

**CHAPTER 15: PROJECT PRESERVATION**

**15.1 INTRODUCTION**

Some borrowers may want to prepay their Agency loans and convert their properties to conventional use. To protect the supply of affordable housing and to ensure that tenants of multi-family housing properties do not suffer from rent overburden or lose their units, the Agency requires that borrowers obtain approval before prepaying their loans [7 CFR part 3560, subpart N]. The approval process allows the Agency to offer the borrower incentives to forgo prepayment and maintain the affordability of the housing. This chapter explains prepayment requirements and describes the prepayment request and approval process.

**15.2 OVERVIEW OF THE CHAPTER**

The key decision points in the prepayment process are shown in Exhibit 15-1 of this section. For an overview of the process, see **Attachment 15-A**.

This chapter addresses the process in five parts:

- Section 1 outlines the key eligibility requirements for participating in the process and obtaining approval to prepay.
- Section 2 describes requirements and procedures for processing and evaluating prepayment requests for loans closed before 1979 or loans with no restrictive agreements.
- Section 3 describes requirements and procedures for processing and evaluating prepayment requests for loans closed between 1979 and 1989 that have restrictive agreements. This section also describes the process of offering the property for sale to nonprofit organizations and public agencies.
- Section 4 discusses properties subject to special circumstances, including foreclosure, bankruptcy, acceleration, and the advance payment of accounts.

Loan Servicers should use Pre-Trac, which is an Internet-ready database application that allows Loan Servicers to process multi-family housing prepayment requests.

**Office of Rental Housing Preservation (ORHP)**

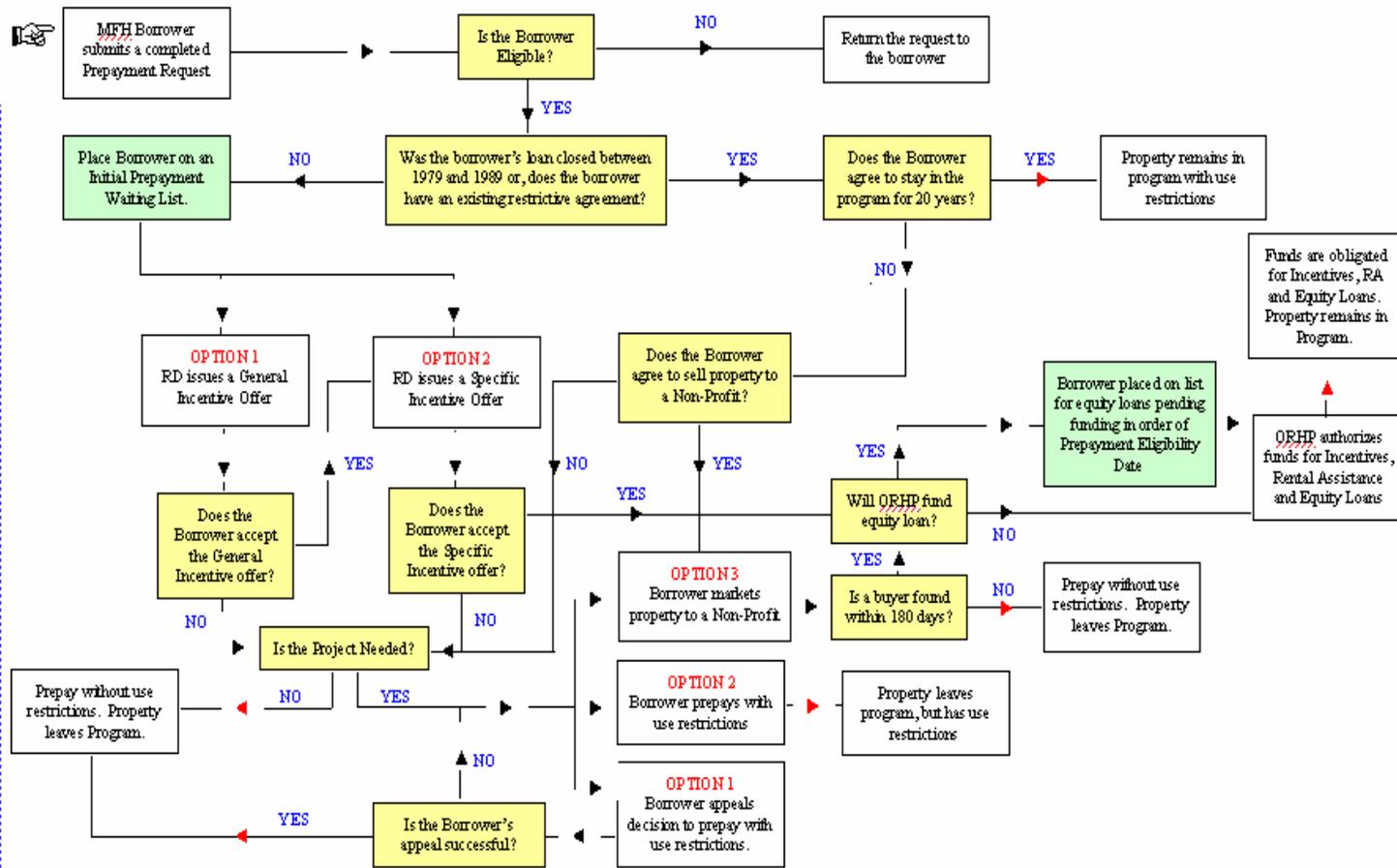
ORHP was established to ensure a standard approach to the prepayment decision-making process. ORHP will approve all incentive offers made by the Field Offices and authorize the closing of these offers.

Through Prepayment Tracking and Concurrence (Pre-Trac), ORHP should be kept informed of the prepayment request’s progress through the process. Field Offices should inform ORHP when:

- A prepayment request is received;
- A request is to be removed from the list;
- An incentive offer is developed and ready for ORHP approval before being offered;
- A borrower accepts incentives;
- A borrower rejects an incentive offer;
- The State Office is ready to process a transfer to a nonprofit or public body; or
- The State Office requests prepayment with or without restrictive-use provisions (RUPs).

Exhibit 15-1

Flow Chart of Prepayment Requests & Incentives



## **SECTION 1: PRESERVATION AND ELIGIBILITY FOR PREPAYMENT**

### **15.3 OVERVIEW**

This section covers key eligibility requirements that apply to prepayment process, including:

- Determining eligibility to submit a prepayment request;
- Meeting with the borrower;
- Notifying tenants;
- Receiving a prepayment request and conducting a completeness review; and
- Determining prepayment feasibility.

### **15.4 BORROWERS ELIGIBLE TO REQUEST PREPAYMENT [7 CFR 3560.652]**

Before submitting a prepayment request, borrowers should confirm that they are eligible to prepay and that they are required to submit a prepayment request. All loans approved prior to December 15, 1989 are subject to prepayment regulations and must file a prepayment application to request payoff the loan(s). Loans made on or after December 15, 1989, to build or acquire new multi-family housing units are prohibited from prepayment.

### **15.5 MEETING WITH THE BORROWER**

Whenever Loan Servicers receive an inquiry concerning prepayment, they should invite the borrower to a meeting. If the borrower begins the prepayment request process with an understanding of the steps involved and the incentives available, the process is more likely to proceed with fewer miscommunications and delays.

At the meeting, the Loan Servicer should:

- Provide the borrower with the items necessary to constitute a prepayment request in accordance with 7 CFR 3560.653 and review the list of items to be submitted. Answer any questions regarding the submissions. Make clear that a complete request includes evidence that the borrower is able to prepay the loan;
- Explain the prepayment process, including the procedures for requesting prepayment, the offer of incentives, and the sale to nonprofit organizations or public agencies;
- Recommend that the borrower hold a meeting with tenants to inform them of the prepayment request and explain the implications of the prepayment process for tenants. The borrower may invite other affordable housing agencies to this meeting to discuss options with the tenants. The Loan Servicer may attend this meeting as well;

- Describe the incentives that are available and explain that the offer will depend on the value of the borrower’s project and its potential for conventional use (**Attachment 15-B** provides a description of incentives and the incentive development process that can be given to the borrower); and
- Explain the restrictive-use provisions that will apply if the borrower accepts the Agency’s offer of incentives (see **Attachment 15-E**).

## 15.6 TENANT NOTIFICATION REQUIREMENTS [7 CFR 3560.654]

Throughout the prepayment process, the Agency and the borrower both have a responsibility to inform tenants of the status of the prepayment request.

