

in accordance with this section and exhibits D and E of this subpart. The letter will include the following:

(1) A statement that the package is a one-time incentive being offered in return for the extension of the low and moderate income use of the housing. The letter will establish that, by accepting the incentives outlined in the letter, the borrower will be subject to a restrictive-use provision obligating the housing to low- and moderate-income use in the FmHA or its successor agency under Public Law 103-354 program for 20 years from the date the extended use agreement is executed, and prohibited from future incentive offers on the project so long as the restrictive-use provisions remain in effect.

(2) The amount of the equity loan being offered (if any). Any offer of an equity loan will include a statement that the borrower is subject to:

(i) A continued eligibility determination in accordance with subpart E of part 1944 of this chapter; and

(ii) Appropriation limitations. When an incentive offer that includes an equity loan is accepted by a borrower, funding the components of the offer is considered binding on FmHA or its successor agency under Public Law 103-354. If funds are not immediately available to fund an incentive loan, the amount of the offer will be included on a funding waiting list maintained by the National Office. Priority for funding is based on the date of receipt of the original complete prepayment request, as specified in §1965.205 of this subpart.

(3) The maximum amount of any increased return on investment offered.

(4) The number of RA units that will be provided to protect existing tenants from rent overburden due to other incentives that may increase rental rates in the project.

(5) Interest credit or additional interest credit if needed to protect existing tenants from rent overburden due to other incentives that may increase rental rates in the project.

(6) The offer of borrower receipt of excess project-based section 8 rents, if applicable.

(7) The offer must be accepted or rejected in writing within 30 days, or the prepayment request will be voided.

(8) Appropriation limitations may restrict available incentives each year. The actual receipt of the preceding incentives may not be forthcoming in the near future. However, the offer is binding on FmHA or its successor agency under Public Law 103-354. Acceptance of the incentive offer by the borrower will cause the request to be maintained on the waiting list for funding until obligated.

[58 FR 38931, July 21, 1993, as amended at 62 FR 25071, May 7, 1997]

§ 1965.214 Offering and processing of incentives.

(a) *Borrower does not respond to incentive offer.* If the borrower does not respond to the incentive offer within 30 calendar days of the date of the letter offering incentives, the State Office will advise the National Office by means of FmHA or its successor agency under Public Law 103-354 Guide Letter 1965-E-1 (available in any FmHA or its successor agency under Public Law 103-354 office) to remove the name from the waiting list. Tenants and any agencies notified in accordance with §1965.206 (b) of this subpart will be notified by the Servicing Office that the borrower has ceased to pursue the prepayment request and prepayment will not take place.

(b) *Borrower rejects the incentive offer.* If the borrower rejects the incentive offer within 30 calendar days, a determination of the continued need for the housing as subsidized housing will be made in accordance with §1965.215 (b) and exhibit E of this subpart. Tenants will be notified that the borrower has rejected the incentive offer and that a decision will be made by FmHA or its successor agency under Public Law 103-354 whether to accept the prepayment. The tenants will be informed of the factors used in making the decision.

(c) *Borrower indicates acceptance of the incentive package.* If the borrower indicates a willingness to accept an incentive package which includes an equity loan, a complete loan application in accordance with exhibit A-11 of subpart E of part 1944 of this chapter will be required. If an appraisal of the property has not been completed as required in §1965.212 of this subpart, one will be made at this time in accordance with

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). The Servicing Official will determine the feasibility of the loan, including any needed reamortization of existing loans. No equity loan is to be made without sufficient RA to protect current tenants against new or increased rent overburden.

(d) *Application for transfer with incentives.* If a transfer is to take place simultaneously with the incentive, a complete transfer application package, in accordance with §1965.65 of subpart B of part 1965 of this chapter, will be submitted. A completed application for an equity loan, if applicable, will be completed and submitted in accordance with paragraph (c) of this section. The determination of borrower eligibility, evaluation of the transfer and any equity loan will be made concurrently. If a proposed transferee is determined not to be eligible for the transfer and assumption, appeal rights concerning transferee eligibility will be provided to the proposed transferee. If the FmHA or its successor agency under Public Law 103-354 decision is upheld, the borrower will be given an additional 15 days to reconsider whether to accept the original incentive offer.

(e) *Notification that incentives are ready for funding.* When the borrower indicates that the final incentive offer is acceptable, and the processing of the incentive application is complete, the Servicing Official will notify the State Office, which in turn will notify the National Office of all required information through use of FmHA or its successor agency under Public Law 103-354 Guide Letter 1965-E-1 (available in any FmHA or its successor agency under Public Law 103-354 office).

(1) All interested agencies contacted in accordance with §1965.206 (b) of this subpart and tenants will be advised that prepayment of the loan will not take place. If the ownership is to be transmitted, tenants will be so advised. Any rent increases resulting from acceptance of an incentive offer will be processed in accordance with §1965.204(b) of this subpart.

