

(c) *Laws of general applicability: contractual restrictions.* This section shall not prevent the establishment, continuing in effect, or enforcement of any law or regulation of any State or political subdivision of a State not inconsistent with the provision of this subpart, such as any law or regulation relating to building standards, zoning limitations, health, safety, or habitability standards for housing, rent control, or conversion of rental housing to condominium or cooperative ownership, to the extent such law or regulation is of general applicability to both projects receiving Federal assistance and nonassisted projects. This section shall not preempt, annul or alter any contractual restrictions or obligations existing before November 28, 1990 or voluntarily entered into by an owner of eligible low income housing on or after that date, and that limit or prevent that owner from prepaying the mortgage on the project or terminating the mortgage insurance contract.

[57 FR 12041, Apr. 8, 1992, as amended at 57 FR 57314, Dec. 3, 1992]

### Subpart C—Prepayment and Plans of Action Under the Emergency Low Income Preservation Act of 1987

SOURCE: 55 FR 38952, Sept. 21, 1990, unless otherwise noted. Redesignated at 57 FR 12041, Apr. 8, 1992.

#### § 248.201 Definitions.

The terms *Fair Market Rent (FMR)* and *Section 8* are defined in 24 CFR part 5.

*Adjusted Income.* Annual income, as specified in § 251.21 of this chapter, less allowances specified in the definition of *Adjusted Income* in § 215.1 of this chapter.

*Allowable Distributions.* The amount of cash or other assets that the owner may withdraw from the project under the terms of the regulatory agreement, applicable regulations, and administrative instructions, including the segregation of cash or assets for subsequent withdrawal, and excluding repayment of advances made for reasonable and necessary expenses incident to the

operation and maintenance of the project.

*Capital Improvement Loan.* A direct loan originated by the Commissioner under part 219, subpart C of this chapter.

*Eligible Low Income Housing.* Any housing financed by a mortgage—

(a) That is—

(1) Insured or held by the Commissioner under section 221(d)(3) of the National Housing Act and assisted under part 886, subpart A of this title because of a conversion from assistance under part 215 of this chapter;

(2) Insured or held by the Commissioner under part 221 of this chapter and bearing a below market interest rate as provided under § 221.518(b) of this chapter;

(3) Insured, assisted, or held by the Commissioner or a State or State agency under part 236 of this chapter; or

(4) A purchase money mortgage held by the Commissioner with respect to a project which, immediately prior to HUD's acquisition, would have been classified under paragraph (a) (1), (2), or (3) of this definition; and

(b) That, under regulation or contract in effect before November 1, 1987, is, or within one year from the date of the notice of intent would become, eligible for prepayment without the prior approval of the Commissioner.

*Equity.* The Owner's investment in the housing project, as approved or determined by the Commissioner.

*Equity Loan.* A loan insured by the Commissioner under part 241, subpart E of this chapter.

*Flexible Subsidy Assistance.* Assistance provided by the Commissioner under part 219 of this chapter, other than a capital improvement loan.

*Good Cause.* Temporary or permanent uninhabitability of the project justifying relocation of all or some of the project's tenants (except where such uninhabitability is caused by the actions or inaction of the owner), or actions of the tenant that, under the terms of the tenant's lease and applicable regulations, constitute a basis for eviction.

*Limited Equity Cooperative.* A cooperative housing corporation in which income eligibility of purchasers or appreciation upon resale of membership

shares, or both, are restricted in order to maintain the housing as available to and affordable by low and moderate income families and persons.

*Low Income Affordability Restrictions.* Limits imposed by regulation or regulatory agreement on tenant rents, rent contributions, or income eligibility with respect to eligible low income housing.

*Low-Income Families.* Families or persons whose incomes do not exceed the levels established for low-income families under part 5 of this title.

*Moderate Income Families.* Families or persons whose incomes are between 80 percent and 95 percent of median area income, as determined by the Commissioner with adjustments for smaller and larger families.

*Mortgage.* The mortgage or deed of trust insured or held by the Commissioner or a State or State agency under parts 221 or 236 of this chapter, or the purchase money mortgage taken back by the Commissioner in connection with the sale of a HUD-owned project and held by the Commissioner, where such mortgage, deed of trust or purchase money mortgage is secured by eligible low income housing.

*Notice of Intent.* An owner's notification of its intent to seek prepayment of its mortgage, termination of the mortgage insurance contract or amendment of the mortgage or regulatory agreement pursuant to this part.

*Owner.* The mortgagor or trustor under the mortgage secured by eligible low income housing.

*Plan of Action.* A plan providing for prepayment of the mortgage, termination of the mortgage insurance contract, or continuation of the mortgage in place, and providing for either the termination of low income affordability restrictions, or the continuation of the project's use as low-income housing under modified terms and conditions.

