

§ 248.233

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review of a request for approval of a transfer of physical assets;

(h) Provision of flexible subsidy assistance;

(i) Termination of HUD's limitations on distributions, and release of residual receipts and reserve for replacements funds, through prepayment of the mortgage; and

(j) Any other incentives for which the owner is eligible.

§ 248.233 Approval of a plan of action that includes incentives.

The Commissioner may approve a plan of action that includes incentives, whether or not the plan of action allows for the prepayment of the mortgage, only upon a finding that—

(a) After taking into account local market conditions, the incentives are necessary to achieve the purposes of this part;

(b) The incentives are necessary to provide a fair rate of return to the owner. Incentives will only be provided in cases where the project's current use does not represent its highest and best use;

(c) The incentives are the least costly alternative for the Federal government to achieve the purposes of this part with respect to the housing;

(d) Binding commitments have been made to ensure that—

(1) The housing will be retained as housing affordable for very low income families, low-income families, and moderate income families for the remaining term of the mortgage;

(2) Throughout the remaining term of the mortgage, adequate expenditures will be made for the proper maintenance and operation of the housing;

(3) Current tenants will not be involuntarily displaced (except for good cause);

(4) Any increase in rent contributions for current tenants will be to a level that does not exceed 30 percent of the adjusted income of the tenant or the fair market rent, whichever is lower;

(5) Any resulting increase in rents for current tenants (except for increases made necessary by increased operating costs) will be phased in equally over a period of not less than 3 years, if the increase is 30 percent or more, and will be limited to not more than 10 percent

per year, if the increase is more than 10 percent but less than 30 percent;

(6) Subject to the availability of funds, the Commissioner shall provide, and the owner shall accept, assistance under section 8 if the Commissioner determines that such assistance is necessary to mitigate any adverse effect of the rent increases on current tenants eligible for section 8 assistance; and

(7) Rents for units becoming available to new tenants will be at levels approved by the Commissioner that will ensure, to the extent practicable, that the units will be available to and affordable, with 30 percent of adjusted income, by the same proportion of very low income families, low-income families, and moderate income families as resided in the housing as of January 1, 1987 (based on the area median income limits established by the Commissioner in February 1987), or the date the plan of action is approved, whichever date results in the highest proportion of very low income families.

(i) For purposes of paragraph (d)(7) of this section—

(A) The percentage of moderate income families in occupancy as of January 1, 1987 shall include families who were admitted to the project as very low income, low income, or moderate income families but whose incomes had increased beyond the limit for moderate income families by January 1, 1987; and

(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 (subject 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