

## § 248.234

(B) The proportions established shall not prohibit a higher proportion of very low income families from occupying the housing.

(ii) In approving rents under paragraph (d)(7) of this section, the Commissioner will take into account any additional incentives provided under this part and will make provision for annual rent adjustments necessary as a result of future reasonable increases in operating costs.

(e) In cases where the owner agrees to maintain only a portion of the project as low income housing, the incentives provided under § 248.231 of this part and the standards imposed under this section shall be adjusted accordingly.

(f) The Commissioner shall not approve a plan of action under this section if there are open findings of non-compliance with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); the Fair Housing Act (42 U.S.C. 3601-3619); Executive Order 11063 (3 CFR 1959-1963 comp., p. 652); the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and all regulations promulgated under such statutes and authorities, or if there are open audit findings with respect to violations of the regulatory agreement.

[55 FR 38952, Sept. 21, 1990. Redesignated and amended at 57 FR 12041, 12060, Apr. 8, 1992]

### § 248.234 Section 8 rental assistance.

(a) When providing rental assistance under section 8, the Commissioner may enter into a contract with an owner, contingent upon the future availability of appropriations for the purpose of renewing expiring contracts for rental assistance as provided in appropriations Acts, to extend the term of such rental assistance for such additional period or periods as is necessary to carry out an approved plan of action.

(b) The contract and the approved plan of action shall provide that, if the Commissioner is unable to develop a revised package of incentives providing benefits to the owner comparable to those received under the original approved plan of action, the Commissioner, upon the request of the owner, shall take the following actions (sub-

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ject to the limitations under the following paragraphs):

(1) Modification of the binding commitments made pursuant to § 248.233(d) that are dependent on such rental assistance.

(2) If action under paragraph (b)(1) is not feasible, release of an owner from the binding commitments made pursuant to § 248.233(d) that are dependent on such rental assistance.

(3) If actions under paragraphs (b)(1) and (2) would, in the determination of the Commissioner, result in the default of the insured loan, approval of the revised plan of action, notwithstanding § 248.221, that involves the termination of low-income affordability restrictions.

(c) The approved plan of action shall specify actions that the Commissioner and the owner shall take to ensure that any tenants displaced as a result of actions taken under paragraph (b) of this section are relocated to affordable housing.

(d) At least 30 days prior to making a request under the preceding sentence, an owner shall notify the Commissioner of the owner's intention to submit the request. The Commissioner shall have a period of 90 days following receipt of such notice to take action to extend the rental assistance contract and to continue the binding commitments under paragraph (b).

[55 FR 38952, Sept. 21, 1990. Redesignated and amended at 57 FR 12041, 12060, Apr. 8, 1992]

### § 248.241 Modification of existing regulatory agreements.

(a) If a plan of action is not approved within 300 days after initial submission, the Commissioner may, upon request of the owner and upon making a determination that the project's current use does not represent its highest and best use, modify existing regulatory agreements to—

(1) Prevent involuntary displacement of current tenants (except for good cause);

(2) Ensure that adequate expenditures will be made for maintenance and operation of the housing;

(3) Extend (subject to the availability of funds) any expiring project-based assistance on the housing for the term of the agreement;

(4) Permit an increase in the allowable distribution that could be accommodated by an increase in the rents on occupied units to a level no higher than 30 percent of the adjusted income of the tenants, as determined by the Commissioner, except that rents shall not exceed the fair market rent, and any resulting increase in rents for current tenants shall be phased in equally over a period of no less than 3 years, unless such increase is less than 10 percent; and

(5) Ensure that units becoming vacant during the term of the agreement are made available in accordance with § 248.233(d)(7) of this part.

(b) *Expiration.* Agreements entered into under this section shall expire on February 5, 1992, unless earlier superseded by an agreement implementing a HUD-approved plan of action. Upon such expiration of the agreement on February 5, 1992, the housing covered by the agreement shall be subject to any law then affecting low income affordability restrictions.

**§ 248.251 Consultation with other interested parties.**

The Commissioner will confer with any appropriate State or local government agency to confirm any State or local assistance that is available to achieve the purposes of this part and will give consideration to the views of the State or local agency when making the determinations under §§ 248.221 and 248.233 of this part. The Commissioner also will confer with other interested parties that the Commissioner believes could assist in the development of a plan of action that best achieves the purposes of this part.

**§ 248.261 Agreements implementing plans of action and State strategies.**

The Commissioner is authorized to enter into agreements, including those for the provision of incentives, necessary to implement any plan of action or State strategy approved by the Commissioner under this part.

**Subpart D—State Preservation Project Assistance**

SOURCE: 57 FR 12060, Apr. 8, 1992, unless otherwise noted.

**§ 248.300 General.**

Upon application by a State agency or a local public housing agency, the Commissioner may make available assistance for use in preventing the loss of housing affordable for low and moderate income families that is assisted under a State program under the terms of which the owner may prepay a State assisted or subsidized mortgage on such housing.

**§ 248.301 Initial application.**

A State agency shall make an initial application to the Commissioner which:

(a) Describes the manner by which the State housing program provides mortgage assistance or subsidy to private mortgagors to provide housing opportunities for low and moderate income families;

(b) Includes copies of the authorizing legislation, any implementing regulations and any administrative guidance provided to owners;

(c) Includes a comprehensive description of the terms and conditions under which a private owner may prepay the assisted or subsidized mortgage without the prior consent of the State agency;

(d) Includes a complete set of pro forma mortgage and/or regulatory documents which evidence an owner's ability to prepay the assisted or subsidized mortgage without the consent of the State agency;

(e) Includes a list of all properties assisted under the State or local housing program whose owners are eligible to prepay the assisted or subsidized mortgages without the consent of the State agency.

**§ 248.303 Approval of a State agency's initial application.**

(a) The Commissioner will evaluate the State agency's application and will notify the State agency within 90 days of receipt that the program and properties qualify under subpart D of this part or that the program and properties do not qualify under subpart D of this part.

(b) If the Commissioner determines that the program and projects do not qualify under subpart D of this part, it will state the reasons why the program