*Prepayment.* Prepayment in full of a mortgage, or a partial prepayment or series of partial prepayments that reduce the mortgage term by at least six months, except where the prepayment in full or partial prepayment results from the application of condemnation proceeds.

*Project oversight costs.* Reasonable expenses incurred by a nonprofit purchaser in carrying out its ongoing ownership responsibilities under an approved plan of action. Project oversight costs must be directly related to educating the nonprofit purchaser's board of directors or otherwise supporting the board in its decision making. Project oversight costs may include staff, overhead, or third-party contract costs for:

(1) Ensuring adequate and responsible participation by the board of directors and the membership of the nonprofit purchaser in ownership decisions, including ensuring resident input in these decisions;

(2) Facilitating long-range planning by the board of directors to ensure the physical, financial and social viability of the project for the entire time the project is maintained as low income housing; and

(3) Assisting the ownership in complying with regulatory, use, loan and grant agreements.

*Regulatory Agreement.* The agreement executed by the owner and the Commissioner or a State agency providing for the Commissioner's regulation of the operation of the project.

*Reserve for Replacements.* The escrow fund established under the regulatory agreement for the purpose of ensuring the availability of funds for needed repair and replacement costs.

*Residual Receipt Fund.* The fund established under the regulatory agreement for holding cash remaining after deducting from the surplus cash, as defined by the regulatory agreement, the amount of all allowable distributions.

*Return on Investment.* The amount of allowable distributions, tax benefits, and other income or benefits received by the owner, as a percentage of the equity.

*Termination of Low Income Affordability Restrictions.* The elimination of low income affordability restrictions under the regulatory agreement through termination of mortgage insurance or prepayment of the mortgage.

*Use Agreement.* An agreement or covenant which is executed and recorded

in the appropriate land records in connection with an approved plan of action, has lien priority over other mortgages and liens, is binding upon the owner and its successors and assigns, is enforceable by the Commissioner and by tenants, contains appropriate reporting requirements, and restricts or governs the use and operation of the project with respect to rent levels and increases, relocation, and, where appropriate, tenant eligibility, civil rights and other requirements. All tenants in occupancy at the time that the plan of action is approved will receive a copy of the use agreement.

*Very Low Income Families.* Families or persons whose incomes do not exceed the level established for very low income families under section 3(b) of the 1937 Act (42 U.S.C. 1437a(b)).

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**§ 248.203 General prepayment limitation.**

(a) An owner of eligible low income housing may prepay, and a mortgagee may accept prepayment of, a mortgage on such housing only in accordance with a plan of action approved by the Commissioner.

(b) A mortgage insurance contract with respect to eligible low income housing may be terminated pursuant to section 229 of the National Housing Act only in accordance with a plan of action approved by the Commissioner.

(c) A mortgagee's acceptance of a prepayment in violation of paragraph (a) or termination of a mortgage insurance contract in violation of paragraph (b) of this section is grounds for administrative action under parts 24 and 25 of this title, in addition to any other remedies available by law, including rescission of the prepayment or reinstatement on the insurance contract.

**§ 248.211 Notice of intent to prepay.**

(a) An owner of eligible low-income housing seeking to prepay its mortgage or to negotiate changes in the terms of the mortgage or regulatory agreement in accordance with this part, including termination of the insurance contract

pursuant to section 229 of the National Housing Act, shall file a notice of intent with the HUD field office in whose jurisdiction the project is located, and shall file a duplicate copy with the HUD Headquarters Office of Multifamily Housing Management, 451-7th Street, SW., Washington, DC 20410. The notice of intent shall identify the project by name, project number and location, briefly describe the owner's plans for the project, including any timetables or deadlines for actions to be taken, and the reason the owner seeks to prepay the mortgage or change the terms of the mortgage or regulatory agreement, and briefly describe any contacts that the owner has made or is making with other governmental agencies or other interested parties in connection with the notice of intent.

(b) An owner simultaneously shall file the notice of intent with:

(1) The chief executive officer of the appropriate State or local government in which the project is located, or any officer designated by executive order or State or local law to receive such information;

(2) Each tenant in the project; and

(3) The mortgagee.

In addition, the owner shall post a copy of the notice of intent in each occupied building in the project.

(c) Upon receipt of a notice of intent, the Commissioner will provide the owner with information that the owner needs to prepare a plan of action. This information shall include information regarding the Commissioner's standards under § 248.221 of this part regarding the approval of a plan of action involving termination of low income affordability restrictions, and any relevant market area and demographic information that the Secretary has custody of and that the owner may use in preparing the plan of action; in addition, it shall include at a minimum a list of the Federal incentives authorized under § 248.231 of this part for those projects for which a plan of action involving termination of low income affordability restrictions would not be approvable.

(d) Filing a notice of intent with the Commissioner will lead to one of the following results: