

§ 1965.207

(6) *On-going tenant notification.* The Servicing Office will periodically notify tenants of the status of the prepayment request and actions being taken. Tenant notifications are to continue until the loan is prepaid, an incentive or loan to a nonprofit is obligated, or the prepayment request is withdrawn. Notification will be sent to tenants as each decision is made or one year after the last notification, whichever is earlier.

§ 1965.207 Prohibition on prepayment for loans made on or after December 15, 1989, to build or acquire new units.

Loans made on or after December 15, 1989, to build or acquire new RRH units may not be prepaid for the life of the loan, even if the borrower is willing to sign restrictions agreeing to operate the project for low- and moderate-income people after prepayment. The prohibition and conditions for use are described in subpart E of part 1944 of this chapter.

§ 1965.208 Restrictive-use provisions related to LH projects with grants.

For LH projects with *any* size grant, no incentive will be offered since the grant agreement obligates the borrower to operate the housing for its intended use for a 50-year period.

§ 1965.209 Restrictive-use provisions after prepayment.

(a) Restrictive-use provisions protect tenants in prepaid projects from future rent increases that would create new or increased rent overburden. Restrictive-use provisions apply to all loans approved between December 21, 1979, and December 14, 1989, all subsequent loans approved on or after December 15, 1989, and those loans approved prior to December 21, 1979, subsequently made subject to restrictive-use provisions as a result of:

- (1) A servicing action;
- (2) Acceptance of prepayment incentives; or
- (3) Restrictions accepted as a condition of prepayment as specified in this subpart and exhibits A-1 through A-4 of this subpart.

(b) The restrictions mandate that conditions of occupancy, rent, and

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charges other than rent be maintained so that the housing will continue to be affordable to the protected population of tenants. Priority for tenants entering the project after prepayment must continue to be for those tenants in the lowest income category in the protected population, if determined eligible for the units. Borrower responsibilities under restrictive-use provisions are discussed in greater detail in § 1965.215 (e)(6) of this subpart.

§ 1965.210 Loans approved prior to December 15, 1989—RHS actions when processing prepayment requests.

For loans approved prior to December 15, 1989, that have not subsequently accepted prepayment incentives, the Servicing Office or other designated office must evaluate the need for the housing to determine the level of incentives to be offered, including equity loans, and whether the prepayment may be legally accepted with or without restrictive-use provisions. A reasonable effort must be made to enter into an agreement with the borrower to maintain the housing for low-income use that takes into consideration the economic loss the borrower may suffer by foregoing prepayment. When developing an incentive offer, the Servicing Office or other designated office must first offer incentives other than equity loans, unless it is determined that alternative incentives are not adequate to provide a fair return to the borrower, prevent prepayment of the loan, or prevent displacement of the tenants. The guidance provided in §§ 1965.213 and 1965.214 and Exhibit E of this subpart (available in any Rural Development State or District Office) will be used to determine the appropriate incentive package. Once an incentive offer has been accepted on a project, the project will be considered ineligible for future incentive offers until such time as the restrictive-use period associated with the incentive offer has expired.

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§ 1965.211 Evaluation of the borrower's ability to prepay the loan.

The borrower's ability to prepay the loan will be evaluated in accordance with exhibit E of this subpart. If it is

determined the borrower does not have the ability to finance the prepayment, the prepayment request will be denied. The borrower will be notified of the reasons for the decision and appeal rights will be given.

§ 1965.212 Appraisals.

To determine the appropriate incentives to offer a borrower, an appraisal must be completed. The purpose of the appraisal is to determine if the borrower's current equity in the project exceeds the initial investment. The project will be appraised as unsubsidized conventional multi-family housing. The effect on value of any hard and soft costs of conversion of the project from subsidized housing to unsubsidized conventional housing will be considered. Additionally, project reserve accounts and the present worth of any unexpired non-FmHA or its successor agency under Public Law 103-354 project based tenant subsidies will be valued as assets of the project for inclusion in the appraisal. FmHA or its successor agency under Public Law 103-354 Instruction 1922-B (available in any FmHA or its successor agency under Public Law 103-354 office) will be used for guidance in conducting multi-family housing appraisals. After receipt of the appraisal, the Servicing Official or other designated official will determine the amount of the equity loan, if any, the number of Rental Assistance (RA) units necessary, the amount of annual return on investment to be offered, and whether excess Section 8 rents may be released to the borrower, if applicable.

§ 1965.213 Offer of incentives to borrowers.

The Servicing Official must offer an incentive package to the borrower as an inducement to not prepay if the borrower's loan(s) is not subject to prohibitions on prepayment or the borrower has not previously accepted incentive offers on the project for which the associated restrictive-use period has not expired. If a prepayment incentive offer which includes any equity loan is accepted, the equity loan may be processed and closed with the current borrower or any eligible transferee.

(a) *Availability of incentives.* Incentives may be offered only if the restric-

tive period has expired for any RRH project loan.

(b) *Available incentives.* One or more of the following incentives will be offered to the borrower. The amount of incentives will be determined in accordance with Exhibits D and E of this subpart (available in any Rural Development State or District Office).

(1) *Equity loans.* In RRH projects, a subsequent loan may be offered for equity for the difference between the current unpaid loan balance and a maximum of 90 percent of the project's value appraised as unsubsidized conventional housing. Equity loans may not be offered unless the servicing official determines that other incentives offered under this paragraph are not adequate to provide a fair return on the investment of the borrower, to prevent prepayment of the loan, or to prevent the displacement of project tenants.

(2) *Rental assistance.* Additional RA will be offered if needed by current tenants if found necessary by a market determination of need. The number of RA units offered will be based upon:

(i) The increase in rent overburden that will be experienced by tenants, in the project as a result of the incentives offered. The Multiple Housing Tenant File System (MTFS) will be reviewed to determine the number of tenants that will be rent overburdened by the increase in rents resulting from any subsequent loan made for equity. The number of RA units offered will be equal to the number of tenants experiencing rent overburden; and/or

(ii) A change in the market increasing the need for affordable housing. This criteria will usually be used when the project is experiencing substantial vacancies due to market factors. Generally, if the incentive offer contains a substantial equity loan, it would be unlikely that this provision would be consistent with the determination that the project is located in a strong unsubsidized market.

(iii) Reamortizing the existing debt under the provisions of §1965.70 of subpart B of this part should be examined to determine if reamortization will lower existing debt service, thereby reducing tenant rent overburden and the need for additional RA.