- **Initial notice.** Within 30 days of the receipt of a complete request, the Loan Servicer must send a notification to each tenant in the project. A sample letter is attached as **Attachment 15-C**.
  - ◇ The Agency may deliver the notices to the borrowers by mail or directly.
  - ◇ The Agency should also send copies of the notification to the borrower and the management agent because the borrower must post copies of the notifications in public areas in the project. These notices must remain posted until the next notice providing an update on the status of the prepayment request is sent.
  - ◇ The borrower must provide copies of the notifications to any tenants who occupy units after these notices were sent.
- **Subsequent notices.** To keep the tenants informed of the progress of the prepayment request, additional notifications are sent after key decisions in the process are made. These notices should be sent, posted, and provided to new tenants, as described for the initial notice. A list of appropriate times to send these notices is provided in Exhibit 15-2.
- **Other interested parties.** Whenever Loan Servicers provide notices to tenants regarding the prepayment process, they must also notify other interested parties such as nonprofit organizations and public agencies.

Tenants are often alarmed by the prospect of prepayment and uninformed about its implications for their housing situation. The Agency recommends that owners hold a meeting early in the request process. Items to cover at such a meeting include:

- The meaning of the first tenant notification letter;
- The steps in the prepayment process;
- Potential outcomes for the property;
- Alternative housing options for the tenants; and
- Tenants’ eligibility for LOPE letters.

**Exhibit 15-2**  
**List of Notices to be Provided to Tenants**  
**During the Prepayment Process**

The following notifications must be sent to tenants at the times indicated below. These notices must be sent to individual tenant households and posted in the project.

**1. Within 30 days of receipt of the prepayment request:**

*Tenant Notification #1:* This notice must be sent within 30 days of receipt of a complete prepayment request. This letter informs tenants that the borrower has submitted a request to prepay. This letter may be coordinated with a meeting including the borrower, the tenants, and the Agency. [7 CFR 3560.654(a)]

**2. After a decision has been made to accept prepayment or offer incentives:**

*Tenant Notification #2A:* If the borrower's prepayment request is withdrawn, the Loan Servicer will send a letter to the tenants informing them that prepayment will not take place. If there is an appeal, this letter should be delayed until the outcome of the appeal is known. [7 CFR 3560.654(d)]

*Tenant Notification #2B:* If the borrower is permitted to prepay with or without use restrictions, the Loan Servicer will send a letter to the tenants informing them of the prepayment and providing them information on their rights (such as reimbursement of relocation costs). This letter must be sent 60 days prior to prepayment. [7 CFR 3560.654(c)]

**3. After the offer of incentives has been accepted or rejected:**

*Tenant Notification #3A:* If the borrower accepts the incentives and related use restrictions, the Loan Servicer will send tenants a letter informing them of the outcome and describing the use restrictions. [7 CFR 3560.654(e)]

*Tenant Notification #3B:* If the borrower rejects the incentives, the Agency will decide if prepayment will be accepted with or without use restrictions. The Loan Servicer will send letters to the tenants informing them that the borrower is prepaying with or without and explaining their rights under the use restrictions. This letter must be sent 60 days prior to prepayment. [7 CFR 3560.654(c)]

*Tenant Notification #3C:* If the borrower chooses to offer the property for sale to a nonprofit organization or a public agency, the Loan Servicer will send a letter to the tenants informing them that the borrower is offering the property for sale and explaining the sale process. [7 CFR 3560.654(f)]

**4. After the offer for sale is complete:**

*Tenant Notification #4A:* If the borrower does not receive a good faith offer within 180 days and is proceeding to prepay the loan, the Loan Servicer will notify tenants of the prepayment. This letter must be sent 60 days prior to prepayment (i.e., 60 days prior to the end of the 180-day marketing period). If a good faith offer is received within the final 60 days of the marketing period, a new letter must be sent to the tenants as described in Tenant Notification #4B. [7 CFR 3560.654(h)]

*Tenant Notification #4B:* If a tenant applicant signs a lease in a housing project for which a prepayment request has been submitted, the borrower must provide the tenant with copies of all notifications provided to tenants by the Agency or the borrower prior to the tenant's occupancy in the housing project. [7 CFR 3560.654(g)]

**15.7 REQUIREMENTS FOR PREPAYMENT REQUESTS [7 CFR 3560.653]**

To be considered for prepayment, the borrower must submit a complete request at least 180 days before the expected date of prepayment. This time frame allows the Agency time to review the request, complete the applicable analyses, and offer incentives, if appropriate, prior to

the prepayment date. If all required procedures can be completed in fewer than 180 days, the prepayment may occur at an earlier date.

A copy of all items to be submitted by the borrower can be found in Pre-Trac on the Prepayment Application Checklist Screen.

## 15.8 RECEIPT OF PREPAYMENT REQUESTS

### Good Practice—Notification to Borrowers

Some borrowers may pay their loans on an accelerated schedule. As these borrowers approach 180 days from their last payment, the Agency should notify them of their status and of their obligation to submit a prepayment request. See paragraph 15.33 for more information on the advance payment of accounts.

When a request for prepayment is received, the Loan Servicer must take the following steps to establish the date of receipt and begin a project file.

- Immediately upon receipt of a written prepayment request, date stamp the request and enter the date of receipt in Pre-Trac on the Timeline Screen at Activity A00. If the completeness review shows the request to be complete (as described in Paragraph 15.9) the date stamped on the request will be used as the date of receipt. (This date will be used by the ORHP to establish the borrower’s position on the waiting list for incentives, if necessary.)
- Begin a project file. The Agency should have a separate file on each prepayment request that includes:
  - ◇ Application (with coversheet that summarizes all key project information);
  - ◇ Tenant notifications;
  - ◇ Project appraisal;
  - ◇ Documentation of all analysis performed;
  - ◇ Communications with the borrower; and
  - ◇ The mortgage document.
- Enter prepayment-related project data into Multi-Family Information System (MFIS) (MFIS) and Pre-Trac.

## 15.9 COMPLETENESS REVIEW

Within 10 days of receiving the prepayment request, the Loan Servicer must review it for completeness. This entails a brief look at the submission to ensure that all the items listed in the Pre-Trac Prepayment Application Checklist Screen are included.

- **Complete requests.** If the Loan Servicer determines that the request is complete, the Loan Servicer must:

- ◇ Send a letter to the borrower providing the date of receipt of the request, and informing the borrower that the Agency is reviewing the request and may ask for additional information;
  - ◇ Send a letter to tenants informing them that the borrower has submitted a request to prepay. This letter must be sent within 30 days of receiving the request (as described in Paragraph 15.6). Also notify other interested parties at this time; and
  - ◇ Complete a review of the request for the feasibility of prepayment. This review must be completed within 60 days of the receipt of the complete request and is described in Paragraph 15.10.
- **Incomplete requests.** If the Loan Servicer finds that all items are not included, the incomplete request must be returned to the borrower with a letter listing the missing items. The borrower may submit a new request to begin the prepayment request process again. The date of receipt cannot be established until a complete request is received.

## 15.10 DETERMINATION OF PREPAYMENT FEASIBILITY

To receive an offer of incentives, the borrower must demonstrate the ability to prepay the Agency loan. Within 60 days of the receipt of a complete application, the Loan Servicer must review the prepayment request to determine the feasibility of prepayment and enter the date of complete application into Pre-Trac on the Timeline Screen at Activity A06.

To determine the feasibility of prepayment, the Loan Servicer must review the borrower's ability to prepay. To be considered "feasible", the borrower must have the ability to prepay the loan, as discussed below. It is not in the Agency's interests to offer incentives to a borrower who does not have the financial capacity to prepay the loan since there is little risk that the borrower will actually prepay and remove the project from the program.

The borrower may be planning to finance the prepayment in one of three ways:

- From the borrower's own resources;
- With financing from a lender or other third-party; or
- By selling the project.

Regardless of the source of funds, the borrower must be able to show that the proposed source of financing is available. The Loan Servicer must review the borrower's prepayment request to ensure that the borrower has submitted sufficient evidence that the funding is available, as described below.

### A. Borrower's Funds

If using their own funds, the borrower must provide:

- A balance sheet and income statement showing that sufficient cash is available to pay the loan principal or that assets of sufficient value are available and can be readily converted to cash; and
- Certification that the income or assets are not pledged elsewhere (e.g., to other prepayment requests or other loans).

**B. Third-Party Lender**

If obtaining a loan, the borrower must provide an original copy of the precommitment letter from the lender, stating:

- The rates and terms of loan;
- The amount financed; and
- A description of the security of the loan.

**C. Sale**

If the borrower is planning to sell the project, the borrower must submit a purchase agreement and documentation of the purchaser's ability to pay. The purchaser's ability to pay can be documented in the same manner as the borrower's, as described in Paragraph 15.10(A).

