and makes them available for public inspection. The Office of Public and Indian Housing will periodically review all waivers of directives to assess such matters as (a) Whether a particular directive, or provision should be revised (because for example, the exception should become the rule), and (b) whether there is consistency in the granting of waiver requests.

Section D. No Further Redelegation

The authority granted to waiver officials under this redelegation may not be further redelegated pursuant to this redelegation.

Section E. Authority Superseded

The portions of the following delegations of authority relating to Directives and conflict of interest