

of this chapter, the basic rent and market rent, as defined in §236.2 of this chapter, for each unit in such project may be increased to take into account the allowable distributions permitted under this section and the debt service on any equity loan, rehabilitation loan or acquisition loan approved under a plan of action under subpart B of this part.

[57 FR 12041, Apr. 8, 1992, as amended at 58 FR 37815, July 13, 1993]

**§ 248.157 Voluntary sale of housing not in excess of Federal cost limit.**

(a) *Offer to sell.* Where an owner has submitted a second notice of intent under §248.133 for the purpose of transferring the project to a qualified purchaser, and the transfer preservation rent does not exceed the Federal cost limit, the owner shall offer the housing for transfer as provided in this section. The owner shall not be obligated to accept any offer made under this section, but may instead elect to retain the project and receive incentives under §248.145.

(b) *Notification of qualified purchasers.* Upon receipt of a second notice of intent to transfer the project to a qualified purchaser, the Commissioner shall notify potential qualified purchasers of the availability of the project for sale, and of the names and addresses of the owner, or of a person representing the owner in the sale of the project, by—

(1) Mailing notices to non-profit organizations;

(2) Placing notices in the major local newspaper(s) in the jurisdiction in which the project is located;

(3) Mailing notices to clearinghouse networks; and

(4) Using any other means of notification which the Commissioner determines would be effective to notify potential qualified purchasers of the sale of the project.

(c) *Right of first offer to priority purchasers.* (1) For the 6-month period beginning on the date of receipt by the Commissioner of a second notice of intent under §248.133, the owner may accept a bona fide offer only from:

(i) A resident council intending to purchase the project under §§248.173 or 248.175, which has met the require-

ments for tenant support, pursuant to those sections;

(ii) A resident council intending to purchase the project and retain it as rental housing, which has the support of a majority of the tenants; or

(iii) A community-based nonprofit organization which has the support of a majority of the tenants.

(2) If no bona fide offer to purchase the project is made and accepted during or at the end of the 6-month period specified in paragraph (c)(1) of this section, the owner may offer to sell the project during the next 6 months to any priority purchasers.

(3) If no bona fide offer to purchase the project is made and accepted during or at the end of the 6-month period specified in paragraph (c)(2) of this section, the owner may offer to sell the project during the 3 months immediately following that period only to qualified purchasers.

(d) *Purchase price.* The sale price, including assumption of the debt on the federally-assisted mortgage(s), or the amount of the debt on the federally-assisted mortgage(s) that the project is taken subject to, may not exceed the transfer preservation value of the project.

(e) *Expression of interest.* Any priority purchaser seeking to make an offer during the 6-month periods specified in paragraph (c) of this section shall, and other qualified purchasers may, submit written notice thereof to the Commissioner. Such notice, if made by a priority purchaser seeking to make an offer during either 6-month priority purchaser marketing period, shall contain the following:

(1) A statement identifying the priority purchaser as a State or local government agency, a nonprofit organization, or a resident council;

(2) A copy of its articles of incorporation, charter and list of officers and directors, if the purchaser is a nonprofit organization or a resident council and in the case of a nonprofit organization, proof that the organization is, or has applied to be, a tax exempt organization in accordance with 26 U.S.C. 501(c); and

(3) A statement as to whether the purchaser is affiliated with any other entity for purposes of purchasing the

§ 248.157

24 CFR Ch. II (4-1-04 Edition)

project and whether any Low Income Housing Tax Credits may be awarded in connection with the purchase of the project.

(f) *Information from the Commissioner.* Within 30 days of receipt of an expression of interest by a priority purchaser, the Commissioner shall determine the status of the priority purchaser with respect to the categories listed in paragraph (h) of this section, and provide such purchaser with:

(1) A list of all possible assistance available from the Federal Government to facilitate a transfer of the project;

(2) The appraisal reports for the project as submitted under § 248.111;

(3) The Commissioner's determination as to the priority status of the purchaser and as to whether the purchaser qualifies as a resident council, community-based nonprofit organization or State or local government entity;

(4) A worksheet indicating the level of the earnest money deposit required upon the submission of a bona fide offer;

(5) An acknowledgment of the purchaser's right to inspect the project; and

(6) Any other relevant financial information that the Commissioner possesses concerning the project, including the information determined under § 248.121.

Within the same 30-day period, the Commissioner shall also notify the owner of the purchaser's expression of interest and instruct the owner to provide to the purchaser any information concerning the project that the Commissioner deems relevant to the transfer of the project.