**15.11 ELIGIBILITY DETERMINATION**

If the Loan Servicer determines that the borrower is eligible with a complete prepayment request and prepayment is feasible, the Loan Servicer continues to process the request. If the borrower is not eligible for prepayment, the Loan Servicer notifies the borrower in writing stating the reasons that the borrower is not eligible for prepayment.

For loans that were closed prior to 1979, or if the loan does not have any existing restrictive agreements, the Loan Servicer follows the process described in Section 2 of this chapter. If the borrower's loan closed between 1979 and 1989 and has a restrictive agreement, the Loan Servicer follows the process described in Section 3 of this chapter.

## **SECTION 2: LOANS CLOSED BEFORE 1979 OR LOANS WITH NO RESTRICTIVE AGREEMENTS**

### **15.12 PREPAYMENT WAITING LIST**

For borrowers who meet the eligibility requirements of Section 1 of this chapter and who have loans that closed prior to 1979 or have no restrictive agreements, the Loan Servicer will place the borrower on an initial prepayment waiting list using Pre-Trac.

### **15.13 MAKING THE INCENTIVE OFFER—OVERVIEW**

To encourage borrowers to forgo prepayment, the Agency offers incentives to all borrowers applicable under this section. Paragraphs 15.14 through 15.21 of this section describe the process for offering incentives and responding to the borrower's acceptance or rejection of Agency incentives.

### **15.14 GENERAL INCENTIVE OFFER**

At the discretion of the Agency, the Loan Servicer may make a general incentive offer to the borrower before developing the specific incentive package. The Loan Servicer should make a general offer only if the borrower indicates that any specific incentive offer will be rejected. From the date of the general offer, the borrower has 30 calendar days to accept or reject the offer.

- If the borrower rejects the general offer in writing, the Agency will not develop a specific incentive offer. The Agency will determine the impact of prepayment as described in Paragraph 15.22.
- If the borrower accepts the general offer, the Agency will develop a specific incentive offer in accordance with this section.
- If the borrower rejects the general offer in writing after 30 calendar days, the Agency will not complete the specific incentive offer and will consider all incentives rejected.

### **15.15 SPECIFIC INCENTIVE REQUIREMENTS [7 CFR 3560.656]**

Specific incentive offers are subject to the following requirements.

- **Value of incentive offer.** The incentive offer must be based on the Agency's assessment of:
  - ◇ The amount necessary to provide a fair return on the investment of the borrower;
  - ◇ An amount that will not cause project rents to increase above the Conventional Rents for Comparable Units (CRCU) standard in accordance with Chapter 4 of HB-2-23560; and
  - ◇ The least costly alternative for the Federal Government that is consistent with extending the low-income use of the property.

- **Eligible recipients.** The Agency will offer incentives only to borrowers who have met the requirements outlined in Section 1 of this chapter.
- **Time frame for offer response.** The Agency must develop the offer within 60 days of completing the review for feasibility and impact. The borrower must respond to an incentive offer within 30 calendar days. If no answer to the offer is received within 30 calendar days, the Agency must consider the incentive offer rejected.
- **Reserve requirements.** At the time the incentive is developed, the maximum reserve amount must be adjusted to include the costs of any deferred maintenance items or expected long-term repair or replacement costs of the project based on the project's capital plan. The Agency may require an additional deposit to the reserve account from the incentive package and/or reduce the incentive in order to allow rents to be increased to fund the reserve at a level necessary to meet capital needs.
- **Capital Improvements.** Any necessary capital improvements must be addressed (monies set aside) prior to receiving any incentives.
- **Consolidation and reamortization of loans.** If a project has more than one Agency loan, existing project loans must be consolidated and reamortized unless consolidation is not necessary to maintain feasibility of the project for the current tenants or the level of monthly rental subsidies must be reduced.
- **Appraisal requirements.** An appraisal is required to provide the Agency the information needed to establish the appropriate value of the incentive offer. It is the Agency's responsibility to assure that an appraisal is obtained.

#### **15.16 TYPES OF INCENTIVES [7 CFR 3560.656(c)]**

The Agency may offer the borrower one or more of the items discussed below as incentives to forgo prepayment. The following considerations apply to the development of the incentive package:

- Incentive offers must not be made without sufficient rental assistance to protect current tenants against rent overburden;
- If the incentive package involves a rent increase, the Agency must approve the rent increase in accordance with budget approval procedures outlined in Chapter 4 of HB-2-3560. In no case may the rent increase cause rents to increase above the CRCU standard as discussed in Chapter 4 of HB-2-3560 [7 CFR 3560.656(b)(3)]; and
- An Agency equity loan must be the last incentive option considered in developing an offer.

**A. Rental Assistance**

The Agency may offer rental assistance if the project tenants will experience rent overburden as a result of the incentive offer.

**B. Increase in Annual Return**

The Agency may offer an increase in the amount of the borrower's annual return on investment by one or both of the following methods:

- The Agency may recognize the borrower's current equity in the project at the original rate of return; and/or
- The Agency may increase the borrower's rate of return on the original equity.

The actual withdrawal of the return remains subject to conditions specified in 7 CFR 3560.301, and Chapter 4 of HB-2-3560.

**C. Excess HUD Section 8 Rents**

For projects with project-based HUD Section 8 assistance, the Agency may permit the borrower to receive rents paid to the project in excess of the amounts needed to meet annual project operating and maintenance expenses, debt service, and reserve requirements. This payment is received in a lump sum.

In these cases, the reserve account will be adjusted to provide adequate funding for long-term capital repairs and maintenance based on the project's capital plan.

**D. Project Conversion or Modification of Interest Rate**

The Agency may agree to convert full-profit loans to limited profit Plan II loans or increase the interest subsidy for loans with HUD Section 8 assistance to lower the interest rate on the loan and make basic rents more financially feasible.

**E. Agency Equity Loans**

The Agency may make an equity loan to the borrower. The Agency may offer an equity loan only after it determines that all other incentive options will not result in an adequate incentive offer. The equity loan may not exceed the difference between the current unpaid loan balance and 90 percent of the project's value appraised as unsubsidized conventional housing.

The following requirements apply to equity loans:

- Labor housing projects are not eligible for equity loans;
- The loan must not adversely affect the borrower's repayment ability;

- Equity loans may be processed and closed with the current borrower or any eligible transferee; and
- If the equity loan is made in conjunction with excess HUD Section 8 funds, the equity will be paid using excess reserves before an equity loan is made.

#### **F. Third-Party Equity Loans**

A third-party equity loan is not considered an incentive, but it is an option the Agency may give the borrower at the same time it makes an incentive offer.

- All incentive requirements described in Paragraph 15.15 apply to third-party equity loans;
- An offer to allow the borrower to receive a third-party equity loan must be included in the incentive calculation worksheet located in Pre-Trac or by completing an Excel spreadsheet version for consideration in the Agency's incentive offer;
- In exchange for taking a third-party equity loan, the borrower must agree to the applicable 20-year use restrictions and all relevant requirements under this chapter;
- The third-party lender must take a subordinate lien position to the Agency;
- The third-party lender must agree in writing that foreclosure action under its lien will not be initiated before holding a discussion with the Loan Servicer and after giving a reasonable period of notice to the Agency; and
- A third-party equity loan may not be associated with a transfer of ownership.

### **15.17 DEVELOPMENT OF THE INCENTIVE OFFER**

Loan Servicers will develop the incentive offer based on calculations outlined in Pre-Trac or using the electronic version in the form of an Excel spreadsheet. Loan Servicers should complete the worksheet, according to the directions in Pre-Trac (also provided in **Attachment 15-D** for the electronic version) and submit it to ORHP prior to making the offer to the borrower.

To help ensure the consistency of incentive offers, ORHP will review each completed worksheet and approve the proposed incentives before the offer is made to the borrower.

### **15.18 AGENCY OFFER OF INCENTIVES**

Once ORHP approves the incentive package, the Loan Servicer must send a letter (located in Pre-Trac) to the borrower outlining the choice of incentives and informing the borrower that they must respond to the offer within 30 days.

## 15.19 BORROWER ACCEPTANCE OF INCENTIVES AND SUBSEQUENT ACTIONS [7 CFR 3560.657]

If a borrower accepts the Agency's offer of incentives, both the borrower and the Loan Servicer have a number of responsibilities.

