The Protective Insurance Payments Demonstration

Volume I - Executive Summary

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U.S. Department of Housing and Urban Development
Office of Policy Development and Research

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Volume One

Executive Summary

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VOLUME I - FINAL REPORT

Executive Summary

The Protective Insurance Payments Demonstration

A Temporary Mortgage Assistance Program

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For

U.S. Department of Housing and Urban Development
The Office of Policy Development and Research

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THE PROTECTIVE INSURANCE PAYMENTS DEMONSTRATION

A Temporary Mortgage Assistance Program

EXECUTIVE SUMMARY

1.0 INTRODUCTION

HUD does not have a program for assisting otherwise sound mortgagors who face the loss of their homes due to economic stress or other reasons beyond their control, other than encouraging mortgagees to forbear exercising their right to foreclose the loan through work-out arrangements until the period of adversity has passed, or accepting assignment of the insured mortgage. Each of these two alternatives has major inadequacies:

1. The rapid catch-up schedule usual in most forbearance programs commonly results in secondary failure. If a distressed homeowner has been unable to make his or her mortgage payments and is consequently three or more payments in arrears, the mortgage company typically will seek arrangements under which the homeowner agrees to make one and one-half or two payments a month. Not surprisingly, the homeowner who previously could not make the regular monthly payments soon finds that the catch-up payments are beyond his or her financial capabilities and a second default occurs, generally resulting in either a distressed sale (if there is an equity buildup in the home) or foreclosure.

2. The acceptance of assignment of the insured mortgage by HUD is not only extremely costly to the Government ($74 million for some 3,800 assignments in FY1979), but it also puts HUD in danger of becoming one of the major mortgage servicers in the country, a role HUD does not desire and for which it is not equipped.

Based on the above situation, and after review of alternative possibilities, the Protective Insurance Payments (PIP) program was designed by the Contractor team as a cost-effective delivery system for providing assistance to such deserving mortgagors. After such design, a demonstration of the PIP program was subsequently approved by HUD. Based on its experience in the course of the demonstration, the Contractor team developed a program for national implementation using the tested delivery system inherent in the PIP program as a means of assisting mortgagors who met the eligibility criteria of the Home Mortgage Assignment program. This integration of the PIP delivery system with the existing intake procedures of the Assignment program should permit HUD, at substantially reduced cost and without entering the mortgage servicing business, to meet its statutory mandate to assist mortgagors who are in default for reasons beyond their control.

In summary, the PIP program provided that, for mortgagors who were three full monthly payments in arrears and who met the narrow eligibility criteria (as compared to the eligibility criteria for the assignment program) established for the demonstration, HUD would make monthly mortgage payments (in part or in whole, depending on the ability of the mortgagor to make partial payments). The period of time for which payments would be made was subject to periodic review and a maximum benefit amount equivalent to nine monthly mortgage payments on the HUD-insured first mortgage. The funds advanced by HUD in the form of monthly mortgage payments to the mortgagee were evidenced by a note payable to HUD and secured by a junior lien on the mortgaged property. When the mortgagor was capable of resuming the full mortgage payment obligation, repayment of the PIP advances was scheduled (i.e., recast) over a period of time determined by the mortgagor's ability to pay. At the same time, the balance due under the HUD-insured first mortgage (including the payments in arrears) was recast to provide for repayment over the remaining term of the first mortgage. The mortgagor was then expected to make a new single monthly payment incorporating both the recast first mortgage and the amount required to amortize the PIP advances as recast. Servicing during the benefit and repayment periods remained with the original mortgage servicer.

The effectiveness of the PIP program as a means of delivering assistance to mortgagors does not depend on the use of any particular set of eligibility criteria. Although narrow eligibility criteria were employed in the PIP demonstration (closely paralleling the criteria established in the Emergency Homeowners' Relief Act of 1975--inability to meet mortgage payments by reason of involuntary unemployment or underemployment), the PIP program can effectively utilize the intake criteria and acceptance/rejection review method of the current Assignment program.

Implementation of the PIP program as a national program (to be known as the Temporary Mortgage Assistance Payments (TMAP) Program) can now be accomplished (after an appropriation is approved by Congress) as a result of the amendment of Section 230 of the National Housing Act (effective October 8, 1980) to permit use of the HUD insurance funds for loans or advances for the benefit of the mortgagor and to protect the insurance funds.

The TMAP program offers significant advantages to HUD, the homeowner, the mortgage lender and the mortgage servicer when compared to current available foreclosure avoidance methods. The principal advantages to HUD are that TMAP permits delivery of assistance at a substantially lower initial cash outlay, and preserves the responsibilities for servicing with the mortgage servicing industry. For the homeowner, TMAP offers payments tailored to ability to pay both during the forbearance period and subsequent repayment period, and the services provided by the mortgage servicer (tax and insurance escrows, year-end tax information, etc.) continue uninterrupted. The homeowner is also offered an opportunity to receive counseling. The servicer avoids the costs associated with late payment collection efforts and foreclosure. For the lender, TMAP maintains a steady income flow and insofar as the program is effective in assisting mortgagors in avoiding foreclosure, it avoids the unreimbursed costs associated with mortgage foreclosure.

2.0 HISTORICAL CONTEXT

2.1. NATIONAL HOUSING POLICY

HUD has a legislatively defined obligation to formulate and carry out a program reasonably calculated to provide a decent home and a suitable living environment for every American family. Over the past several years, stimulated at least in part both by litigation and Congressional action, HUD has made extensive efforts to improve the quality and extent of mortgage servicing and in particular has addressed the problem of providing relief to "deserving mortgagors" who face the loss of their homes due to circumstances beyond their control.

2.2 MORTGAGE SERVICING PRACTICES

Initially in HM Mortgagee Letter 75-10 and subsequently in the promulgation of new regulations (24 C.F.R. Part 203, Subpart C) and handbooks (4191.1 Rev.) for servicing, HUD moved from its historic posture of relying upon the "acceptable practices" of "prudent lending institutions" to establishing specific requirements for responsible mortgage servicing. Nonetheless, these improved servicing requirements did not directly respond to the problem of providing relief to mortgagors in default due to economic stress or other reasons beyond their control.

2.3 EMERGENCY HOMEOWNERS' RELIEF ACT (EHRA)

In enacting this legislation in 1975 (89 Stat. 249; 12 U.S. Code 2701), Congress reflected its concern that the severe recession and attendant acceleration in unemployment and underemployment would jeopardize the capacity of many homeowners to continue their mortgage payments, "leading to the possibility of widespread mortgage foreclosures and distress sale of homes" (Sec. 102(a)(2)).

EHRA provided standby authority to the Secretary of HUD to implement a program of emergency loans and advances (made by the mortgagee and insured by the Secretary) and emergency repayable mortgage relief payments (made by the Secretary out of a relief fund established for this purpose) to homeowners (mortgagors) where the mortgagor had incurred a substantial reduction in income as a result of involuntary unemployment or underemployment due to adverse economic conditions and was financially unable to make full mortgage payments.

HUD decided that EHRA would not be implemented until delinquencies throughout the nation reached a defined level, and since this level was never reached, EHRA was never implemented prior to its expiration in 1977.

2.4 PIP DEMONSTRATION PROGRAM

Concurrently with the Congressional consideration of emergency relief for homeowners, the Office of Policy Development and Research solicited responses to a Request for Proposal which was designed to develop a demonstration design for an alternative approach for assisting mortgagors who, by reason of unemployment or underemployment, would otherwise face the loss of their homes through foreclosure or forced sale under existing mortgage servicing practices and procedures.

The result was the design of the PIP program which was subsequently approved for a demonstration.

2.5 HOME MORTGAGE ASSIGNMENT PROGRAM

At the same time that the PIP Demonstration Program was being developed at the request of the Office of Policy Development and Research, but completely independently of such development, the current Assignment program was developed and instituted, principally as a result of a public interest lawsuit in Chicago that sought to hold then Secretary Hills in contempt for failure to provide relief for distressed homeowners (Ferrell v. Hills, Case No. 73 C 334, U.S.D.C., N.C. Ill., July 29, 1976) (the Ferrell case).

In conjunction with the settlement of the Ferrell case, HUD adopted the basic Assignment program, and has modified it largely as a result of continued allegations and threats of renewed litigation on the part of the litigants in that case.

Assignment, itself, was not a new procedure. It had been authorized under Section 230 of the National Housing Act since 1959 (Section 114(a), Housing Act of 1959, Public Law 86-372). Although the law provided no specific test or qualification for assignment (other than stating "the Secretary, in his discretion and for the purpose of avoiding foreclosure of the mortgage... may acquire the loan and security therefor"), the Regulations in effect since 1964 had provided that the "Commissioner may approve... assignment... if he finds that the default was due to circumstances beyond the mortgagor's control. (24 C.F.R. §203.350.)

3.0 DEMONSTRATION PROGRAM DESIGN

3.1 ORIGINAL DESIGN

The PIP Demonstration Program was an experimental program designed to test the proposition that interim monthly mortgage payments made by HUD to mortgagees on behalf of certain homeowners would permit those homeowners continued occupancy in their homes, thus reducing the number of foreclosures or assignments and the consequent demand on HUD personnel and the mortgage insurance funds. In addition, the resulting retention of the mortgage servicing in the private sector would further reduce the demand on HUD personnel.

The PIP demonstration, as originally designed, called for the enrollment of 40 mortgagors in each of 4 groups in each of 3 cities, for a total sample of 480 families. The 40 mortgagors in group one were to have been offered PIP advances as well as default and delinquency counseling; in group two, PIP advances without counseling; in group three, counseling without PIP advances; and in group four, neither PIP advances nor counseling. Counseling in each case was to be only the then existing regular counseling programs as provided by HUD-approved agencies. The demonstration did not encompass any modification to or extension of existing counseling, nor was such existing program to be independently evaluated as part of the demonstration.

On the basis of then current high unemployment rates, volume of HUD-insured loans, geographical dispersion, approved counseling agencies and other program requirements, the 3 cities selected for the demonstration were Atlanta, Philadelphia and Los Angeles.

The principal eligibility criteria originally designed to be used in the demonstration were:

1. The default was due to temporary interruption in gross family income due to loss of employment or underemployment.

2. The mortgagor was unable to pay the full payments on the insured first mortgage with 30 percent of gross family income.

3. The mortgage was 3 months delinquent.

4. The mortgagor had a good payment record over the previous 2 years and an immediate 1-year history of stable employment.

5. The property was a single-family dwelling, the principal residence of the mortgagor, owned in fee simple, and without any other liens or junior mortgages.

6. The mortgage was unsubsidized and insured under Section 203(b) or 221(d)(2), but not co-endorsed under Section 223(e).

7. Upon recovery and recast, not more than 30 percent of gross family income would have to be devoted to total mortgage payments (principal, interest and escrows).

Mortgagors were referred to the Contractor by cooperating mortgage servicers in each city. The sole function of the servicers was to supply the files of all unsubsidized, HUD-insured mortgagors whose mortgages were insured under the proper section of the National Housing Act and who were about to become 3 payments in arrears. Thus, the entire qualification and sampling was conducted without any self-selection into the program by defaulting mortgagors and without any selection bias on the part of the cooperating mortgage servicers.

3.2 DESIGN MODIFICATIONS

Because of the rapidly improving economic conditions in the 3 demonstration cities between 1976, when they were selected, and the Spring of 1977, the commencement of the demonstration itself, the qualification rate of mortgagors dropped so low that there was no way to adhere to the original design of the program.

One modification was to expand the eligibility criteria by (a) including mortgagors unable to work due to medical reasons, (b) requiring that 30 percent of income be insufficient to pay not only the monthly installments on the insured mortgage but the remainder of the mortgagor's housing expenses as well, (c) increasing from 30 percent to 35 percent the percentage of income needed to pay the monthly installments under both the insured first mortgage and the resulting PIP mortgage after recovery and recast, and (d) permitting up to 6 months (rather than 3 months) delinquency on the insured first mortgage.

In addition, the sample size for group one was reduced to those mortgagors who had passed the stringent eligibility criteria during the first six months of the enrollment period; groups two and three were omitted from the demonstration; and group four was then filled to the same extent as group one. In addition, Los Angeles was dropped from the demonstration because of its particularly low enrollment. In all, 29 families in Philadelphia and 17 families in Atlanta were enrolled in group one (called the experimental group), and another 46 families placed into group four (called the control group). The members of the control group were selected so as to achieve almost perfect frequency matching on seven critical variables: location, age, race, sex of the head of household, gross family income, and the age and section of the National Housing Act of the HUD-insured mortgage.

4.0 DEMONSTRATION PROGRAM - IMPLEMENTATION

4.1 FIELD IMPLEMENTATION

In each of the demonstration cities the contractor team met with HUD area office personnel and arranged for space from which the contractor's representative would work in conducting the demonstration. Local HUD personnel were designated in each city to work with the contractor's representative, principally to sign the necessary letters and legal documents for operation of the demonstration.

The Contractor team contacted the leading mortgage servicers in each city, explained the program, and secured letters of intent from major servicers to participate in the program.

The Contractor team also entered into agreements with up to two HUD-approved counseling agencies in each city to provide program participants with the regular counseling programs of such agency. However, the program was designed to leave actual techniques and the conceptual framework for counseling up to the counselors.

Before commencing the demonstration, detailed instructions were prepared and delivered to the participating servicers and counseling agencies, and training seminars were held in each city for representatives from the servicers, counseling agencies and the HUD area office.

The first step in enrolling mortgagors into the program was for the participating servicers to review their mortgagor files - they screened the potential mortgagors for insurance under the proper section of the National Housing Act and for mortgagors who had missed their second payment. The Contractor's representative then reviewed the files of these mortgagors against the participation criteria to determine potential participants for the program. These mortgagors were then invited (by letter from the HUD area director) to come into the office if they were interested in participating in the program. The Contractor's representative interviewed the responding mortgagors to gather the information needed to determine if the mortgagor was eligible and to gather other data needed for the statistical analysis of the results of the demonstration.

Once the mortgagor was enrolled in the program, the mortgage servicer was advised and the counseling agency was instructed to begin monthly counseling. Each month the mortgagor met with the counseling agency. The counselor assisted the mortgagor in completing a monthly certificate on the basis of which the contractor's representative determined (i) if the mortgagor continued to be eligible to participate in the program, and (ii) when the PIP assistance would cease based upon the mortgagor's ability to resume payments without assistance. At the same time, the contractor's representative arranged for a PIP advance to be made by the contractor (on behalf of HUD) and sent to the servicer in the amount necessary so that the mortgagor's partial monthly mortgage payment, if any, and the PIP advance would equal the total monthly payment (including principal, interest and escrows) on the HUD-insured first mortgage. The mortgagor was expected to deliver the monthly certificate to the servicer with the partial payment, if any.

When the contractor's representative determined that the mortgagor's income had been sufficiently restored, the HUD-insured mortgage and PIP loan were modified and the mortgagor thereafter began making payment directly to the servicer in an amount equal to the revised monthly payments under the HUD-insured mortgage and the PIP loan. The Contractor's representatives continued to monitor the progress of the mortgagor for a period of one year.

In several instances during the demonstration, as a result of the sale of the mortgagor's home, the PIP loan was prepaid from the sale proceeds of the home.

4.2 LEGAL AND ADMINISTRATIVE DOCUMENTS

The legal documents needed to conduct the PIP Demonstration Program were prepared by the contractor, reviewed by local counsel in each demonstration city, reviewed by representatives of GNMA, FNMA and other major lenders and servicers, and submitted for approval to the office of the General Counsel of HUD. In addition, the data collection documents were submitted for approval to the Office of Management and Budget.

The basic legal documents used in the program were as follows:

1. Protective Insurance Payment (PIP) Agreement - This was a four party agreement among the mortgagor, mortgagee, servicer and HUD pursuant to which each party agreed to perform the necessary steps to carry out the program. As explained below, this Agreement would be unnecessary in a national program unless the HUD-insured first mortgage were to be modified.