(g) *Bona fide offer.* A bona fide offer is an offer to purchase eligible low-income housing at a sales price which does not exceed the transfer preservation value of the project.

(1) A bona fide offer must include the following:

(i) A contract of sale signed by the purchaser, which states that acceptance of the contract is contingent upon approval by the Commissioner;

(ii) An earnest money deposit from every qualified purchaser equal to the lesser of one percent of the transfer preservation value, \$50,000 or \$500 per

unit, unless the purchaser is a resident council purchasing the project under a resident homeownership plan under § 248.173 or § 248.175, in which case the earnest money deposit shall be equal to \$200 per unit from 75% of the occupied units; and

(iii) If the purchaser is a resident council intending to purchase the project pursuant to a resident homeownership plan, the information required under § 248.173(b); or

(iv) If the purchaser is a resident council intending to retain the project as rental housing, or a community-based nonprofit and the offer is submitted within the marketing period established in paragraph (c)(1) of this section, a resolution of the resident council, or a petition signed by tenants representing a majority of the units indicating their support of the offer.

(2) An owner may waive the requirement of an earnest money deposit or agree to accept a smaller deposit for all qualified purchasers, except resident councils who intend to purchase the project pursuant to a resident homeownership plan under § 248.173 or § 248.175. In order to be effective:

(i) The waiver must be indicated in the second notice of intent submitted under § 248.133 and the waiver must apply equally to all qualified purchasers, except resident councils who intend to purchase the project pursuant to a resident homeownership plan under § 248.173 or § 248.175; or

(ii) If the second notice of intent has already been submitted, the owner must submit to the Commissioner, in writing, its decision to waive the earnest money deposit. The Commissioner shall notify all qualified purchasers who have submitted an expression of interest under paragraph (e) of this section that the owner has waived the earnest money deposit requirement.

(h) *Retention and acceptance of offers.* The owner shall accept or reject any bona fide offer within 30 days of receipt of such offer. For an offer to be bona fide, it must meet the requirements of paragraph (g) of this section, as well as be submitted to the owner within the appropriate marketing period under paragraph (c) of this section. If an owner rejects any offer, it must return

the earnest money deposit to the offeror at the time of rejection. A bona fide offer which is rejected by the owner will still be considered a bona fide offer for purposes of this section, even after the earnest money deposit has been returned. If an owner decides to accept the offer at a later date, the purchaser may renew the offer by resubmitting the earnest money deposit, if a deposit had originally been required, within 30 days of notification of the owner's acceptance of the offer.

(i) *Submission of offer to HUD.* The purchaser shall submit the offer to the Commissioner. The Commissioner shall review the offer which is preliminarily accepted by the owner to determine whether it meets the requirements of a bona fide offer. The Commissioner shall notify the owner and purchaser, within 30 days after acceptance, whether the offer meets such requirements. The owner's preliminary acceptance of any offer pursuant to this section shall be conditional upon the Commissioner's certification that the offer is bona fide. If the Commissioner determines that the offer is not a bona fide offer, the offer will be considered invalid for the purposes of subpart B of this part.

(j) *Submission of plan of action.* Upon a determination by the Commissioner that the offer is bona fide and final acceptance of such an offer, the owner and purchaser shall jointly submit a plan of action to the Commissioner pursuant to § 248.135. The plan of action shall include any request for assistance from the Commissioner for purposes of transferring the project.

(k) *Requirements for plan of action approval.* If the qualified purchaser of the project is a resident council seeking to purchase the project under a resident homeownership program, the Commissioner may approve a plan of action only if the resident council's proposed resident homeownership program meets the requirements under § 248.173 or § 248.175. For all other qualified purchasers, the Commissioner may approve a plan of action submitted pursuant to this section only if the plan of action meets the criteria listed in § 248.145.

(l) *Failure to consummate sales transaction.* (1) If the owner accepts an offer

from a priority purchaser during either of the two 6-month periods specified in paragraph (c) of this section, and before the expiration of the period specified in paragraph (c) of this section, the sales transaction either falls through or does not close within 90 days after the Commissioner's approval of the plan of action, the owner shall:

(i) Immediately notify the Commissioner that the sale has fallen through;

(ii) Notify any other purchaser that had submitted an offer to purchase the project; and

(iii) Resume holding the project open for sale for the remainder of the time periods specified in paragraph (c) of this section.