### A. Borrower Acceptance

If the borrower accepts the Agency's offer of incentives, the borrower must complete the following actions:

- The borrower must agree to restrictive-use provisions that prohibit prepayment for 20 years and adopt appropriate amendments to the project's loan documents and rental assistance agreements;
- If the incentive offer accepted includes an Agency equity loan, the borrower must complete an application for the equity loan and the borrower must remain eligible for it. For additional information on how to process the equity loan, see Chapter 10 of HB-1-3560; and
- If the incentive offer accepted includes rent increases, the borrower must follow program requirements for rent increases. See Chapter 4 of HB-2-3560.

### B. Closing the Incentive Offer

To close the incentive offer, the Loan Servicer must take the following steps:

- Prior to closing, notify ORHP via Pre-Trac that the borrower has accepted the incentive offer and to request the allocation of equity loan funds or Rental Assistance (RA) (as appropriate);
- ORHP will authorize all incentives and notify the State Office of the authorization;
- Insert appropriate restrictive-use provisions in the loan documents and rental assistance agreements (e.g., the deed, security instruments, loan agreement/resolution, assumption agreement, and/or reamortization agreement) with consultation from the Office of General Counsel (OGC):
  - ◇ **For equity loans.** Execute a new loan agreement/resolution, *Form RD 3560-52, Promissory Note*, and mortgage and convert to Plan II if needed. Follow other loan closing procedures as described in Chapter 8 of HB-1-3560; and
  - ◇ **For RA or increase in owner return.** Execute a new *Form RD 3560-9, Interest Credit and Rental Assistance Agreement*, with the borrower and change the loan agreement/loan resolution as necessary.
- Notify tenants and other interested parties that prepayment will not take place.

### **C. Transfers**

If a transfer is to take place simultaneously with the Agency incentive offer, a complete transfer application package must be submitted as described in Chapter 7 of this handbook.

- If a proposed transferee is determined not to be eligible for the transfer and assumption, the borrower will be given an additional 45 days to reconsider whether to accept the original incentive offer or find another transferee; and
- In some cases, the Agency may make an offer of incentives contingent on the successful transfer of the project to an acceptable purchaser. The Agency may offer a smaller incentive if the transfer does not take place.

#### **15.20 INSUFFICIENT FUNDING FOR INCENTIVES**

In some cases, the borrower may be offered incentives that cannot be provided immediately. For example, the Agency may lack funding for equity loans or sufficient RA. If a borrower accepts an incentive offer but the Agency is unable to fund the incentive within 15 months, the borrower will be removed from the incentive waiting list. The borrower then has three options:

- The borrower may offer to sell the project to a nonprofit or public agency as described in Section 3 of this chapter;
- The borrower may stay on the list of borrowers awaiting incentives until the borrower's incentive offer is funded. If this option is chosen, the Agency will not renegotiate the incentive offer; and
- The borrower may withdraw the prepayment request and be removed from the list of borrowers awaiting incentives. If the borrower chooses this option, the borrower may submit a new request for prepayment and repeat the prepayment process.

#### **15.21 BORROWER REJECTION OF INCENTIVE OFFER AND SUBSEQUENT ACTIONS [7 CFR 3560.658]**

If the borrower rejects the incentive offer, the Loan Servicer must make a determination of the project's impact and whether it is needed, in accordance with Paragraph 15.22.

If the Agency determines that the project is not needed and that there is no adverse impact on minorities, the borrower may prepay without restrictions. After prepayment, the property leaves the program. Processing the prepayment is described in paragraph 15.22.

If the project is needed, or there is an adverse impact, the Loan Servicer must send the borrower a letter informing the borrower of four options:

- The borrower may prepay the Agency loan subject to use restrictions. The letter should describe the applicable use restrictions. Guidance on how to determine the appropriate use restriction is described in Paragraph 15.22.A.
- If the borrower does not want to accept the use restrictions, the borrower may offer the property for sale to nonprofit organizations and public agencies. This process is described in Section 3 of this chapter.
- The borrower may forgo prepayment and stay in the program.
- The borrower may appeal the decision to prepay with use restrictions. The borrower and Agency follow the appeal procedures described in Chapter 1.

The letter should also request the borrower to send a written response indicating the borrower's intentions within 30 days.

If the borrower chooses to prepay the loan subject to restrictive-use provisions, the Loan Servicer must determine the appropriate use restrictions to apply. The analysis for making this determination follows:

- **For prepayments that will have an adverse impact on minorities.** If the borrower chooses to prepay subject to use restrictions, the Agency must make a determination regarding the impact of the prepayment on minorities. Loan Servicing Staff should rely on Civil Rights Staff to make this determination. Relevant factors include:
  - ◇ The percentage of minorities residing in the project and the percentage of minorities residing in projects in the market area where displaced tenants are most likely to move;
  - ◇ The impact of prepayment on minority residents in the project and in the market area. Determine whether displaced minority tenants will be forced to move to other low-income housing in areas not convenient to their places of employment, to areas with a concentrated minority population, and/or to areas with a concentration of substandard housing;
  - ◇ The vacancy trends and number of potential minority tenants on the waiting list at the project being prepaid and at other projects in the market that might attract minority tenants; and
  - ◇ The impact prepayment will have on the opportunity for minorities residing in substandard housing in the market area to have comparable decent, safe, and affordable housing, as is offered by the project being prepaid.

If Civil Rights Staff determine that the prepayment will have a negative impact on minorities, the borrower must adopt use restrictions that protect the affordability of the project over the long term.

- **For prepayments that will have an adverse impact on the adequacy of supply of affordable housing.** In projects where the prepayment does not have an adverse impact on minorities, the borrower is required to adopt use restrictions that protect the access of current tenants to adequate affordable housing. These provisions prohibit the borrower from raising rents for tenants who live in the property at the time of prepayment unless the rent increase is necessary to meet the operating costs of the project. (Their rents cannot be raised as a result of actions associated with prepayment.)

## 15.22 DETERMINATION OF PREPAYMENT IMPACT

One of the Agency’s key goals in the prepayment process is to ensure that affordable housing opportunities exist for program eligible tenants. Therefore, one of the most important issues to address is the impact of the prepayment on project tenants. In cases where prepayment will have little or no impact on project rents or availability of units, the Agency has less interest in keeping the property in the program than in cases where prepayment will likely result in the displacement of project tenants.

To make this determination, the Loan Servicer will review the following information provided in the market study:

- Existence of comparable conventional units, their rents, and vacancy rates;
- Any plans to build a similar project in the market area; and
- Other subsidized units and the availability of rental assistance.

The goal of this analysis is to determine if tenants will lose their units or suffer from rent overburden. The steps involved in the analysis of impact depend on whether the project has rental assistance.

### A. Prepayment Impact on Projects without Rental Assistance

For these projects, the Loan Servicer must review the prepayment request, including market information, and address the following items:

- **Change in rents or loss of units.** The Loan Servicer must look at the impact of the prepayment on tenants’ ability to stay in the project. This analysis depends on the proposed use of the project after prepayment and rents for comparable conventional units in the market area. (For example, if the proposed use of the project is conventional rental units, the Loan Servicer should compare rents in the project to conventional rents in the market area.) Likely rents should be compared to tenants’ income to ensure that a change in rents will not result in rent overburden.
  - ◇ If the prepayment is not likely to result in an increase in rents above current rents or 30 percent of tenants’ adjusted incomes, the prepayment is considered to have no adverse impact on project tenants; and

- ◇ If the prepayment is likely to result in an increase in rents that will create rent overburden, the Loan Servicer must consider the availability of alternative comparable housing as described below.
- **Availability of alternative housing.** If the proposed use of the project after prepayment is likely to cause an increase in rents or a loss of units, the Loan Servicer must assess the availability of comparable housing in the community. The Loan Servicer must determine if there is sufficient housing that is comparable in size and rent to house project tenants in the local community without causing them rent overburden.
  - ◇ If there is sufficient comparable housing in the local community to replace the units that will be lost after prepayment, then the prepayment is considered to have no adverse impact on project tenants; and
  - ◇ If sufficient comparable housing is not available in the local community, the prepayment is considered to have an adverse impact on project tenants.

#### **B. Prepayment Impact on Projects with Rental Assistance**

If project tenants have rental assistance, the Loan Servicer must conduct the same analysis as described in Paragraph 15.22(A). However, in assessing the availability of comparable affordable units, the Loan Servicer must identify comparable units with rental assistance or other rental subsidy such as HUD Section 8 (as long as the tenants will have priority for these units).

- If sufficient comparable units with rental assistance are available in the local community to house all tenants with rental assistance (for example, if another Section 515 project in the local community has vacancies to house the tenants from this prepaid property), the prepayment is considered to have no adverse impact.
- If insufficient units with rental assistance are available, the prepayment is considered to have an adverse impact on project tenants.