2. PIP Demonstration Program Guidelines - The Guidelines set forth the rules for running the demonstration program. In a national program, these Guidelines would be incorporated in HUD Regulations and handbooks setting forth procedures for the program.

3. PIP Note and PIP Mortgage - These evidenced the mortgagor's obligation to repay HUD the PIP advances, plus interest, and a second mortgage on the mortgagor's home to secure payment of the Note. The PIP Note provided for interest at the same rate as the mortgagor's HUD-insured first mortgage.

4. Disclosure Statements - At the time of the execution of the PIP Note, disclosures were required in connection with the PIP loan and the possible modification of the HUD-insured first mortgage in compliance with the Truth-in-Lending Act and Regulation Z (and in the case of Georgia, with applicable State law). Therefore two separate Disclosure Statements were prepared and used at the time of execution of the PIP Note.

5. Rescission Notice - At the same time, to comply with the Truth-in-Lending Act and Regulation Z, the mortgagor was given a Rescission Notice giving him or her the right to rescind the PIP loan transaction within 3 business days of consummation.

6. Modification of First Mortgage - Since the initial program design provided that the three regular mortgage payments delinquent at the commencement of the PIP payments would remain outstanding, upon termination of PIP payments the HUD-insured first mortgage was modified to increase the remaining payments to that outstanding balance. This component of the demonstration design was subsequently eliminated in the national program design which provides for full repayment of the delinquent first mortgage payments as a part of the initial PIP payment.

7. Modification of PIP Loan - This document modified the PIP loan from a demand Note to an equal monthly amortization of the PIP advances, typically over the balance of the first mortgage loan (although a shorter period, not less than 5 years, could be established based on the mortgagor's ability to repay).

8. Disclosure Statements and Rescission Notice - At the time of the modifications of the two loans, additional Truth-in-Lending and Georgia disclosures were required and another rescission right was required in connection with the modification of the HUD-insured first mortgage.

4.3 GOVERNMENT/INDUSTRY PANEL

A panel of government and industry experts was established to review the policies and procedures for the program, to provide a liaison with the mortgage banking industry and counseling agencies, and to review the results of the demonstration in the context of its expansion to a national program.

Two formal panel meetings were held. The members of the panel attending at least one of the meetings were as follows:

Industry Members

David DeWilde, GNMA
Michael K. Stamper, GNMA
John M. Dalton, GNMA
Thomas Gale, National Urban League
Russell Clifton, FNMA
Fred W. Mowatt, FNMA
Carol Borchardt, FNMA
David Hooper, FNMA

Industry Members (continued)

Everett Matson, Lomas & Nettleton
Edward Sensor, Bank of America
Charles Stocker, National Federation of Housing Counselors
James Sublett, Ohio Teachers' Retirement System
Peter Williams, Mortgage Bankers Association
R. William Sharry, Massachusetts Purchasing Group

Government (HUD) Members

Dr. Donna E. Shalala, Assistant Secretary for PD&R
Dr. Raymond J. Struyk, Deputy Assistant Secretary for PD&R
John Howley, Deputy Assistant Secretary for Housing
Dr. Louise R. White
Dr. Richard J. Devine
Sybil M. Phillips
Julius M. Williams
Russell H. Dawson
Dennis Manning

The suggestions and comments of the panel members were taken into account in designing and operating the program, and their input is detailed throughout the Final Report where the appropriate aspects of the program are discussed.

5.0 DEMONSTRATION PROGRAM--RESULTS

5.1 INTRODUCTION

The general conclusion of the contractor with respect to the PIP Demonstration Program is that the delivery system used in the demonstration (PIP payments followed by resumption of monthly payments at a slightly increased level to include the first mortgage payments plus amortization of the PIP advances) is a cost effective, practicable and workable program. Therefore, although for a national program the intake criteria must be modified, it is the contractor's recommendation that the delivery system be used to provide the benefits to mortgagors in a national program.

5.2 BASIC RESULTS

5.2.1 Statistical Summary

The 46 families in the experimental group receiving PIP benefits and counseling assistance fared better, on average, than their matched counterparts in the control group, who received neither PIP nor counseling. Out of each group of 46 families, 17 of the experimental group compared to 20 of the control group were deemed to be in serious default by the conclusion of the demonstration, and of these, 10 of the experimental group compared to 13 of the control group were judged most likely to result in insurance claims as the ultimate outcome.

To refine these differences, a point score was established wherein a mortgagor current in his or her payment program was scored as zero; those one month delinquent were scored as 1, two months delinquent scored as 2, etc., up to maximum scores of 7 and 8 for foreclosure pending or completed, respectively. With this system, the mean score of the 46 experimental families was 2.3 compared to 3.0 among the 46 controls--a difference of sufficient magnitude to be statistically significant.

This difference was even more pronounced in the city of Atlanta, where the point score was 2.8 for the experimentals compared to 4.9 for the controls, and where only half as many mortgagors (4 compared to 8) in the experimental group were expected to result in insurance claims.

Among the 15 mortgagors who participated in formal recasting of their mortgages subsequent to receiving PIP benefits, the average point score was only .87, with only two of these "recast" mortgagors being as much as three payments behind, and none worse than that in their repayment plan schedules.

Because of the remarkably high success rate among the recast mortgagors, it was concluded that perhaps the greatest shortcoming of the PIP demonstration was that the benefit period selected--nine monthly mortgage payments spread out over not more than one year--was simply too short a period to permit most mortgagors to recover full health or obtain gainful reemployment.

5.2.2 Demographic Profile of Participants

The typical participant family had four members and a head of household from 35 to 49 years of age. Approximately 90% of the participant families were black. Most heads of household were high school graduates and blue collar workers with an average gross family income of $1,138 per month ($13,656 per year) during 1976--when times were good. The head of household was female in 30 percent of the cases.

In Atlanta, the mortgagor was most likely found in a home insured under section 203(b), worth about $26,000 in mid-1977. In Philadelphia, it was more likely a row-house insured under section 221(d)(2), worth about $15,000 in mid-1977.

Because of the narrow entrance criteria adopted, employment-related income reduction was almost always the sole reason for the mortgagor's intake into the program. The principal family wage earner was typically not receiving unemployment insurance benefits, but between part-time employment, underemployment, earnings by other family members, and gradual consumption of savings, actual default on the HUD-insured mortgage did not occur until six months to one year following job loss.

As a result of the sudden break in employment, gross family income of the typical mortgagor suffered an average reduction of almost 50 percent in Atlanta and close to 60 percent in Philadelphia, in the one-year interval 1976-1977. Because of the nature of the mortgagor's occupation, lack of promotional opportunities, and relatively low salary progression, gross family income was observed to grow at a median rate of only 4.5 percent per year between the time the home was acquired to just before the mortgagor's economic difficulties began in 1976. Indeed, the chances were one in four that the mortgagor's gross family income declined during that initial period of homeownership, and were 60 percent likely to have not kept up with a general inflation rate of 6 percent per year.

At the same time the mortgagor's income was increasing at less than the general inflation rate, the mortgagor's housing expenses were increasing at a median rate of almost 10 percent per year, while total fixed payments (the sum of housing expenses and other recurring charges) were increasing at almost 12 percent per year. In fact, the chances were one in five that the mortgagor's total fixed payments were increasing faster than 20 percent per year, and greater than one in three that they were increasing faster than 15 percent per year.

There was also a 30 percent chance that the mortgagor had experienced a large, unanticipated bill (medical, dental, funeral, etc.) just prior to default.

The typical mortgagor involved in the PIP demonstration did not consider abandoning his or her home because of the substantial equity build-up accumulated in the home through inflation, amortization, and initial equity (down payment). Since acquiring the home in 1973 (Atlanta) or 1970 (Philadelphia), the mortgagor's initial investment grew to an approximate equity of $6,500 in Atlanta and to slightly more than $5,700 in Philadelphia.