(2) The National Office will issue authorizations to obligate incentives to

the extent possible, depending upon the availability of loan funds and RA. Authorizations will be issued in the order in which complete prepayment requests were received as set forth in §1965.205 of the subpart. To fully utilize all available prepayment incentive loan funds and RA, projects with fully processed incentive packages may be authorized prior to authorizing packages with earlier receipt dates for which incentives have not been fully processed. Any other required National Office authorizations will be given at the same time.

(f) *Processing the incentives.* When authorization to proceed is received, the Servicing Office will process the incentives, with or without a transfer and make the following amendments to the loan and RA agreements with the assistance of the Office of the General Counsel (OGC), as appropriate:

(Note: If the project is to be transferred at the time the incentive is processed, all obligations will be made to the transferee)

(1) If the annual return on investment is increased, a statement will be added to the loan agreement specifying that, "The maximum annual return on investment is being increased by \$ _____ for a total maximum annual return of \$ _____." No equity level or rate of return need be mentioned.

(2) If a conversion of profit type is made, the procedures of paragraph IV A 2 d of exhibit B of subpart C of part 1930 of this chapter will be followed. If the interest subsidy is increased, a new Form FmHA or its successor agency under Public Law 103-354 1944-7, "Multiple Family Housing Interest Credit and Rental Assistance Agreement," will be executed.

(3) Any change in the amount of RA will require the execution of a new RA agreement or a change in the existing RA agreement, as described in paragraph V C of exhibit E of subpart C of part 1930 of this chapter.

(4) Loans for equity will be made in accordance with subpart E of part 1944 of this chapter. In accordance with §1951.517 (b)(1) of subpart K of part 1951 of this chapter, the equity loan will be established as a Predetermined Amortization Schedule System (PASS) loan and all existing loans on the project

will be converted to PASS. All assumptions and transfers will be processed in accordance with §1965.65 of subpart B of this part. All existing project loans may be consolidated and reamortized in accordance with §§1965.68 and 1965.70 of subpart B of this part, unless consolidation is not necessary to maintain feasibility of the project for the current tenants or reduce the level of monthly rental subsidies. All delinquent loans must be brought current, cost items paid in full, and project operating and reserve accounts brought current. All project operating and reserve accounts will remain at authorized levels during and after the closing of the incentive package, regardless of whether a transfer was included as part of the prepayment. All taxes, assessments and other liens must be prorated, brought current or paid in full as appropriate. Deferred maintenance identified in previous inspections must be performed before any equity may be received by the borrower or transferor, as applicable.

(g) *Restrictive-use provisions.* The restrictive-use provisions contained in exhibit A-1 of this subpart will be inserted in the deed, security instruments, loan agreement/resolution, assumption agreement, and/or reamortization agreement, as appropriate with the advice of OGC.

[58 FR 38931, July 21, 1993, as amended at 58 FR 40956, July 30, 1993]

§ 1965.215 Borrower rejection of incentive offer—approving/disapproving prepayment.

(a) *Approving or disapproving prepayments.* If the borrower rejects the incentive offer and indicates a preference to prepay, prepayment may be approved in accordance with paragraph (d) of this section within 180 days of the decision that the prepayment can be accepted if the determinations required in paragraph (c) of this section can be made. Exhibit E of this subpart provides additional guidance for making the necessary determinations. The State Director or other designated official in the National Office, with the recommendation of the Servicing Official, will make the decision to either approve or disapprove the prepayment request.

(b) *Determining the need for housing.*
(1) The Servicing Office or other designated office will review the following, using exhibit E of this subpart as a guide:

- (i) Local market conditions;
- (ii) Information submitted as support for the prepayment request;
- (iii) Responses to the 30-day tenant comment period;
- (iv) the effect of the prepayment on minorities, handicapped individuals, and families with children; and
- (v) Any other relevant information.

(2) The results of the determination of need will be documented in the case file.

(c) *Conditions under which prepayment may be approved.* In certain instances, prepayment may be approved after a borrower has rejected the incentive offer. If the decision is made to approve a prepayment request, restrictive-use provisions will be inserted in the deed, deed of release or satisfaction, if the project is determined to be needed under the provisions of the following paragraphs (1)(i) and (ii) of this section. The borrower will also execute the applicable restrictive-use agreement. If the project has section 8 assistance, the local HUD Area Office must be notified. To determine whether a prepayment offer can be approved, the following decision steps must be followed by the Servicing Office:

(1) *The loan is not currently subject to restrictive-use provisions nor prohibition on prepayment.* To determine whether a loan not subject to restrictive-use provisions or prohibition on prepayment may prepay, and if so, what restrictions must be inserted in the release documents, the following determinations must be made.

(i) If the Servicing Office cannot make the determination that housing opportunities to minorities will not be materially affected as a result of the prepayment, the borrower may prepay if the borrower agrees to the following restrictions and inclusion of the applicable restrictive language found in paragraph (A) or (B) of exhibit A-4 of this subpart, and to execute the applicable Restrictive-Use Agreement found in exhibit G-2 or G-3 of this subpart;