Exhibit 15-3 of this section provides an overview of the full analysis of impact.

**Exhibit 15-3**

**Analysis of Impact on Tenants**

**Step 1:** Answer the following questions about rents and loss of units.

- A. Will prepayment result in an increase in tenant payments and if so, will this new payment be higher than 30 percent of the current tenants' incomes?

**OR**

- B. Will prepayment result in a loss of units?

*If the answer to both A and B is no, there is no adverse impact on tenants.*

*If the answer to either A or B is yes, proceed to step 2.*

**Step 2:** Answer the following questions about the availability of alternative housing:

- A. Are there sufficient comparable vacant units in the market area (as indicated by the market study) for displaced tenants to find alternative housing?

**AND**

- B. Are the tenant payments in these units equal to or less than the greater of their current rent of 30 percent of their income?

*If the answer to both C and D is yes, there is no adverse impact on tenants.*

*If the answer to either C or D is no, there is an adverse impact on tenants.*

**C. Processing the Prepayment**

Prior to prepayment, the Loan Servicer must take the following steps:

- Establish the target date for the prepayment to occur;
- Prepare the prepayment figures based on the borrower's outstanding balance on the Agency loan; and
- Notify tenants and other interested parties of the prepayment and its implications. Tenants must be notified at least 60 days in advance of the prepayment date.

To finalize the prepayment, the Loan Servicer must:

- Document the borrower's satisfaction of the mortgage; and
- Place a deed restriction on the property to establish the use restrictions.

**D. Monitoring Compliance with the Use Restrictions**

If a borrower prepays a loan and the project remains subject to continued restrictive-use provisions, the following requirements apply after prepayment:

- The owner of the prepaid project (formerly the borrower) is responsible for ensuring that the restrictive-use provisions agreed to as a condition of prepayment are observed and must retain appropriate documentation to demonstrate compliance with the use restrictions;
- The owners must provide the Agency with a signed and dated certification within 30 days of the beginning of each calendar year for the full period of the restrictive-use provisions establishing that these provisions are being met;
- The Loan Servicer must visit the site on an annual basis to perform an annual physical inspection;
- The Loan Servicer must also investigate any complaints from tenants or other parties regarding the violation of the use restrictions; and
- The Loan Servicer must keep owner certifications and records of visits in the project file.

### **SECTION 3: LOANS CLOSED BETWEEN 1979 AND 1989 WITH A RESTRICTIVE AGREEMENT**

#### **15.23 APPLICABILITY**

For borrowers whose loans have restrictive agreements and which closed between 1979 and 1989, Loan Servicers should follow the procedures in this section. For loans closed between 1979 and 1989 with no restrictive agreements, follow the procedures in Section 2 of this chapter.

#### **15.24 REQUEST BORROWER TO REMAIN IN PROGRAM**

The Agency will make an effort to enter into a restrictive-use agreement with borrowers who received Section 514 or 515 loans on which restrictive-use provisions are still in place, who received “restricted” loans, or who make a prepayment request and prepayment is feasible. If a borrower accepts the Agency’s request to enter into a 20-year restrictive-use agreement, without prepayment, no further action is necessary.

After receiving a complete application to prepay and determining the borrower's ability to prepay, the Agency must make a reasonable effort to enter into a new restrictive-use agreement with the borrower before accepting prepayment of a restricted loan.

If a borrower declines the Agency’s offer, the Loan Servicer should document this in writing, noting the date on which this information was obtained. The document should be included in the case file. The Loan Servicer should then proceed to review the prepayment process to determine the impact of prepayment.

#### **15.25 SALE TO A NONPROFIT OR PUBLIC BODY [7 CFR 3560.659]**

A borrower who rejects the Agency’s offer to enter into a restrictive-use agreement may offer the project for sale to nonprofit or public agencies. A borrower who is being processed

under Section 2 of this chapter, where the Agency's incentive offer is rejected may offer the project for sale to nonprofit or public agencies. A borrower who accepts the incentives but does not receive them within 15 months of accepting them, may offer the project for sale to nonprofit and public agencies. This process can take up to 30 months to complete. At the end of this process, if the property has not been purchased, the borrower is permitted to prepay without restrictive-use provisions.

The sale process has several steps:

- The property must be marketed for 180 days as described in Paragraph 15.27;
- If no offer is made within 180 days, the borrower may prepay the loan without use restrictions (see Paragraph 15.31);
- Offers received within the 180 days must be treated as described in Paragraph 15.28;
- If an offer is accepted, the purchaser must finalize the sale within 24 months. If the sale is not finalized, the borrower may prepay the loan without use restrictions (see Paragraph 15.31); and
- After a sale is completed, the Loan Servicer must oversee the transfer of the property and continue to monitor the project as a program property (see Paragraph 15.30).

## **15.26 ESTABLISHING THE PROJECT VALUE**

To establish the value of the property (as an unsubsidized conventional property) and determine an acceptable offer, two independent "as-is" market value appraisals will be completed in accordance with Chapter 7 of HB-1-3560. The borrower must pay the expense of the borrower's appraisal. The appraiser selected may not have an identity-of-interest with the borrower.

If the two appraisers fail to agree on the fair market value, the Agency and the borrower will jointly select an appraiser whose appraisal will be binding. The Agency and the borrower will jointly fund the cost of the appraisal.

## **15.27 MARKETING REQUIREMENTS**

The Loan Servicer must ensure that the borrower takes appropriate actions to inform appropriate entities of the sale. The borrower must provide the Loan Servicer with appropriate documentation (e.g., copies of advertisements) to demonstrate that the following actions occurred:

- The borrower must contact interested nonprofit organizations and public agencies from the list maintained by ORHP. The borrower should also contact other interested organizations.
- The borrower must provide these entities with sufficient information regarding the project and its operations for interested purchasers to make an informed decision.

This information must include the minimum acceptable bid prices based on the appraised market value (as discussed in Paragraph 15.26). It should also state the preference for local entities, as described in Paragraph 15.28.

- If an interested purchaser requests additional information concerning the project, the borrower must promptly provide the requested materials.
- The borrower must advertise and offer to sell the project for a minimum of 180 days. The borrower may choose to suspend advertising and other sales efforts while eligibility of an interested purchaser is determined. If the purchaser is determined to be ineligible, the borrower must resume advertising for the balance of the required 180 days.

**15.28 SELECTING AN OFFER**

The borrower must accept any bona fide offer at or above the minimum acceptable bid price.

- **Requirements for nonprofit organizations and public agencies to purchase.** To buy and operate a multi-family housing project, a nonprofit organization or public agency must meet the requirements listed in Exhibit 15-4.

<p><b>Exhibit 15-4</b></p> <p><b>Requirements for Nonprofit Organizations and Public Agencies to Purchase</b></p> <ul style="list-style-type: none"> <li>• The purchaser must agree to maintain the housing for very low- and low-income families or persons for the remaining useful life of the project and related facilities. However, currently eligible moderate-income tenants will not be required to move;</li> <li>• The purchaser must agree that no subsequent transfer of the housing and related facilities will be permitted for the remaining useful life of the housing and related facilities unless the Agency determines that the transfer will further the provision of housing and related facilities for low-income families and persons, or there is no longer a need for such housing and related facilities;</li> <li>• The purchaser must show financial feasibility of the project including anticipated funding;</li> <li>• The purchaser must certify on <i>Form RD 3560-30</i> that there are no identity-of-interest relationships;</li> <li>• The purchaser must complete an Agency-approved application and obtain Agency approval in accordance with 7 CFR part 3560 subpart I; and</li> <li>• To be eligible to purchase properties, nonprofit organizations must meet the criteria outlined in 7 CFR part 3650, subpart B. These requirements are discussed in Chapter 4 of HB-1-3560.</li> </ul>
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- **Preference for local nonprofit and public agencies.** Local nonprofit organizations and public agencies have priority over regional and national nonprofit and public agencies. The borrower may not accept an offer from a regional or national nonprofit organization or public agency during the first 60 days that the property is advertised.
  - ◇ If no offer from a local nonprofit or public agency is received in the first 60 days, the borrower may accept an offer from a regional or national nonprofit organization or public agency.
  - ◇ If more than one qualified nonprofit organization or public agency submits an offer to purchase the project, the Agency will give priority to qualified local nonprofit organizations and public agencies over regional and national nonprofit organizations and public agencies.
  - ◇ If additional criteria are needed to make a selection, the borrower must consider the organization’s past success in developing and maintaining subsidized housing and the length of experience in developing and maintaining subsidized housing. Past success is given priority over length of experience when comparing equal offers.
- **Approving an offer.** The Loan Servicer must approve the borrower’s acceptance or rejection of any offer for purchase. If the borrower receives an offer, they must notify the Loan Servicer of the offer and whether or not they want to accept the offer. The Loan Servicer must review the borrower’s decision.
  - ◇ If the borrower wants to reject the offer, the Loan Servicer must concur with the borrower’s reasons for rejection. If the Loan Servicer does not concur, the borrower must accept the offer.
  - ◇ If the offer is to be accepted, the proposed purchaser must submit appropriate documentation to the Agency to demonstrate eligibility for the transfer. The Loan Servicer must approve the transfer and then take appropriate steps to close the transfer (see Chapter 7 for the procedures for transfer).