5.2.3 Repayment Period Of Recast PIP Loans

Of the 46 mortgagors who received PIP payments, 15 eventually had their PIP advances set up and cast in the form of a level-payment second mortgage. The terms of these mortgages were the shortest ones for which the total combined mortgage payments (including the principal, interest, and all escrow payments on the HUD-insured first mortgage and the PIP mortgage) did not exceed 30 percent of the gross family income of the mortgagor upon re-establishment of income flow. However, the minimum term of the second mortgage was 5 years (or the remaining term of the first mortgage if less than 5 years) and the maximum term was that of the remaining term of the first mortgage.

In 14 of the 15 cases recast, the mortgage term was the minimum permitted: 60 months. In the one remaining case, the mortgage term was the length remaining on the first mortgage: 294 months. However, because the maximum benefit in the PIP program was only 9 monthly payments, if the same recast method was used in a national program, we would expect a longer recast term because of the maximum 36 monthly payment benefit authorized by the TMAP Legislation.

5.2.4 Disposition of PIP Loans

HUD presently holds 47 PIP Loans as a result of the demonstration. (A total of 54 PIP Loans were made, including 6 in Los Angeles, and 7 of these loans have been repaid.) It is unlikely that these loans - at interest rates well below current rates, uninsured and in many instances without even second lien position - can be marketed except at a very great discount.

5.3 FIELD REPORTS AND DEBRIEFINGS

5.3.1 Counseling Agencies

The reports provided by the housing counselors on the counseling sessions held with 35 PIP participants indicate that the counselors provided substantial administrative support in the month-to-month operation of the PIP demonstration project as well as assistance to the mortgagors in making regular payments, living up to their responsibilities as homeowners, and taking advantage of social assistance programs or community resources for which they qualified.

The services in support of the PIP program included monthly review of income and regularity of mortgage payments. In addition, counselors were available to answer questions from the participants about the PIP program or to straighten out problems that seemed to arise frequently with the mortgage servicers.

The counselors also provided normal D&D counseling, including budget counseling and referrals to community services.

Finally, the counseling agency was available for follow-up assistance upon conclusion of the PIP payments and the resumption of regular mortgage payments. In several cases, after the end of the PIP benefits, counselors, when contacted, provided assistance to clients with regard to continuing problems relating to their mortgages. This assistance included further clarification of problems of communication with the mortgage servicers or the setting up of extended forbearance programs.

The major shortcoming of the counseling program was its apparent inability effectively to address employment problems. Most of the clients had employment problems, and these were discussed in a majority of the reported counseling sessions. Yet very little was accomplished, and there is little evidence of any significant housing counseling contribution. In summary, neither the counseling programs nor the individual counselors were sufficiently responsive to or adequately prepared to deal with employment related problems.

For about one-fifth of the participants, there was some resentment or resistance directed toward the mandatory counseling. While most of the clients accepted the requirement of monthly attendance (necessary to get the monthly PIP payment certificate), the resentment harbored by a few clients raises questions concerning the usefulness of continued mandatory counseling during the entire PIP payment period. The positive results of counseling appeared to diminish after the early sessions.

Therefore, it would appear that mandatory monthly counseling for all program participants from start to completion of program is unwarranted. Mandatory counseling appears most useful during the first three months. After that period, voluntary counseling similar to other D&D counseling appears advisable. Some counseling is perhaps desirable at the time of program termination when the mortgage is recast.

5.3.2 Mortgage Servicers

When asked to assess the potential effectiveness of PIP or a PIP-type program, the servicers generally agreed that the program was an effective tool when dealing with mortgage situations that were not otherwise covered. The servicers also felt that the PIP program could be effective as a national program and that, should it be made available, the current Assignment program would probably be redundant in the great majority of cases.

Many of the servicers interviewed felt that the mortgage servicers could adequately administer the intake procedures (i.e. application of selection criteria) in a national program and were the best qualified to do so. There was unanimity among those interviewed that, although HUD was the logical entity to administer the selection process, HUD's offices were not properly staffed to give a prompt and timely answer to the qualifying criteria and, as a result, a national program administered by HUD would suffer the same administrative delays and malfunctions as were experienced in the Assignment program. The general feeling was that the quality of counseling agencies was not sufficiently uniform to allow them to be effective entities for the administration of a national program.

The general consensus of the servicers interviewed was that the Government must bear the costs of a national program. Discussion relative to a private insurance fund was very limited, as few of those interviewed had had any experience with such a program. However, those that were familiar with such private funding felt that the premiums would be very high and that the percentage of voluntary participation would be very low.

Servicers unanimously recommended that the servicing fee for the PIP (or TMAP) loan should be on a per-loan basis rather than on a percentage-of-loan amount. It was felt that an appropriate fee would be $5.00 per month.

5.3.3 HUD Area Offices

The debriefings of the HUD area offices in Atlanta, Philadelphia and Los Angeles produced the following general responses:

1. The Atlanta and Philadelphia offices felt that if the entrance criteria were expanded, and if high unemployment returned, the program would be an effective tool, and should probably be used to replace assignment. The Los Angeles office saw no need for a PIP-type program because of the improvement in economic conditions.

2. Either HUD or HUD and the mortgage servicers working jointly should administer a national TMAP program.

5.3.4 FNMA and GNMA

In general, officials of both FNMA and GNMA felt that a national TMAP program, using the eligibility criteria of the present Assignment program with the delivery system tested in the PIP demonstration, would be a workable program. The principal objection of FNMA to the PIP demonstration related to excessive paperwork, much of which would be eliminated in the revised national TMAP program.

Both FNMA and GNMA officials felt that the servicing fee used in the PIP demonstration would not be sufficient for a national TMAP program, in light of the small loans that would be created. GNMA officials suggested that a $5.00 per month servicing fee would be a minimum. Both FNMA and GNMA officials suggested that the remittance of servicing fees should probably be established on a monthly basis, but with a provision that no remittance would be required until a certain minimum amount had been collected. There was also a suggestion by GNMA officials that an added inducement would be to permit the servicers to maintain the payments on the TMAP loan in an interest-bearing account prior to remittance.

Both GNMA and FNMA officials felt that the interest rate on the TMAP loans should not necessarily be set at the same level as the interest rate on the HUD-insured first mortgage but should be set at some current rate (such as the FNMA auction or the current FHA rate).

6.0 NATIONAL IMPLEMENTATION

6.1 INTRODUCTION

The PIP demonstration indicated that the PIP program was a workable system and an effective means of accomplishing its goal - a program of temporary mortgage assistance payments utilized to assist mortgagors who are temporarily unable to make the payments on their HUD-insured first mortgage.

Effective October 8, 1980, new legislation (the TMAP Legislation) was enacted authorizing HUD to implement a national program of "temporary mortgage assistance payments", to be known by its acronym, TMAP. In essence, TMAP is the PIP program utilizing the broader based eligibility criteria of the current Assignment program.

6.2 CRITERIA FOR MORTGAGOR QUALIFICATION

The Contractor team recommends that the national TMAP program use substantially the same mortgagor eligibility criteria utilized presently in the current Assignment program, many of which are expressly required by the TMAP Legislation. These criteria are as follows:

1. The mortgagee must have indicated to the mortgagor its intention to foreclosure the mortgage.

2. At least three full monthly installments must be due and unpaid under the mortgage.

3. The mortgaged property must be the principal residence of the mortgagor and the mortgagor must not own other property subject to a mortgage insured or held by HUD, except when HUD waives this latter criterion.

4. The default must have been caused by a circumstance or set of circumstances beyond the mortgagor's control which temporarily renders the family financially unable to cure the delinquency within a reasonable time or make full mortgage payments. Examples of qualifying reasons for default include, but are not limited to:

   a. Curtailment of family income, such as unemployment or underemployment; loss, reduction or delay in receipt of federal, state, municipal benefit (e.g., Social Security, Supplemental Security Income, Public Assistance, Government pensions) or of private benefits (e.g., pensions, annuities, retirement plans); loss of support payments; or other loss of income due to divorce or separation.

b. Uninsured damage to the mortgaged property, affecting its livability, of a type which is commonly insured against but which was not covered or not fully covered by insurance because adequate insurance coverage was not available.

c. Death or illness in the mortgagor's household or expenses attributable thereto.

d. Unanticipated increase of payments to mortgage escrow account to compensate for past underestimates of requirements.