(2) If the owner accepts an offer from a purchaser, and during the 3-month period specified in paragraph (c) of this section, or thereafter, the sales transaction either falls through or does not close within 90 days after the Commissioner's approval of the plan of action, the owner shall take the following steps:

(i) Immediately notify the Commissioner that the sale has fallen through;

(ii) Contact any other purchaser that had submitted an offer to purchase the project and give such purchaser and any other qualified purchaser 60 days from the date of notification to the Commissioner in which to resubmit an offer to purchase the project.

(3) At any time during the 60-day period the owner may accept an offer submitted under paragraph (l)(2) of this section.

(4) If an offer submitted during the 60-day period specified in paragraph (l)(2) of this section is made and accepted, but the sale is not consummated within 90 days of the Commissioner's approval of the plan of action for reasons not attributable in whole or in part to the owner, the owner may terminate the low-income affordability restrictions through prepayment or voluntary termination, subject to compliance with the provisions of § 248.165.

(m) *Assistance.* Subject to the availability of amounts approved in appropriation acts, the Commissioner shall, for approvable plans of action, provide assistance sufficient to enable qualified purchasers to:

§ 248.161

24 CFR Ch. II (4-1-04 Edition)

(1) Acquire the eligible low income housing project from the current owner for a purchase price not greater than the transfer preservation value of the project;

(2) Pay the debt service on the federally-assisted mortgage(s) covering the project;

(3) Pay the debt service on any loan for the rehabilitation of the project;

(4) Meet project operating expenses and establish adequate reserves for the housing, and in the case of a priority purchaser, meet project oversight costs;

(5) Receive a distribution equal to an 8 percent annual return on any actual cash investment made to acquire or rehabilitate the project;

(6) In the case of an priority purchaser, receive reimbursement for all reasonable transaction expenses associated with the acquisition, loan closing and implementation of an approved plan of action; and

(7) In the case of an approved resident homeownership program, cover the costs of training for the resident council, homeownership counseling and training, the fees for the nonprofit entity or public agency working with the resident council, if such entity or agency is approved by the Commissioner, and costs related to relocation of tenants who elect to move. Assistance for such costs, exclusive of relocation expenses, shall not exceed \$500 per unit or \$200,000 for the project, whichever is less.

(n) *Incentives.* The Commissioner may provide assistance for all qualified purchasers under this subpart in the form of one or more of the incentives authorized under §248.153. The incentives provided by the Commissioner to any qualified purchaser may include an acquisition loan under subpart E of part 241 of this chapter.

(o) *Grants to priority purchasers.* The Commissioner may provide assistance for priority purchasers under subpart B of this part in the form of a grant for each unit in the project in an amount, as determined by the Commissioner, that does not exceed the present value of the total of the projected fair market rent for the next ten years, or such longer period if additional assistance is

necessary to cover the costs set forth in paragraph (m) of this section.

(p) *Reimbursement of assistance.* The Commissioner reserves the right to seek reimbursement from a priority purchaser who, within ten years of approval of a plan of action, becomes affiliated with or transfers the project to any non-priority purchaser. The Commissioner shall be entitled to receive reimbursement for the difference between the assistance provided to the priority purchaser and the assistance that would have been provided in the same circumstances to a non-priority purchaser.

(q) *Seller financing.* In order to finance the acquisition or rehabilitation of a project under this section, a qualified purchaser may receive take-back financing from the owner of the project. If the purpose of the seller financing is to aid acquisition of the project, the principal amount of such financing, together with an acquisition loan provided under part 241 of this chapter, may not exceed the transfer preservation equity of the project, plus, in the case of priority purchasers, any expenses associated with the acquisition, loan closing, and implementation of the plan of action. If the purpose of the seller financing is to fund rehabilitation of the project, the principal amount of such financing may not exceed the equity requirements for a rehabilitation loan under §241.70 or §219.305 of this chapter. The seller may not charge interest on any seller financing at a rate in excess of that of the Federal acquisition or rehabilitation loan.

[57 FR 12041, Apr. 8, 1992, as amended at 58 FR 37816, July 13, 1993]

**§ 248.161 Mandatory sale of housing in excess of the Federal cost limit.**

(a) *In general.* With respect to any eligible low income housing for which the transfer preservation rent determined under §248.121 exceeds the Federal cost limit, the owner shall offer the housing for transfer to qualified purchasers as provided in this section.

(b) *Applicability of voluntary sale provisions.* The provisions of §248.157, other than paragraphs (a) and (p) of this section thereof, shall be applicable to any sale conducted under this section. If