### **15.29 LOANS MADE BY THE AGENCY OR OTHER SOURCES TO NONPROFIT ORGANIZATIONS AND PUBLIC AGENCIES**

The Agency may make loans to nonprofit organizations or public agencies to facilitate the purchase of the project. Alternatively, the Agency may approve a loan from another entity. These loans must be approved as described in HB-1-3560. They may be made for either of the purposes described below.

- A loan may be made to enable the nonprofit organization or public agency to purchase a project at the appraised value; and

- With proper justification, a loan may be made to help meet the project's first-year operating expense if current operating funds are not sufficient. This loan may not exceed two percent of the project's appraised value.

The Agency may also make an advance of up to \$20,000 to a nonprofit organization or public agency to cover the costs to develop a loan application package or close a loan to purchase a property.

### **15.30 POSTSALE REQUIREMENTS**

Once the property has been sold to a nonprofit or public agency, the new owner of the property is subject to all applicable program requirements and use restrictions that applied to the property prior to the sale.

- The Loan Servicer must ensure that the transfer of the property takes place according to Agency rules and that the new owner is made subject to all applicable use restrictions (see Chapter 7);
- The Loan Servicer must notify tenants and other interested parties that the sale will take place; and
- The Loan Servicer will monitor this property as it monitors all other program properties (see Chapter 9 of HB-2-3560).

### **15.31 REQUIREMENTS FOR BORROWERS IF AN ACCEPTABLE PURCHASER IS NOT FOUND**

If no purchaser is found for the property within the 180-day marketing period or if an offer is made but the purchaser fails to come up with the funds to complete the purchase within 24 months, the borrower is considered to have fulfilled the requirements for offering the property for sale. At this time, the borrower is permitted to prepay the Agency loan without use restrictions.

The Loan Servicer must:

- Send a letter to the borrower notifying him or her that prepayment is permitted; and
- Close out the application in Pre-Trac.

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## **SECTION 4: SPECIAL CIRCUMSTANCES**

### **15.32 PROPERTIES UNDER BANKRUPTCY OR FORECLOSURE**

Bankruptcy proceedings will have no effect on contractual requirements for restrictive use.

If a project that is subject to restrictive-use provisions is sold outside the program at a foreclosure sale, the Agency has no means to continue to enforce restrictive-use provisions after the purchase.

### **15.33 ADVANCE PAYMENT OF ACCOUNTS**

When an Agency loan, which is not subject to prepayment prohibitions, reaches or falls below six remaining payments due to a borrower's voluntary advance payments or extra payments required by the Agency, the borrower will be notified that the final payment on the account cannot be accepted unless a prepayment request is made. The borrower will be required to submit all applicable information to a prepayment request.

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## **ATTACHMENT 15-A**

### **OVERVIEW OF PREPAYMENT PROCESS**

Outlined below is a summary of the conditions to be met for making key decisions related to the prepayment process.

#### **What are the criteria for accepting a prepayment request?**

- The borrowers' loans were closed before 1989;
- All items on the application checklist have been submitted; and
- The borrowers submit proof of their ability to prepay their loans.

#### **You may issue a general or specific incentive offer to a borrower if the following conditions are met:**

- The application has been accepted (see criteria listed above);
- The existing loan is a Rural Rental Housing (RRH) loan or an Off-Farm Labor Housing loan;
- The loan closed prior to 1979; and
- There are no restrictive-use provisions associated with the loan.

**Note:** If the borrower is inclined not to accept a specific incentive offer, you may proffer a general offer and proceed from there when the borrower declines the offer. If, however, the borrower accepts the general offer, you must then proceed with a specific incentive offer.

#### **A borrower may prepay WITHOUT use restrictions when the following conditions are met:**

- If the borrower rejects the general and/or specific incentive offers and the property is not needed;
- If the borrower appeals the decision to prepay with use restrictions, when the property is needed, and wins the appeal;
- If the borrower markets the property to a nonprofit organization and a buyer is not found within 180 days; and
- If the borrower markets the property and a buyer is found, but the deal fails to close.

**A borrower may prepay WITH use restrictions when the following conditions are met:**

- If the borrower rejects the general or specific incentive offer and the property is needed.

**A borrower can market the property to a nonprofit organization under the following circumstances:**

- If the borrower's loan closed between 1979 and 1989 and the borrower does not wish to continue in the program, but agrees to sell the property to a nonprofit organization;
- If the borrower's loan closed between 1979 and 1989 and the borrower does not wish to continue in the program or sell to a nonprofit organization. However, a subsequent needs assessment reveals that minority tenants will be materially affected. In this case, the borrower is obligated to sell to a nonprofit organization;
- If a pre-1979 borrower declines both the general and specific incentive offers. A needs assessment reveals that the property is needed. The borrowers can then agree to sell to a nonprofit organization if he or she does not wish to prepay with use restrictions; and
- If a pre-1979 borrower declines both the general and specific incentive offers, but a needs assessment reveals that the property is needed. The borrowers can then appeal the decision. However, if they lose the appeal, they can then agree to sell to a nonprofit organization if they do not wish to prepay with use restrictions.

**A request is returned to the borrower under the following circumstances:**

- If the borrower's loan closed after 1989;
- If the borrower's prepayment request is withdrawn or rejected; and
- If the project is needed, the borrower is obligated to prepay with use restrictions. The borrower can then appeal. If the borrower loses the appeal, he or she may decide to withdraw the application rather than have to sell to a nonprofit organization.

## ATTACHMENT 15-B

### EXPLANATION OF INCENTIVE OFFERS

- (1) The Agency may increase the borrower's annual return on equity by one of the following two methods. The actual withdrawal of the return remains subject to the procedures and conditions for withdrawal specified in 7 CFR part 3560 subpart G of this part.
- (2) The Agency may recognize the borrower's current equity in the housing project. The equity will be determined using an Agency accepted appraisal based on the housing project's MARKET value.
- (3) When a current appraisal indicates an equity loan can not be made, the Agency may recognize the borrower's current equity in the housing project at the higher of the original rate of return or the current 15-year Treasury bond rate plus 2 percent rounded to the nearest one-quarter percent. The equity will be determined using the most recent Agency accepted appraisal of the housing project prior to receiving the prepayment request.
- (4) The Agency may agree to convert projects without interest credit or with Plan I interest credit to Plan II interest credit or increase the interest credit subsidy for loans with HUD Section 8 assistance to lower the interest rate on the loan and make basic rents more financially feasible.
- (5) The Agency may offer additional rental assistance, or an increase in assistance provided under existing contracts under §§ 521(a)(2), 521(a)(5) of the Housing Act of 1949 [42 U.S.C. 1490a (a)(2)] or section 8 of the United States Housing Act of 1937 [42 U.S.C. § 1437f].
- (6) The Agency may make an equity loan to the borrower. The equity loan must not adversely affect the borrower's ability to repay other Agency loans held by the borrower and must be made in conformance with the following requirements:
  1. Borrowers with farm labor housing loans are not eligible to receive equity loans as incentives.
  2. If an incentive offer for an equity loan is accepted, the equity loan may be processed and closed with the borrower or any eligible transferee.
  3. Excess reserve funds will be used to reduce the amount of an equity loan offered to a borrower.
  4. Equity loans may not be offered unless the Agency determines that other incentives are not adequate to provide a fair return on the investment of the
- (7) The equity loan must not exceed the difference between the current unpaid loan balance and 90 percent of the housing project's value as determined by an "as-is" market value appraisal conducted in accordance with 7 CFR part 3560 subpart P of this part.
  1. Borrowers with farm labor housing loans are not eligible to receive equity loans as incentives.
  2. If an incentive offer for an equity loan is accepted, the equity loan may be processed and closed with the borrower or any eligible transferee.
  3. Excess reserve funds will be used to reduce the amount of an equity loan offered to a borrower.
  4. Equity loans may not be offered unless the Agency determines that other incentives are not adequate to provide a fair return on the investment of the

borrower to prevent prepayment of the loan or to prevent displacement of project tenants.

(8) The Agency will offer rental assistance to protect tenants from rent overburden caused by any rent increase as a result of a borrower's acceptance of an incentive offer or tenants who are currently overburdened.

All incentives will be processed using the Incentive Calculation Worksheet. The Worksheet has two versions:

- A Stand Alone Excel Spreadsheet located on the Agency's Intranet; or
- The Pre-Trac version.

**ATTACHMENT 15-C**  
**SAMPLE LETTERS TO TENANTS**

*Initial Tenant Notification of Owner's Intent to Prepay*

TO: The Tenants of Riddlebrook Apts

SUBJECT: Notice of Prepayment Request

Your apartment was developed with a loan from the U.S. Department of Agriculture (USDA) Rural Development, an Agency of the U.S. Government. The owners of your apartment recently asked USDA for permission to pay off their USDA loan ahead of schedule.

Based on USDA's communications with the owner so far, it is not clear whether:

- \* The owner plans to continue to operate the apartments as affordable rental housing, or to sell or operate the apartment as conventional, market rate apartments.
- \* The owner wants to prepay their USDA loan, and then either sell or operate the apartment as conventional, market rate apartments.
- \* The owner wants to sell the property to a new owner who is willing to continue to operate the apartments as affordable rental housing.
- \* The owner does not really plan to prepay their USDA loan. The owner has applied in order to qualify for financial incentives from USDA. In return for the incentives, the owner must continue to operate the apartments as affordable rental housing.

In any case, if USDA agrees to the owner's request and if the owner actually does pay off the USDA loan, rents at the apartments could go up and USDA would not be able to provide rent subsidy for tenants. Also USDA would no longer be involved in supervising the apartment's management, leases and rents.

**USDA WOULD LIKE TO KNOW YOUR OPINION ABOUT THIS PAYOFF REQUEST.** We would like to know what you think the effect of paying off the loan would be on you, other tenants in the apartments, other people in the community, and any minorities living in the apartments and in the community. You have 30 days from the date of this letter to give us your opinion in writing. If you wish to write us, please send your comments to the local USDA Office at the address shown above.

It may be helpful to know that USDA follows a very careful process before deciding whether or not to allow apartment owners to pay off their USDA loans. First, USDA may offer various financial incentives to the owners to encourage them not to prepay their loan and to continue to operate the apartments for affordable rental housing. Often such incentives are sufficient to

prevent prepayment, and the apartment will continue to be operated without change for the tenants.

However, if the owner is not interested in the financial incentives that USDA can offer, USDA will evaluate how prepayment would affect the tenants of the apartments.

\* If USDA decides that housing opportunities for minorities would be materially affected by a prepayment, USDA will require that the owner try to sell the apartments to a nonprofit organization or public agency which would continue to operate the apartments for affordable rental housing.

\* If USDA decides that there is an inadequate supply of affordable rental housing nearby, USDA may require that the owner continues to provide low rents to you and the other current renters, even if rents go up for future tenants.

\* If USDA decides to allow the owner to prepay, you and the other tenants may be given immediate priority for other USDA financed apartments. Even if USDA's loan is paid off, the owner will not be able to evict any tenant without cause.

We will keep you notified of the status of this request until a final resolution is reached. You will be allowed to review the information used by USDA to make its decisions regarding prepayment.

If the owner disagrees with the decision that USDA makes on the prepayment request, the owner may be given an opportunity to appeal USDA's decision. If the owner appeals, tenants will be given the opportunity to submit evidence at the appeal hearing.

Please contact our office if you have any questions or concerns.

Sincerely,

*Notification of Sale to a Nonprofit Organization or Public Body*

**[Insert Tenant Address]**

**TO: Tenants of [Project Name]**

Rural Development has reviewed relevant information concerning a request from your landlord (Insert Owner's Name) to pay off the Rural Development loan on (Enter Name of Project). Rural Development has decided that we cannot accept the payoff because we determined that tenants would be adversely affected by a prepayment. Therefore, Rural Development has offered the owner an incentive to stay in program and not prepay the loan.

Rural Development is considering providing a loan to **[Insert name of new nonprofit or public body]**, a nonprofit organization/public housing authority, to finance the owner's equity in the property and to purchase the property in exchange for an extension of the low- and moderate-income use of the housing. **[Insert name of new entity]** would be required to continue to use the property for the purpose of housing very low- and low-income people eligible for occupancy as provided in Rural Development regulations during the remaining useful life of the project. You may remain in the project throughout the remaining useful life of the project, and as long as you remain eligible or wish to occupy your apartment/unit. Rents, other charges, and conditions of occupancy will be set to meet these conditions. **[Insert name of new entity]** would only be released from these obligations when the government determines that (1) there is no longer a need for such housing; (2) that such other financial assistance provided to the residents of such housing will no longer be provided due to no fault, action, or lack of action on the part of **[insert name of new entity]**. The restrictions are intended to protect only very low- and low-income individuals and families for the remaining useful life of the project. These restrictions will not be superceded by new restrictions imposed by any subsequent transfers of the property. Eligible moderate-income tenants living at the project at the time of prepayment will not be required to move as a result of the restrictions.

Information regarding the approval of the prepayment can be reviewed at the Rural Development Area Office located at **[Insert address]**. Please call ahead to arrange an appointment if you wish to review this information.

If you have any questions, please contact me prior to **[enter date]**.

Sincerely,

Rural Development Specialist

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## ATTACHMENT 15-D

### INCENTIVE CALCULATION WORKSHEET AND DIRECTIONS

<b>State Office:</b>			<b>Contact Person:</b>		
<b>Project Name:</b>			<b>Project Location:</b>		
<b>Borrower Name:</b>			<b>Borrower I.D.:</b>		
<b>Date Submitted to ORHP:</b>			<b>Project Number:</b>		

Number of Units:	Current Basic Rents:	Comparable Rents:	Other Data:
0 Bedroom	0 Bedroom	0 Bedroom	Original Debt
1 Bedroom	1 Bedroom	1 Bedroom	Current Debt
2 Bedroom	2 Bedroom	2 Bedroom	Initial Bor. contribution
3 Bedroom	3 Bedroom	3 Bedroom	Original ROI rate
Other Br.	Other Br.	Other Br.	30 yr. Tres. Bond rate
0 Total	#DIV/0! Average	#DIV/0! Average	Authorized reserve balance
			Current reserve balance
			Required capital needs
			Add'l monthly reserve deposit per unit
			Current Debt Service
			Reamortized Debt Service
			Will you ream the debt? Enter yes or no.