5. There must be a reasonable prospect that the mortgagor will be able to resume full mortgage payments after a temporary period of reduced or suspended payments not exceeding 36 months, and will be able to pay the mortgage in full by its original maturity date extended, if necessary, by up to ten years.

The TMAP Legislation provides that when HUD "makes a determination that assistance [using TMAP] would be inappropriate" for a particular mortgagor, HUD shall accept assignment of the mortgage. The Contractor suggests that one category of cases where the Assignment program would be more appropriate is where there is no reasonable prospect that the mortgagor will be able to pay in full the HUD-insured first mortgage <u>by its original maturity date</u>. Although the TMAP Legislation would permit the use of TMAP so long as there is prospect of repayment by a date <u>10 years after</u> the scheduled first mortgage maturity date, each such case would require consent by the mortgagee and a recast of the first mortgage, unduly complicating the TMAP program.

Another category where Assignment would be more appropriate is where the mortgagor is unable to grant a valid junior lien on his or her property, a requirement for TMAP under the new legislation.

6.3 IMPLEMENTATION

6.3.1 <u>Field Administration</u>

6.3.1.1 Intake

Under the TMAP Legislation, the national TMAP program and the Assignment program will co-exist, with the same qualifying eligibility criteria. Thus, the procedures presently being followed by HUD to determine which mortgagors qualify for the Assignment program will be equally applicable to determine those mortgagors who qualify for TMAP assistance.

If the mortgagor is to be denied access to the TMAP program (whether or not assignment is also rejected), this constitutes a denial of credit and to comply with the federal Equal Credit Opportunity Act and Fair Credit Reporting Act, HUD must send the mortgagor a statement similar to the Statement of Credit Denial used in the PIP demonstration.

Assuming the mortgagor is to be accepted into the TMAP program (rather than the Assignment program), the HUD field office staff must notify the mortgagor and servicer of the acceptance and then accomplish the following:

1. Determine the amount of the mortgagor's partial payment. The formula used in the Assignment program to determine the partial payment to be made during HUD's forbearance after Assignment is quite similar to the formula used in the PIP demonstration. The amount of the payments will be based on a percentage of income that may be reasonably so required, given the circumstances of each individual case. If the mortgagor's circumstances are such that even partial payments or payments to cover only taxes and insurance are beyond his or her financial ability, he or she would not be asked to make them.

2. Determine the maximum period of TMAP assistance. Under the TMAP Legislation, HUD may provide TMAP assistance for an initial period of 18 months, which may be extended for up to another 18 months if necessary to avoid foreclosure. Because the TMAP program will be simpler to administer if it is only necessary for the mortgagor to sign one promissory note at the outset, it is suggested that the note used for the TMAP program (the "TMAP Note") be for a maximum amount equal to the amount necessary to cure the default on the first mortgage plus an amount equal to 36 times the total monthly payment under the HUD insured first mortgage. The mortgagor will also enter into a written payment plan to determine how much of the maximum loan will actually be advanced by HUD.

3. Prepare the instrument(s) required for securing the advances to be made on behalf of the mortgagor (i.e. the TMAP Note, TMAP Mortgage, Disclosure Statement and Rescission Notice).

4. Determine the amount required to bring the HUD-insured first mortgage current. The curing of the existing default, as authorized in the TMAP Legislation, will serve to simplify the program by eliminating the need for mortgagee consent, and will make the program feasible for mortgages in GNMA passthrough pools.

5. Order a title report on the mortgagor's home to ensure a valid lien to HUD, since the TMAP Legislation requires such a lien.

6. Arrange a meeting with the mortgagor for signing legal documents, indicating that all co-mortgagors and the mortgagor's spouse must attend.

At the meeting for signing the legal documents, the mortgagor should be given the first monthly certificate to use in making partial payments and also be requested to have HUD named as an additional insured on his or her hazard insurance policy.

After this conference, the same steps used in the PIP demonstration would be followed: the TMAP mortgage would be recorded (except that it is suggested a title company rather than the servicer be used) and the TMAP payments from HUD to the servicer would begin.

6.3.1.2 Benefit Period

The procedures used in the PIP demonstration with respect to the partial payments by the mortgagor and the remaining payment by HUD would be equally applicable to a national TMAP program. In the PIP demonstration, the mortgagor attended a monthly counseling session and the counselor explained the program to the mortgagor, assisted in any problems that developed, and assisted the mortgagor in completing the monthly certificate which had to accompany the mortgagor's partial payment. The TMAP Legislation provides that in connection with both the TMAP and Assignment programs, HUD is to provide home ownership counseling "to the extent practicable." If monthly counseling is not to be a part of the TMAP program, the counselor's role will have to be filled either by HUD personnel or the mortgage servicer.

During the benefit period, the normal functions of the mortgage servicer remain applicable. Procedures will have to be modified to identify problems with respect to the partial payments being made by the mortgagor and decisions regarding termination of assistance as a result of failure to make such partial payments.

As was the case in the PIP demonstration, the benefit period (for TMAP payments) should terminate when any of the following occur:

1. The mortgagor fails to make his or her required partial monthly payment and HUD is not satisfied that future partial payments will be made.

2. The information shown in the monthly certificate indicates that the mortgagor no longer qualifies for participation in the program, including the case where there is no longer a reasonable prospect that the mortgagor will be able to resume full mortgage payments and the repayment of the TMAP loan by the end of the TMAP benefit period.

3. The information in the monthly certificate shows that the cause of the default has been cured.

If the TMAP payments are to be terminated without recast of the TMAP loan, it will be necessary to notify the mortgagor and give him a notice that complies with the federal Equal Credit Opportunity Act and Fair Credit Reporting Act similar to the Statement of Credit Termination used in the PIP demonstration.

6.3.1.3 Post-Benefit Period

If the termination of the TMAP payments is because the problem originally causing the default has been cured, the TMAP loan would then be recast in the same manner as utilized in the PIP demonstration. It is suggested by the contractor that the same guidelines used to set the term of the recast PIP Loan be used with respect to the TMAP Loan - the term of the TMAP Loan should be lengthened until the total combined payments on the first mortgage and the TMAP Loan do not exceed 30% of gross family income. After the determination of the terms of the recast TMAP loan, the necessary legal documents would be executed and recorded and the mortgagor would begin remitting directly to the servicer a new monthly payment incorporating both the regular first mortgage payment plus the additional amount required to amortize the TMAP loan.

The amount of the servicing fee for the TMAP loan must be established. The contractor suggests that the fee be established as a fixed fee per month per loan (for example, $5.00). The contractor also suggests that the servicer be required to account to HUD for the balance of the payments on the TMAP loan on a monthly basis but with no payment required until a minimum amount is to be paid, for example, $2,500.00, with the servicer entitled to any interest earned on the funds until remittance. This potential additional benefit to the servicer should aid HUD in establishing the fixed monthly fee at a reasonable level.

6.3.2 Legal Documents

With the exceptions indicated below, the legal documents used for the PIP demonstration would be suitable for use in the TMAP program. Certain documents will have to be reviewed for compliance with the local law in each jurisdiction in which they are to be used.

The contractor suggests that the TMAP program not include any extension of the maturity date of the first mortgage. If this suggestion is followed and if, in addition, the first mortgage is brought current with the first TMAP payment, there will be no need to modify the first mortgage upon conclusion of the benefit period. As a result, at the time of the intake of the mortgagor into the TMAP program, there will be no need for documents comparable to the PIP Agreement and the Disclosure Statement in connection with the HUD-insured first mortgage. Moreover, the Guidelines used in connection with the PIP demonstration will be greatly simplified.

Since the TMAP Legislation provides that the interest rate charged the mortgagor on the TMAP Loan is not to be limited by any state or local laws limiting the rate of interest on loans, one interest rate can be established for the entire program.

