

organizations for the purpose of this paragraph need not be broadly-based (unless qualifying as a local nonprofit organization as defined in §1965.202 of this subpart) nor organized solely to provide housing. Nonprofit organizations determined qualified to buy the housing through this procedure must:

(1) Be capable of managing the housing and related facilities for its remaining useful life, either by self management or through a management agent.

(2) Agree that no subsequent transfer of the housing and related facilities will be permitted during the remaining useful life of the housing and related facilities unless the FmHA or its successor agency under Public Law 103-354 Administrator determines that the transfer will further the provision of housing and related facilities for low-income families or persons, or there is no longer a need for such housing and related facilities. Generally, transfers between qualified nonprofit organizations and/or public agencies will be acceptable. However, under no condition will a transfer be approved to an entity in which the nonprofit transferor or a member of the nonprofit entity holds an ownership interest.

(3) Agree to obligate itself and successors in interest to maintain the housing for very low- and low-income families or persons for the remaining useful life of the project and related facilities, although no currently eligible moderate-income tenants will be required to move. The provision in exhibit A-2 of this subpart will be used and inserted in the deed, security instrument, loan agreement/resolution and/or assumption agreement, as appropriate.

(4) Show financial feasibility of the project including anticipated funding to be authorized in accordance with §1965.217(d) of this subpart. Financial feasibility may also include any regular RA or debt forgiveness RA allocations which can reasonably be anticipated to be available for the project at the time of the transfer.

(5) Have no identity of ownership or controlling interest, regardless of degree, except as management agent between:

(i) Officers or directorate persons or parties with a material interest (or persons or parties related to any person or party with such interest) in loans financed under section 515 that have been prepaid; and

(ii) Officers or directorate persons or parties with a material interest (or persons or parties related to any person or party with such an interest) in the purchasing entity.

(6) Evidence compliance with paragraph (c)(5) of this section. An officer legally authorized to execute documents on behalf of the purchasing nonprofit entity shall execute the following statement:

(Name of purchasing nonprofit entity) certifies that no officer or directorate of (name of purchasing nonprofit entity) has been a person or party with a material interest (or persons or parties related to any person or party with such interest) in any loans financed under section 515 that have been prepaid.

(d) *Priority between nonprofit organizations and public agencies.* If more than one qualified organization or public agency submits an offer to purchase the project, the following criteria, in descending order of importance, will be used to establish priority:

(1) Local nonprofit organizations and public agencies have priority over regional and national nonprofit organizations and public agencies;

(2) Nonprofit organizations and public agencies with the most successful experience in developing and managing subsidized housing; and

(3) Nonprofit organizations and public agencies with the longest experience in developing and managing subsidized housing.

**§1965.217 Processing applications for transfers to nonprofit corporations or public agencies.**

(a) *Determining eligibility.* After an option to purchase is signed between a borrower and nonprofit corporation or public agency, the purchasing organization will file a complete application in accordance with §1965.65 (f) of subpart B of this part. FmHA or its successor agency under Public Law 103-354 will make a determination of the eligibility of the borrower and feasibility of the proposed transfer and subsequent

loan. Consolidation and reamortization of the loans will be considered when a transfer takes place.

(b) *Appeal rights when a purchaser is not selected.* If a nonprofit organization or public agency is not accepted by FmHA or its successor agency under Public Law 103-354 to purchase the project because the purchaser is found to be ineligible, the transfer is found to be not feasible or because the organization has lower priority than another applicant in accordance with §1965.216 (b), (c), or (d) of this subpart, appeal rights will be given to the applicant organization in accordance with subpart B of part 1900 of this chapter.

(c) *Authorization for transfer.* When the transfer and loan(s) are ready to be obligated, the National Office will be notified in the format 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). If the loan will exceed the State Director's approval authority, the entire case file shall be sent to the National Office for review. The National Office will give approval authority and authorize funding for purchase of projects which have complied with the provisions outlined in this section. Subject to the nationwide maximum funding allowed, the authorizations will be issued in date order the complete prepayment request was received by the Servicing Office.

(d) *Special loans and grants available to nonprofit organizations and public agencies.* Loans and grants are available to nonprofit organizations and public agencies to purchase and assist in the purchase of prepaying projects and to pay first year operating expenses. Loans to nonprofit organizations and public agencies may not exceed 102 percent of the fair market value of the project. Grants for costs related to purchasing a project may not exceed \$10,000.