<b>1% Interest rate for Agency equity loan/reamortization</b>		
<b>MAXIMUM RHS EQUITY LOAN</b>	<b>MAXIMUM THIRD-PARTY EQUITY LOAN</b>	
\$ - Appraised value (unsub. conv. housing)	#DIV/0! Max. equity loan after using excess reserves for equity	
- Maximum equity (90%)	#DIV/0! New debt service for third party equity loan	
\$ - (Current debt)	#DIV/0! Debt Service for existing RHS loan	
\$ - 90% RHS equity	#DIV/0! New total debt service	
\$ - Total excess reserve	#DIV/0! Difference between new and current debt service	
\$ - 90% eq. loan, less excess res. for eq., w/o regard to comp. rent	#DIV/0! Monthly/per unit increase to debt service	
#DIV/0! Max. eq. loan w/ comp. rents, less ex. res. for eq.	#DIV/0! <b>TOTAL INCENTIVE (EQ. LOAN + EX. RESERVES)</b>	
#DIV/0! <b>TOTAL INCENTIVE (EQ. LOAN + EX. RESERVES)</b>	#DIV/0! Average current rent	
#DIV/0! New basic rent after RHS equity loan	#DIV/0! Average rent with new debt service	
#DIV/0! Amount above or (below) comparable rent	#DIV/0! Plus any additional reserve requirement	
<b>MAXIMUM RHS EQUITY LOAN AND INCREASED ROI</b>		
#DIV/0! Max. eq/ly loan after using ex. res. for eq/ly	#DIV/0! Average comparable rent	
#DIV/0! New debt service (DS) for equity loan	#DIV/0! Amount above or (below) comparable rent	
#DIV/0! Debt service for existing RHS loan	<b>INCREASED ROI WHEN AN EQUITY LOAN CANNOT BE OFFERED</b>	
#DIV/0! New total debt service	\$ - Appraised value prior to prepayment	
#DIV/0! Difference between new and current DS	\$ - (Current balance)	
#DIV/0! Monthly/per unit increase to DS	\$ - Current equity position	
#DIV/0! New equity position	\$ - ROI w/o equity loan at 8%	
#DIV/0! New ROI	\$ - ROI w/o equity loan at Treasury rate +2	
\$ - Original ROI	\$ - Original ROI	
#DIV/0! Difference betw'n new and current ROI	\$ - <b>TOTAL INCENTIVE: NEW ROI</b>	
#DIV/0! Monthly/per unit increase to ROI	\$ - Difference betw'n new and current ROI	
#DIV/0! <b>TOTAL INCENTIVE (EQ. LOAN + INCR. ROI + EX. RES.)</b>	#DIV/0! Monthly/per unit increase to ROI	
#DIV/0! Average current rent	#DIV/0! Average current rent	
#DIV/0! Average rent with new ROI and DS	#DIV/0! Average rent with new ROI	
#DIV/0! Plus any additional reserve requirement	#DIV/0! Plus any additional reserve requirement	
#DIV/0! Average comparable rent	#DIV/0! Average comparable rent	
#DIV/0! Amount above or (below) comparable rent	#DIV/0! Amount above or (below) comparable rent	
<b>INCREASED ROI WHEN AN EQUITY LOAN COULD BE OFFERED, BUT IS NOT</b>		
#DIV/0! Max. eq. loan in transfer to ltd. Profit with tax credits (<=95%), less ex. res.	<b>RHS EQUITY LOANS IN CONJUNCTION WITH TRANSFERS AND SALES</b>	
\$ - RHS Debt Service	#DIV/0! <b>TOTAL INCENTIVE (EQ. LOAN + EX. RESERVES)</b>	
\$ - Decrease in current monthly debt service, if any	#DIV/0! New basic rent after equity loan	
#DIV/0! Monthly per-unit decrease to debt service, if any	#DIV/0! Amount (below) comparable rent	
\$ - Appraised value (unsub. conv. housing)	#DIV/0! Max. eq. loan in transfer to ltd. Profit, no tax credits (<=97%), less ex. res.	
\$ - (Current debt)	#DIV/0! <b>TOTAL INCENTIVE (EQ. LOAN + EX. RESERVES)</b>	
\$ - Max. new equity position with ROI only	#DIV/0! New basic rent after equity loan	
\$ - <b>TOTAL INCENTIVE: NEW ROI</b>	#DIV/0! Amount (below) comparable rent	
\$ - Original ROI	#DIV/0! Max. eq. loan in transfer or sale to unprofit (<=100%), less ex. res.	
\$ - ROI increase with new equity position	#DIV/0! <b>TOTAL INCENTIVE (EQ. LOAN + EX. RESERVES)</b>	
#DIV/0! Monthly/per unit increase to ROI	#DIV/0! New basic rent after equity loan	
#DIV/0! Average current rent	#DIV/0! Amount above or (below) comparable rent	
#DIV/0! Average rent with new ROI and DS	<b>COMMENTS:</b>	
#DIV/0! Plus any additional reserve requirement		
#DIV/0! Average comparable rent		
#DIV/0! Amount above or (below) comparable rent		

## **INSTRUCTIONS FOR RHS INCENTIVE CALCULATION WORKSHEET**

- 1. GO TO PROJECT LIST SCREEN**
- 2. CLICK ON QUERY**
- 3. TYPE IN "OR"**
- 4. CLICK ON QUERY AGAIN - this will give you a listing of every application in the State of Oregon.**
- 5. ONCE YOU HAVE THE PROJECT NAME AND BORROWER NAME FROM THE PROJECT LISTING - CLICK ON SCREENS; THEN CLICK ON "BORROWER"**
- 6. WHEN YOU GET TO THE BORROWER SCREEN, CLICK ON QUERY, TYPE IN OR IN THE STATE FIELD, CLICK ON QUERY AGAIN.**
- 7. THE FIRST BORROWER WILL APPEAR FOR THE STATE OF OREGON**
- 8. CLICK ON THE "DOWN" BUTTON UNTIL YOU SEE THE BORROWER YOU ARE LOOKING FOR.**
- 9. PRINT THAT PAGE; THEN CLICK ON THE GREEN RECTANGULAR BUTTON THAT SAYS "PROJECT" AND PRINT THAT SCREEN**
- 10. THEN CLICK ON THE "NEXT" BUTTON (NOTE: You'll see a dialogue box that asks if you want to continue working with this borrower/application) CLICK YES**
- 11. THIS WILL TAKE YOU BACK TO THE PROJECT LIST; CLICK ON TIMELINE FOR THAT APPLICATION**
- 12. CLICK ON THE GREEN BUTTON THAT SAYS "TIMELINE TREE"**
- 13. CLICK ON "TIMELINE TREE"**
- 14. CLICK ON "TIMELINE RPT"**
- 15. THE TIMELINE REPORT WILL APPEAR IN A SEPARATE ACROBAT WINDOW; CLICK ON THE "PRINTER" ICON**
- 16. ONCE THE REPORT HAS PRINTED, CLOSE THE ACROBAT WINDOW.**
- 17. CLICK ON "TIMELINE" AND ONCE BACK TO THE TIMELINE SCREEN CLICK ON THE GREEN "NEXT" BUTTON (this will take you to the Application Checklist Screen)**

- 18. PRINT PAGE 1 OF THE CHECKLIST SCREEN**
- 19. CLICK ON THE GREEN RECTANGULAR "PROJECT NEEDED" BUTTON**
- 20. PRINT PAGE 2 OF THE CHECKLIST SCREEN**
- 21. CLICK ON THE GREEN "NEXT" BUTTON (this will take you to the Prepayment Information Screen)**
- 22. PRINT PAGE 1 OF THE PREPAYMENT INFORMATION SCREEN**
- 23. CLICK ON THE GREEN RECTANGULAR "PREPAY, PAGE 2" BUTTON**
- 24. PRINT PAGE 2 OF THE PREPAYMENT INFORMATION SCREEN**
- 25. CLICK ON THE GREEN "NEXT" BUTTON (this will take you to the Incentive Calculation Worksheet)**
- 26. PRINT ALL 11 PAGES OF THE INCENTIVE CALCULATION WORKSHEET**

**THAT'S IT.**

**PLEASE PRINT THE SCREEN EVEN IF IT IS BLANK.**

**NOTE: CHECK THE TIMELINE SCREEN TO SEE IF ANY OF THE PROJECTS HAVE REHAB/REPAIR/DEFERRED MAINTENANCE; IF SO, PRINT THOSE 2 SCREENS AS WELL.**

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## ATTACHMENT 15-E

### RESTRICTIVE-USE PROVISIONS AND AGREEMENTS

(a) The undersigned, and any successors in interest, agree to use the subject property (described herein) in compliance with 42 USC 1484 or 1485, whichever is applicable, and applicable regulations and the subsequent amendments, for the purpose of housing:

- (1) very low, or low income households when required by 7 CFR 3560.658 (a)(3) or (b)(1), or
- (2) very low, low, or moderate income households when required by 7 CFR 3560.655, 3560.658 (a)(1) and (2) and (b)(2), or 7 CFR 3560.401.

(b) The period of the restriction will be inserted in accordance with the following:

- (1) 10 years if required by 7 CFR 3560.658 (a) (1);
- (2) 15 years if required by 7 CFR 3560.655;
- (3) 20 years if required by 7 CFR 3560.655 or 3560.656;
- (4) 30 years if required by 7 CFR 3560.406(g);
- (5) Remaining period of existing Restrictive Use Provision's if required by 7 CFR 3560.655 or 3560.658 (a)(2);
- (6) The remaining useful life of the housing and related facilities if required by 7 CFR 3560.658 (a)(3) and (b)(1);
- (7) The last existing tenant (that occupied the property on the date of prepayment) voluntarily vacates if required by this subpart.

(c) When required by 7 CFR 3560.658 (a)(1) and (2), the borrower will also agree that at the expiration of this restriction, the undersigned agrees to offer the property for sale to a qualified nonprofit organization or public body, in accordance with previously cited statutes and regulations.

(d) The Agency and eligible tenants or applicants may enforce these restrictions.

(e) The borrower must also agree to the following requirements to implement these restrictions:

- (1) rents, other charges, and conditions of occupancy will be set to meet these conditions;
- (2) an Agency approved notice of this restriction will be posted for tenants of the project;

- (3) to adhere to applicable local, state, and Federal laws; and
- (4) to obtain Agency concurrence for any rental procedures that deviate from those approved at the time of prepayment, prior to implementation.

(f) The borrower will be released from these obligations before that date only when the Agency determines that there is no longer a need for the housing or that such other financial assistance provided the residents of the housing will no longer be provided due to no fault, action or lack of action on the part of the borrower.