Documents comparable to the PIP Note and PIP Mortgage will be needed since the TMAP Legislation provides that the TMAP payments are to be repaid to HUD by the mortgagor and such repayment is to be secured by a mortgage on the mortgagor's home.

If the HUD-insured first mortgage is not to be modified (as suggested above), the legal documents needed at the time of recast will consist only of documents comparable to the Modification of PIP Mortgage and Disclosure Statement used in connection with the PIP demonstration.

6.3.3 Instructional Seminars

To ensure the most effective and successful national implementation of TMAP, it is suggested that all parties be well informed as to the operational requirements of the program prior to program start-up. The methods used in the PIP demonstration consisted of instructional seminars for HUD field office personnel, mortgage servicers and counseling agency personnel, in a two-step procedure.

It is suggested that the same or similar techniques be used for the implementation of the TMAP program.

6.4 STAFFING ANALYSIS

Based upon the fiscal year 1980 single-family loan management staff estimates and informal discussions by the contractor with various HUD personnel, it was estimated that if TMAP were to supplant the current Assignment program, there would be an annual savings in personnel requirements of approximately 150 staff years. This saving was estimated to result from approximately a 90 percent saving in the estimated 156 staff-years for servicing the HUD-held mortgages and a saving of approximately 10 staff-years in the 24 staff-years estimated necessary for mortgagee reviews.

However, because of the change in circumstances since the staffing analysis was undertaken, these figures no longer may be reliable. Since the conclusion of the staffing analysis, (a) the acceptance rate into the Assignment program (and thus presumably into the TMAP program) has increased from approximately 15 percent at the time the staffing analysis was made to a current rate of approximately 25 percent; (b) the information used in the staffing analysis was gathered just prior to the commencement of the "reconsideration" of all rejected applications between May, 1976 and January, 1979, and such reconsideration is continuing at this time; (c) the staffing analysis was based on the assumption that the Assignment program would be replaced with the TMAP program and the TMAP Legislation provides that both are to be maintained; and (d) as a result of the requirements of HUD Handbook 4191.2 (Chapter 7) requiring the encouragement of counseling, the additional counselors involved with mortgagors will increase the staff time needed for intake into the TMAP program.

6.5 COST-BENEFIT AND RISK ANALYSIS

6.5.1 Introduction

This section summarizes the cost, benefits and risks analyses associated with TMAP versus the Assignment program from the viewpoint of HUD, as well as the collateral benefits of a nationwide TMAP program to the mortgage lending and servicing industries.

6.5.2 Treatment Path Analysis

The analysis used to arrive at the conclusions regarding cost, benefits and risks includes an analysis of a HUD-insured mortgagor in default who is subjected to each of 5 separate treatment paths:

1. The mortgagor is accepted for assignment and ultimately recovers.
2. The mortgagor is provided TMAP assistance and ultimately recovers.
3. The mortgagor is provided no assistance and goes directly to foreclosure.
4. The mortgagor is accepted for assignment and ultimately fails.
5. The mortgagor is provided TMAP assistance and ultimately fails.

6.5.3 Benefit, Costs and Risks to HUD

In FY79, HUD received about 16,000 applications for assignment and accepted 3,833 of them, at a total outlay of $74,467,765, an average of almost $19,500 per case. For the four year period from May, 1976, when the Assignment program effectively commenced, through January 1, 1980, about 11,000 mortgages had been accepted for assignment.

Although the above sums of money represent merely the exchange of one asset for another--cash for notes--the fact that the average interest rate of the mortgage notes acquired is well below HUD's mandated discount rate of 10 percent per annum means that, even with successful repayment of the forborne amounts, the HUD insurance funds will experience a large economic opportunity cost. In terms of a $25,000, 30-year, 8 percent mortgage which defaults after three years, with payments reduced to escrows for 36 months, the opportunity cost to HUD will be $5,616--even with full repayment. If TMAP had been used for the same period of forbearance, the corresponding opportunity cost would be only $1,589.

Should the mortgagor have defaulted under the terms of the forbearance plan after 36 months of support and the mortgage foreclosed, the additional cost to HUD, beyond the potential loss had foreclosure taken place in the first instance, would be about $1,382 for the Assignment program and only $145 for TMAP.

6.5.4 Annual Cost-Benefit Projections

In terms of the packet of 3,833 mortgages accepted for assignment in FY79, taking into account that as many as one-third may go into "secondary default" and subsequently be foreclosed, the annual cost of the Assignment program was $74.5 million and the expected savings to the HUD insurance funds is estimated as having a present value of $26 million. If TMAP had been used with 36 months of benefits for the 3,833 mortgages, assuming the mortgagor made partial payments equal to the escrow amount, the annual outlay would have been $17.8 million. The corresponding savings to the HUD insurance funds would have a present value of $35.5 million. In chart form:

Program	Benefit Period	Expected Benefits	Annual Cost	Benefit-Cost Ratio
TMAP	36 months	$35,500,000	$17,800,000	2.0
Assignment	36 months	26,000,000	74,500,000	.35

The above figures are predicated on a secondary default and foreclosure rate of one-third in both the TMAP and Assignment programs. To the extent that the secondary failure rate in the TMAP program would turn out to be less than one-third, the above differences between the two programs would be more favorable to the TMAP program.

6.5.5 Benefits, Costs, and Risks to Mortgagees

When a single-family, HUD-insured mortgage is foreclosed, the mortgage lender will ordinarily lose two months' interest, one-third of all legal and court costs, and the difference between the debenture rate and mortgage interest rate on the note between the time of default and the payment of claim. For a $25,000 mortgage, this will typically be about $1,200. The corresponding loss to the mortgage servicer is typically comprised of about $250 in the direct costs of default monitoring and another $350 in the opportunity costs due to loss of servicing.

These losses to the mortgage lenders and servicers vanish under a successful TMAP loan, and are greatly mitigated should secondary failure occur under TMAP because a subsequent insurance claim would follow the rules for that of special forbearance, wherein the lender is reimbursed for all legal fees and court costs and does not lose the two months' interest.

To put this in perspective, the present value of the savings (relative to the costs of outright foreclosure) to the mortgage lending and servicing industries which would result if TMAP rather than Assignment has been used for the 3,833 mortgages assigned in FY79, are as follows:

Program	Mortgage Lender Savings	Mortgage Servicer Savings "Hard"	"Soft"	Total
TMAP	$435,000	$37,000	$178,000	$215,000
Assignment	619,000	-0-	-0-	-0-

The above figures again assume that one-third of all mortgages granted forbearance relief would result in secondary failure and claim. The column marked "hard" contains the savings to the servicers in the direct costs of default monitoring, and the column marked "soft" is the reduction in opportunity costs due to loss of servicing.

The benefits of TMAP to the mortgage servicing industry are readily apparent. Although the benefits of TMAP to the mortgage lending industry are not as great as for Assignment (where the lender gets full payment at the outset), if and to the extent that the secondary failure rate for TMAP would be less than that of the Assignment program, the above difference would be lessened and even eliminated.

6.6 LEGAL IMPLICATIONS/IMPEDIMENTS

6.6.1 Required Legislation

Prior to the enactment of the TMAP Legislation, HUD was not authorized to make advances to a mortgagee from any of its insurance funds. Implementation of a national TMAP program could have been legislatively authorized either by (i) enactment of enabling legislation requiring an appropriation similar to that contained in the Emergency Homeowners' Relief Act, or (ii) amendment of the National Housing Act to permit use of the HUD insurance funds for loans or advances for the benefit of the mortgagor and to protect the insurance fund. With the enactment of the TMAP legislation, Congress chose the latter alternative.

