

**§248.121**

third appraiser of the project's preservation values shall be binding on both the owner and the Commissioner.

(k) *Timeliness of appraisals.* The Commissioner may approve a plan of action to receive incentives under §§248.153, 248.157 or 248.161 only based upon an appraisal conducted in accordance with this section that is not more than 30 months old, unless the failure of the Commissioner to approve the plan of action within the 30-month period was due to circumstances beyond the control of the owner.

[57 FR 12041, Apr. 8, 1992, as amended at 58 FR 4871, Jan. 15, 1993]

**§248.121 Annual authorized return and aggregate preservation rents.**

(a) *Annual authorized return.* For each eligible low income housing project appraised under §248.111, the Commissioner shall set an annual authorized return on the project equal to 8 percent of the extension preservation equity.

(b) *Aggregate preservation rents.* For each eligible low income housing project appraised under §248.111, the Commissioner shall also determine the aggregate preservation rents. The aggregate preservation rents shall be used solely for the purposes of comparison with the Federal cost limit under §248.123. Actual rents received by the owner (or a qualified purchaser) shall be determined pursuant to §§248.153, 248.157, and 248.161.

(c) *Extension preservation rent.* The extension preservation rent shall be the gross potential income for the project, as determined by the Commissioner, that would be required to support—

(1) The annual authorized return determined under paragraph (a) of this section;

(2) Debt service on any rehabilitation loan for the project, assuming a market rate of interest and customary terms;

(3) Debt service on the federally-assisted mortgage(s) for the project;

(4) Project operating expenses as determined by the Commissioner; and

(5) Adequate reserves.

(d) *Transfer preservation rent.* The transfer preservation rent shall be the gross potential income for the project, as determined by the Commissioner, that would be required to support—

(1) Debt service on the loan for acquisition of the project;

(2) Debt service on any rehabilitation loan for the project, assuming a market rate of interest and customary terms;

(3) Debt service on the federally-assisted mortgage(s) for the project;

(4) Project operating expenses as determined by the Commissioner; and

(5) Adequate reserves.

(e) *Adequate reserves and operating expenses.* For purposes of this section—

(1) Adequate reserves are the amount of funds which, when added to existing reserves, are sufficient to maintain the project, including needed deferred maintenance, at a level that meets the standards set forth in §248.147; and

(2) Project operating expenses shall be based on operating expenses for the preceding 3 years, adjusted for reasonable reductions in operating costs due to rehabilitation and energy improvements. For purposes of comparison to the gross rents used in determining the Federal cost limit, project operating expenses shall include the cost of utilities paid by the residents.

(f) *Debt service.* For purposes of this section, the amount of debt service for an acquisition loan will be estimated based on the maximum loan to which the purchaser is entitled under §241.1067 of this chapter. The debt service on any rehabilitation loan will be estimated using costs derived from the appraisals conducted under §248.111, taking into account any funds provided for rehabilitation by State or local governments and assuming market rate interest rates.

**§248.123 Determination of Federal cost limit.**

(a) *Initial determination.* For each eligible low income housing project appraised under §248.111, the Commissioner shall determine whether the aggregate preservation rents for the project exceed the amount determined by multiplying the number of dwelling units in the project, according to appropriate unit sizes, by 120 percent of the section 8 existing fair market rent for the appropriate unit sizes.

(b) *Relevant local markets.* If either the extension or transfer preservation rent for a project exceeds the amount

determined under paragraph (a) of this section, the Commissioner shall determine whether such extension or transfer preservation rent exceeds the amount determined by multiplying the number of units in the project, according to the appropriate unit sizes, by 120 percent of the prevailing rents in the local market area. The relevant local market, and the prevailing rents in such relevant local market, shall be determined on the basis of the appraisal conducted by the appraiser selected by the Commissioner pursuant to § 248.111 and any other information that the Commissioner determines is appropriate. If there are no comparables in the relevant local market and it is not otherwise possible to determine prevailing rents in that area, the section 8 existing fair market rent shall be the sole measure for determining the Federal cost limit.

(c) *Effect.* The extension or transfer preservation rent for an eligible low income housing project appraised under § 248.111 shall be considered to exceed the Federal cost limit only if the extension or transfer preservation rent exceeds the amount determined under paragraphs (a) and (b) of this section.

**§ 248.127 Limitations on action pursuant to Federal cost limit.**

(a) *Retention of the project.* With respect to owners who seek to retain the project, the owner may file a plan of action to receive incentives under § 248.153, except that if the extension preservation rent exceeds the Federal cost limit, the amount of the incentives may not exceed an amount that can be supported by a projected income stream equal to the Federal cost limit.

(b) *Transfer of the project.* With respect to owners who seek to transfer the project—

(1) If the transfer preservation rent does not exceed the Federal cost limit, or if the transfer preservation rent exceeds the Federal cost limit and the owner is willing to transfer the project at a price which will result in project rents that, on an aggregate level, do not exceed the Federal cost limit, the owner may file a second notice of intent indicating an intention to transfer the project under § 248.157; or

(2) If the transfer preservation rent exceeds the Federal cost limit, the owner may file a second notice of intent to transfer the project under § 248.161 or, if no bona fide offers are received, to prepay the mortgage or terminate the mortgage insurance.

**§ 248.131 Information from the Commissioner.**

(a) *Information to owners terminating affordability restrictions.* Within six months after receipt of a notice of intent to terminate the low income affordability restrictions under § 248.141, the Commissioner shall provide the owner with a description of the criteria for such termination and with information that the owner needs to prepare a plan of action. This shall include information concerning the standards under § 248.141 regarding the approval of a plan of action and a list of the Federal incentives authorized under § 248.153 and available to those projects for which a plan of action involving termination of low income affordability restrictions, through prepayment of the mortgage or termination of the mortgage insurance contract, would not be approvable. The Commissioner shall also provide the owner with any other relevant information which the Commissioner may possess.

(b) *Information to owners extending affordability restrictions.* Within nine months of receipt of a notice of intent to extend the low income affordability restrictions under § 248.153 or to transfer the project under § 248.157, the Commissioner shall provide the owner who submitted the notice with—

(1) A statement of the preservation values of the project as determined under § 248.111;

(2) A statement of the aggregate preservation rents for the project as calculated under § 248.121;

(3) A statement of the applicable Federal cost limit for the market area (or relevant local market, if applicable) in which the project is located, and an explanation of the limitations under § 248.127 on the amount of assistance the Commissioner may provide based on such cost limits;

(4) A statement of whether either of the aggregate preservation rents exceeds the Federal cost limit; and