

**§ 248.153 Incentives to extend low income use.**

(a) *Agreements by the Commissioner.* After approving a plan of action filed pursuant to § 248.145, from an owner of eligible low income housing that includes the owner's plan to extend the low income affordability restrictions of the project, the Commissioner shall, subject to the availability of appropriations for such purpose, enter into such agreements as are necessary to enable the owner to—

(1) Receive the annual authorized return for the project as determined under § 248.121 for each year after the approval of the plan of action;

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

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

(4) Meet project operating expenses; and

(5) Establish adequate reserves.

(b) *Permissible incentives.* Such agreements may include one or more of the following incentives, as determined necessary by the Commissioner:

(1) Increased access to residual receipts accounts as necessary to enable the owner to realize the annual authorized return;

(2) An increase in the rents permitted under an existing project-based section 8 contract;

(3) Additional project-based section 8 assistance or an extension of any project-based assistance attached to the housing;

(4) An increase in the rents on non-section 8 units occupied by current tenants up to the maximum allowable rents;

(5) Financing of capital improvements under part 219 of this chapter;

(6) Financing of rehabilitation through provision of insurance for a second mortgage under part 241 of this chapter;

(7) Redirection of the Interest Reduction Payment subsidies to a second mortgage for projects which are insured, assisted, or held by the Commissioner or a State or State agency under part 236 of this chapter;

(8) Access by the owner to a portion of the preservation equity in the project through provision of insurance

for an acquisition or equity loan insured under part 241, subpart E of this chapter or through a non-insured mortgage loan approved by the Commissioner and the mortgagee;

(9) An increase in the amount of allowable distributions up to the annual authorized return; and

(10) Other incentives authorized in law.

(c) *Limitation on the provision of permissible incentives.* (1) The total amount of incentives provided to a project under paragraphs (b)(2), (3), and (4) of this section shall not result in a projected rental income stream which exceeds the Federal cost limit.

(2) The debt service on the loan obtained by the owner under paragraph (b)(8) of this section, when added to the allowable distributions under paragraph (b)(9) of this section, shall not exceed the annual authorized return.

(d) *Rent phase-in period.* To the extent necessary to ensure that owners receive the annual authorized return during the tenant rent phase-in period established in § 248.145(a)(6), the Commissioner shall permit owners to receive the following additional incentives:

(1) Access to residual receipts accounts;

(2) Deferred remittance of excess rent payments; and

(3) Increases in rents, as permitted under an existing Section 8 contract.

These incentives shall be provided to owners in the order listed. An owner will not be eligible to receive these additional incentives unless it can demonstrate that it is not receiving the annual authorized return. Once an owner has adequately demonstrated that it is not receiving the annual authorized return, the Commissioner will provide the owner with each incentive in turn during the rent phase-in period, until it has been determined that the owner is receiving the annual authorized return.

(e) *Interest reduction subsidies.* Where Interest Reduction Payment subsidies are sought to be redirected, pursuant to paragraph (b)(7) of this section, the lender may not unreasonably withhold its consent to such redirection.

(f) *Recalculation of section 236 basic rent and market rent.* With respect to any project with a mortgage insured or otherwise assisted pursuant to part 236

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