Very generally, the TMAP legislation contains the following provisions (the section number references being references to the National Housing Act, as amended):

1. Upon receiving notice of default of a mortgage covering a 1-, 2-, 3- or 4- family residence insured under the National Housing Act, HUD is authorized to:

"make all or part of the monthly payments due under the mortgage directly to the mortgagee on behalf of the mortgagor, if such default was caused by circumstances which are beyond the mortgagor's control and render the mortgagor temporarily unable to correct a mortgage delinquency and to resume full mortgage payments." [Section 230(a)(1)]

2. The payments may be made only after HUD has determined that the payments are necessary to avoid foreclosure. To ensure that the cause of default is only temporary, HUD must also have determined that there is a reasonable prospect that the mortgagor will be able:

   "(A) to resume full mortgage payments within thirty-six months after the beginning of the period for which such payments are provided...;

   "(B) to commence repayment of the payments made under this subsection at a time designated by the Secretary; and

   "(C) to pay the mortgage in full by its maturity date or by a later date established by the Secretary for completing the mortgage payments." [Section 230(a)(2)]

   As indicated above, the contractor suggests that there be no extension of the maturity date of the HUD-insured first mortgage since this would require the consent of the mortgagee and thereby complicate the implementation of the TMAP program.

3. Monthly payments are authorized up to an amount equal to the monthly payment under the HUD-insured first mortgage, including principal, interest, taxes, assessments, ground rents, hazard insurance, mortgagee's expenses in connection with payments or repayments, and mortgage insurance premiums. In addition, the Legislation permits the initial TMAP payment to be larger in order to bring the HUD-insured mortgage current. However, if HUD determines that the mortgagor is capable of contributing toward the mortgage payments, the amount of the payments by HUD is to be appropriately reduced. [Section 230(a)(3)]

4. TMAP payments are initially to be made for a period not to exceed 18 months (plus the period of default) and then can be extended in HUD's discretion for an additional period of up to 18 months if after the initial 18-month period HUD determines that the extension is necessary to avoid foreclosure and there is still a reasonable prospect that the mortgagor will be able to make the payments and repayments described above. [Section 230(a)(4)]

5. HUD is required to review the financial circumstances of the mortgagor during the continuance of the TMAP payments and if HUD determines that the payments are no longer necessary to avoid foreclosure or determines that there is no longer a reasonable prospect that the mortgagor will be able to make the payments and repayments described above, the TMAP payments are to terminate. [Section 230(a)(4)]

6. The TMAP loan must be secured by at least a lien on the property covered by the HUD-insured first mortgage. [Section 230(a)(5)]

7. HUD is authorized to establish an appropriate interest charge for repayment of the TMAP Loan. Such interest is payable "notwithstanding any provision of any State constitution or law or local law which limits the rate of interest on loans or advances of credit." The rate established by HUD may not exceed the maximum interest rate applicable with respect to level payment mortgages insured pursuant to section 203(b) of the National Housing Act at the time assistance is approved. [Section 230(a)(5)]

   This provision precludes potential conflict with state constitutional or legislative limits on the interest rate that may be charged. However, this does not prevent such conflict with the state constitutional or legislative proscriptions relating to compounding of interest.

8. A mortgagor may take advantage of the TMAP program more than once, but if the mortgagor has previously received TMAP assistance, he or she must have made the full payments on the first mortgage and the repayments of the TMAP loan for at least 12 months prior to qualifying to use TMAP again. [Section 230(a)(6)]

9. If HUD has determined that assistance using TMAP "would be inappropriate" in the case of any particular mortgagor, HUD may still accept assignment of the mortgage, and except as indicated below, the provisions regarding assignment are identical to the current provisions of the National Housing Act dealing with assignment. [Section 230(b)(1)]

10. After HUD has accepted assignment of a mortgage, if the mortgagor has not received TMAP assistance within 12 months prior to the acquisition of the mortgage by HUD and if HUD determines that there is a reasonable prospect that the mortgagor will be able to meet the payment and repayment provisions described above, HUD may offer additional relief through forbearance of interest or principal for a period of up to 18 months after acquisition of the mortgage. This 18 month period may be extended for not to exceed an additional 18 months where HUD determines that the extension is necessary to avoid foreclosure and also determines that there is a reasonable prospect that the mortgagor will be able to meet the payment and repayment conditions described above. The assistance provided after assignment

is to be repayable upon terms and conditions prescribed by HUD with any interest rate set not to exceed the interest rate described above for TMAP. [Section 230(b)(2)]

11. HUD may accept an assignment of a mortgage even if TMAP payments are being made "for the sole purpose of extending the term of repayment under the mortgage so that the mortgagor will be able to make the full payments on the mortgage." [Section 230(b)(3)]

    This provision would be helpful if, for example, it was decided to include extensions of the first mortgage as part of the TMAP program and a mortgagee refused such extension.

12. The expenditures for TMAP advances are to be made from the insurance fund that is chargeable for insurance benefits on the HUD-insured first mortgage outstanding to the mortgagor. Repayments of TMAP loans are also to be deposited into such fund. However, payments for TMAP may only be made to the extent approved in appropriation Acts. [Section 230(c)]

    Such an appropriation Act is now needed to implement TMAP.

13. HUD "shall, to the extent practicable, provide homeownership counseling to persons assisted under this section." [Section 230(d)]

The contractor had suggested that the following provisions be included in the legislation authorizing TMAP but such provisions were not included in the actual TMAP Legislation adopted:

1. An authorization for a "due-on-sale" clause in the TMAP Mortgage without regard to whether any state or local law would prohibit the use of such clause. This clause is desirable for inclusion in the TMAP mortgage to provide HUD the option to require repayment if the home is sold.

2. If the TMAP loans are to be marketed by HUD in the secondary market with HUD insurance, and if HUD desires to collect a mortgage insurance premium on the TMAP loan, legislation will be needed to authorize such mortgage insurance premium.

3. It might have been desirable for the enabling legislation to preempt any state laws relating to disclosures so that the federal Truth-in-Lending disclosures would be all that was required.

6.6.2 Impact of Ferrell Litigation

As a result of continuing allegations in the Ferrell case, an amendment to the settlement was entered into on August 2, 1979. HUD agreed to reopen all requests for assignment that were rejected between May 17, 1976, when the assignment procedure was instituted, and January 31, 1979, if the mortgagor or former mortgagor requests reconsideration and if the mortgage has been foreclosed or is in foreclosure, or foreclosure is imminent. This reconsideration is continuing at the present time.

More recently, and in connection with the introduction of legislation authorizing a national TMAP program, the plaintiffs sought to have the Secretary of HUD held in contempt of court for violating the settlement stipulation by allegedly proposing to eliminate the Assignment program and replace it with a national TMAP program. Although the request for contempt was denied, it was clear from the proceedings that the Court would not permit the elimination or even modification of the Assignment program unless it was assured that the benefits sought by the plaintiffs would be available in a national TMAP program. The TMAP Legislation does provide for the continued use of the Assignment program.

In the course of the hearing on the plaintiff's motion to hold the Secretary in contempt, one of the matters objected to by the Court was the fact that TMAP benefits could not be granted to the mortgagor without the consent of the mortgagee. The contractor's proposal to eliminate modification of the HUD insured first mortgage would solve this problem. In addition, even if the TMAP program includes modification of the HUD-insured mortgage so that consent of the mortgagee would be required, the TMAP Legislation authorizes HUD to accept assignment of the mortgage if the TMAP program could not be implemented for a particular mortgagor because of this refusal of consent.

7.0 NATIONAL IMPLEMENTATION--SPECIAL AREAS

7.1 ALTERNATIVE SOURCES OF FUNDING

One source of funds for the TMAP payments in a national TMAP program would be the HUD insurance fund applicable to the HUD-insured first mortgage. Subject to the necessity for a specific appropriation act, the TMAP Legislation authorizes such expenditures from the appropriate insurance fund. The TMAP Legislation also provides that repayments of TMAP Loans are to be credited to the appropriate insurance fund.

An alternative to financing TMAP with existing HUD insurance funds would be to set up a separate revolving fund for the TMAP program. Although it is beyond the scope of this report to estimate the amount of funds that would be required to create such a revolving fund and to make it self-sustaining, the contractor's final report does estimate, based on various assumptions, that the annual cash outlay for a TMAP program would be approximately $18,000,000.

A national TMAP program will result in a sizable number of loans owned by HUD, each with a relatively small principal amount and secured by a second or more junior mortgage on the mortgagor's home. One option would be for HUD to retain these loans in its loan portfolio and another option would be for HUD to attempt to market the loans in the secondary loan market. The contractor suggests that such loans would not be marketable unless they were insured by HUD, which cannot be done without additional enabling legislation.