(1) *Loans to nonprofit organizations and public agencies.* Loans to nonprofit organizations or public agencies will be approved in accordance with subpart E of part 1944 of this chapter for the following purposes:

(i) A loan sufficient to enable the nonprofit organization or public agen-

cy to purchase a project at the fair market value;

(ii) With proper justification, first year operating expenses not to exceed 2 percent of the project's appraised fair market value if current operating funds are not sufficient.

(2) *Special advances to nonprofit organizations or public agencies to cover costs related to purchasing a project.* A grant may be made to a nonprofit organization or public agency to cover any direct costs, other than the purchase price, incurred by the organization or agency in purchasing and assuming responsibility for a project and related facilities. To be eligible for grant funds, the organization or agency must be able to obtain an accepted purchase offer for a project offered for sale by a borrower under §1965.216 of this subpart.

(i) *Grant purposes.* Eligible purposes of the grant include:

(A) Direct costs to the organization or agency that are based on written estimates for legal fees for purchasing the project, architectural fees, and/or other expenses as described in §1944.222 of subpart E of part 1944 of this chapter and as authorized by the State Director. Legal fees for organizing the entity are not an eligible cost;

(B) Fees, for technical assistance received from a nonprofit organization, with housing and/or community development experience, to assist the organization or agency in the packaging of the loan docket and project as well as legal, technical, and professional fees incurred. Legal fees for organizing the entity are not an eligible cost. The Agency will allow payments to eligible organizations packaging applications without discrimination because of race, color, religion, sex, national origin, age, familial status, or handicap if such an organization has authority to contract. The packaging organization may not represent or be associated with anyone else, other than the purchasing nonprofit organization or public agency, who may benefit in any way in the proposed transaction.

(ii) *Administrative requirements.* The following policies and regulations apply to grants made under this section:

**RHS, RBS, RUS, FSA, USDA****§ 1965.217**

(A) The policies and regulations contained in subpart Q of part 1940 of this chapter apply to grantees under this subpart.

(B) The grantee will retain records for three years from the date Standard Form (SF)-269A, "Financial Status Report," is submitted. The records will be accessible to Agency; and other Federal officials in accordance with 7 CFR part 3015.

(C) Annual audits will be required if the grantee has received more than \$25,000 of Federal assistance in the year in which the grant funds were received. The audits will be due 13 months after the end of the fiscal year in which funds were received.

(1) States, State agencies, or units of general local government will complete an audit in accordance with 7 CFR parts 3015, 3016 and 3019; and OMB Circular A-128.

(2) Nonprofit organizations will complete an audit in accordance with 7 CFR part 3015 and OMB Circular A-133.

(iii) *Obtaining payment for costs.* To obtain advance funds or reimbursement of costs, the nonprofit organization or public agency must:

(A) Submit to the appropriate Servicing Office SF-270, "Request for Advance or Reimbursement," for an amount not to exceed \$10,000;

(B) Submit a copy of the accepted purchase offer or option to purchase and assume responsibility for a pre-paying project and related facilities;

(C) As soon as possible after obtaining an accepted purchase offer or option, submit a complete transfer and loan package (if applicable), as described in §1965.65 of subpart B of part 1965 of this chapter for transfers and subpart E of part 1944 of this chapter for loans to purchase the project;

(D) If less than \$10,000 is advanced or reimbursed at the time of submittal of the grant application package and the applicant expects that further advances or reimbursements may be needed, additional funds may be requested so long as the total advanced or reimbursed does not exceed \$10,000. SF-270 will be used to request additional advances or requests for reimbursement. If advance funds are requested, the amount requested may not exceed the amount the grantee expects

to use during the 30 days following receipt of the advance. The final draw advance or request for reimbursement shall not be later than the closing date of the transfer and loan and shall be submitted on SF-270;

(E) Fully document all requests for advances with line item estimates on SF-270. Requests for reimbursement shall be documented with itemized bills or receipts for each item listed on SF-270;

(F) Include SF-269A with the grant application if the entire amount of the grant is being requested at that time. If the grant will be advanced or reimbursed in more than one draw, SF-269A will be submitted with the final draw;

(G) Include a signed statement for all grant applications which states, "Neither the organization nor any of its employees are associated with or represent anyone in this transaction other than the applicant."

(iv) *Processing grants.* The following actions will be taken by FmHA or its successor agency under Public Law 103-354 when a grant application is received:

(A) The FmHA or its successor agency under Public Law 103-354 Approval Official will review each grant application package for the amount authorized. The FmHA or its successor agency under Public Law 103-354 Approval Official will execute and distribute Form FmHA or its successor agency under Public Law 103-354 1944-51, "Multiple Family Housing Obligation Fund Analysis," in accordance with the Forms Manual Insert;

(B) The Servicing Official will be responsible for reviewing the eligibility of costs estimated to be incurred or submitted for reimbursement;

(C) A grant agreement, prepared in substantially the same format as exhibit F of this subpart and authorized by grant resolution, will be dated and executed by the applicant on the date of grant closing. The executed agreement will be filed in the casefile.

(D) A grant resolution authorizing the appropriate officers of the applicant to execute the grant agreement will be adopted by the applicant's board of directors or other form of governing body. A certified copy is to be submitted to FmHA or its successor

§ 1965.218

7 CFR Ch. XVIII (1-1-05 Edition)

agency under Public Law 103-354 for the file.

(e) *Servicing Office actions when a transfer and subsequent loan is authorized.* When notified by the State Office that the National Office has authorized the transfer and subsequent loan, the Servicing Office will:

(1) Submit the assumption to the State Office for approval in accordance with §1965.65 of subpart B of this chapter.

(2) Transfer any RA associated with the project to the transferee in accordance with paragraph XV B 1 of exhibit E of subpart C of part 1930 of this chapter unless debt forgiveness RA is used to replace current project RA.

(3) Notify tenants that prepayment of the loan will not be taking place and to whom the ownership of the housing is being transferred. The notification should state that any rent increases resulting from the transfer and loan will be processed in accordance with §1965.204 (b) of this subpart.

(4) Transfer all existing loans in the project on new rates and terms and consolidate and reamortize, if necessary, to maintain project feasibility and reduce rental subsidy payments.

(5) Ensure that all delinquent accounts are brought current, cost items paid in full, project accounts brought current and transferred with the project, and all taxes and liens paid or prorated at closing as applicable. Deferred maintenance identified in previous inspections must be acceptably completed before the transferor may retain any equity.

(6) Insert the restrictive-use provisions contained in exhibit A-2 of this subpart in the deed, security instruments, loan agreement/resolution, assumption agreement, and/or reamortization agreement, as appropriate.

(f) *Rental subsidies.* No transfer will be approved unless there is sufficient RA available for every tenant who would experience rent overburden after the transfer, assuming that all units vacated will continue to be filled by very low or low-income tenants. Sufficient debt forgiveness RA (DFRA), must be authorized for obligation in accordance with paragraph V C of exhibit E of subpart C of part 1930 of this

chapter, when authorization to process the loan is given. The National Office will advise the State Office whether RA will be transferred with the project or if RA will be suspended and transferred to another project within the State when authorization to process the transfer is given. If the latter is chosen, all RA needs at the project will be met with DFRA.

[58 FR 38931, July 21, 1993, as amended at 61 FR 39852, July 31, 1996]

**§ 1965.218 Accepting prepayment when nonprofit organizations do not apply to purchase or funds are not available.**

Borrowers not subject to restrictive-use provisions or prohibitions on prepayment may prepay without restrictions within 120 days of meeting either of the following requirements.

(a) *No offer to purchase.*(1) At least 180 days have passed since the offer to sell to a local nonprofit organization or public agency began and the advertisement continued for the full 180 days;

(2) The project has been offered to regional and national organizations for at least a 60-day period of the 180 days;

(3) Documentation is provided showing that all organizations whose names were provided by the District or State Office were contacted in accordance with §1965.216 (b) of this subpart and offered the housing for purchase;

(4) No qualified nonprofit organization has made a bona fide offer to purchase the property for the appraised fair market value. Note: (An offer will be considered to be bona fide if there is a written offer to purchase the project at fair market value, even if the offer is contingent on FmHA or its successor agency under Public Law 103-354 funding when no funding is available.); and

(5) Funds have been available for the purpose of carrying out a transfer/sale during this period.

(b) *Funds are not available.* A borrower may be allowed to prepay even if an eligible nonprofit organization or public agency has offered to purchase the project if the following lack of funding exists. All funds for funding nonprofit organizations and public agencies for the purpose of purchasing any project in the country must have been exhausted for a period of 15