7.2 EXPANSION BEYOND MORTGAGES AND LOANS UNDER ASSIGNMENT

Although the PIP demonstration covered only mortgagors whose property was covered by a mortgage insured by HUD under either Section 203(b) or Section 221(d)(2) of the National Housing Act, there is no such limitation in the TMAP Legislation for the national TMAP program. The TMAP Legislation would allow coverage for all mortgagors whose property was covered by a mortgage insured under any section of the National Housing Act.

At the present time, the Assignment program excludes (or apparently excludes) three categories of such loans and the contractor suggests that these categories be included in the TMAP program:

1. Except for a hardship assignment under Reg. §203.650, mortgages co-insured by HUD under Section 244 are not included in the Assignment program. There appears to be no reason why such mortgages should not be eligible for a national TMAP program, and the TMAP Legislation so permits.

2. Property improvement loans made to finance alterations, repairs and improvements in connection with existing structures are insured by HUD under Section 2 of Title I of the National Housing Act. These are primarily personal, unsecured loans, but loans in excess of $7,500 are to be secured by a recorded lien on the improved property. It is suggested that these property improvement loans that are in excess of $7,500 and thus secured by a mortgage should be eligible for the TMAP program.

3. Loans for the purchase of a mobile home that will serve as the borrower's principal residence and loans for the purchase of a lot on which the mobile home is to be placed are also insured by HUD under Section 2 of Title I of the National Housing Act. The loans to purchase the mobile home where no lot is involved do not qualify for the Assignment program because there can be no mortgage; the loans to acquire a lot do have a mortgage but it is unclear whether such loans qualify for the Assignment program. The TMAP Legislation would only authorize the inclusion of these loans if the lot was included, since there would then be a mortgage on a 1-4 family residence insured by HUD. It is suggested that these loans which are permitted by the TMAP Legislation should be included in the TMAP program and at a future date consideration could be given to additional legislation to permit all of these loans in a TMAP program.

The contractor suggests that consideration should also be given to expanding the TMAP program to cover mortgages insured or guaranteed by other Government agencies. The contractor believes that loans guaranteed and insured by the Veterans Administration and loans guaranteed by the Farmers Home Administration should be considered for inclusion in a TMAP program. Before such inclusion, one obvious decision to be made is whether the TMAP loan should be made by HUD or by the other government agency. The decision as to which entity would make the loans depends in part on the source of funding.

Finally, it would also be possible to expand a national TMAP program to cover conventional mortgages that are not insured or guaranteed by any government agency. The absence of any government agency with a relationship to the first mortgage raises at least the following substantive issues, the investigation of which are beyond the scope of this report:

1. Should the broad eligibility criteria to be used in the national TMAP program be used with respect to conventional mortgages? If a mortgage is already insured by a government agency, a large financial loss results to the government agency if the mortgage is foreclosed or assigned--under those circumstances, the use of broad eligibility criteria makes sense because it results in saving a larger number of cases from foreclosure. In connection with conventional mortgages, the broad eligibility criteria would impose a large cost on HUD or any other source of funding. The narrower criteria used in the PIP demonstration or as set forth in the Emergency Homeowner's Relief Act might be more appropriate.

2. What would be the source of funding for the program? Alternatives would include the use of one or more of HUD's existing insurance funds or a separate revolving fund established for the program. It would also be possible for such a program to be funded and administered through one or more private entities presently supplying partial mortgage insurance.

3. What entity would administer a national TMAP program with respect to conventional mortgages? The source of funds for the TMAP advances would have a direct bearing on this decision. Another relevant factor would be the choice of eligibility criteria, i.e. if very narrow, objective criteria were used, it might be possible to have the program administered by the mortgage servicers or counseling agencies.

4. In connection with conventional mortgages, would the use of equity insurance rather than a TMAP program be more appropriate?

7.3 FORERUNNER OF EQUITY INSURANCE

An alternative to assisting mortgagors with government funds using the TMAP program would be to use a program of equity insurance supplied by private industry. Instead of having HUD provide assistance by means of loans to the mortgagor, each mortgagor who desired to have the benefit of the availability of TMAP-type assistance would purchase equity insurance from a private source. Upon the occurrence of an event that would result in a TMAP loan under the TMAP program, the private insurance company would begin making the mortgage payment on the HUD-insured first mortgage to the mortgagee on behalf of the mortgagor. No loan would be created because the payments would be the payment of insurance benefits under the contract between the mortgagor and the insurance company.

One previous study of the use of equity insurance supplied by private industry was conducted by the Insurance Technical Advisory Group (ITAG) organized by HUD in response to a 1968 amendment to the National Housing Act. The report produced estimates of the premium schedules required by private insurers to make coverage both actuarially sound and modestly profitable. Probably because of the high premiums estimated to be necessary, little development has occurred in the area of equity insurance. Although the determination of such premiums would require a thorough actuarial study and is beyond the scope of this report, this report is helpful in determining the cost to HUD of a national TMAP program and if the necessary premium for an equity insurance program were determined, the comparison of the cost of TMAP to HUD and the cost of equity insurance to the mortgagor could be relevant to a judgment of what portion of the premium, if any, should be subsidized by HUD.

7.4 AUTOMATED TMAP

It might be desirable, strictly from HUD's manpower point of view, to design a national TMAP program in which HUD personnel were not required for purposes of entry into the program. Such a program could thus be referred to as an "automated" TMAP program. It is the contractor's belief that if the criteria to be used are the subjective eligibility criteria authorized by the TMAP Legislation, the program should be administered by HUD and not by the mortgagor servicers or counseling agencies. If the criteria were limited to a more objective criteria, such as the criteria used in the PIP demonstration, it would be possible to have an automated TMAP program for such narrower class of mortgagors.

7.5 EVALUATION

As indicated above, it is proposed that the data-gathering procedures presently being used for intake into the Assignment program could be used for intake into a national TMAP program. However, the contractor does have certain suggestions for modifying those procedures in order to enhance HUD's ability to evaluate the results of the national TMAP program and, if these modifications were used, the Assignment program.

The contractor suggests that a substantially greater amount of the data already being collected should be computerized and tabulated. In order to accomplish this objective, the forms presently being used for data collection would either have to be redesigned so that the information contained would be in a format that could be directly keypunched for the computer or an auxiliary instrument would have to be devised under which certain of the more relevant information could be transcribed and keypunched.

The contractor also suggests that certain additional data should be collected to facilitate program evaluation. The two classes of data which are suggested for consideration are (i) the level, extent and depth of assistance provided by the other participants in the mortgage servicing arena, including housing counseling agencies and the mortgage servicers themselves, and (ii) the ultimate outcome for all mortgagors who apply for admission into the program, including those who are rejected or returned for further servicing.

In order to evaluate the TMAP program or compare it with the Assignment program, one or more measures of effectiveness must be selected. Among the possible choices are:

1. The outreach of the program, i.e. the percentage of all mortgagors in default nationwide who are accepted into the program;

2. The quality of the decision making, possibly measured by (a) the number of applicants together with the percentage of applicants accepted under TMAP, and (b) the percentage of rejected applications that were later reversed on appeal as between one program and the other; and

3. The secondary default rate.

From the viewpoint of HUD, the impact of TMAP that is of particular importance is the program's ultimate effect on the cash flow and reserve position of the various HUD insurance funds. To conduct an evaluation of the financial impact on HUD insurance funds of TMAP compared to Assignment, the approach in general would be to track the cash advances and payments received over similar periods for one program versus the other, correcting for such phenomena as inflation, fluctuating interest rates, and the annual default rate among HUD-insured mortgagors.

<u>NOTE</u>: The complete report, of which this is the executive summary, may be obtained while the supply lasts by writing to HUD-USER, P.O. Box 280, Germantown, Maryland 20767 or calling 301-251-5154. After this supply is exhausted, additional copies will be available from The National Technical Information Service - information on the cost of these copies can be obtained by writing The National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22151, or calling 703-487-4650.