

PART 1965 - REAL PROPERTY

Subpart E - Prepayment and Displacement Prevention of Multi-Family
Housing LoansTable of Contents

<u>Sec.</u>		<u>Page</u>
1965.201	General.	1
1965.202	Definitions.	1
1965.203	Nonprofit organization and public agency interest lists.	3
1965.204	Processing prepayment requests and related rent increases.	4
	(a) Chronological order of steps in processing prepayment requests.	4
	(b) Rent increases resulting from prepayment process.	4
1965.205	Borrower request to prepay.	5
1965.206	Review of borrower prepayment request by Servicing Office.	6
	(a) Return of incomplete requests.	6
	(b) Receipt of complete requests.	6
1965.207	Prohibition on prepayment for loans made on or after December 15, 1989, to build or acquire new units.	9
1965.208	Restrictive-use provisions related to LH projects with grants.	9
1965.209	Restrictive-use provisions after prepayment.	10
1965.210	Loans approved prior to December 14, 1989 - Rural Development actions when processing prepayment requests.	10
1965.211	Evaluation of the borrower's ability to prepay the loan.	11
1965.212	Appraisals.	11
1965.213	Offer of incentives to borrowers.	11
	(a) Available incentives.	11
	(b) Development of incentive package.	13
	(c) Letter offering incentives to borrowers.	14
1965.214	Offering and processing of incentives.	15
	(a) Borrower does not respond to incentive offer.	15
	(b) Borrower rejects the incentive offer.	15

<u>Sec.</u>		<u>Page</u>
	(c) Borrower indicates acceptance of the incentive package.	15
	(d) Application for transfer with incentives.	16
	(e) Notification that incentives are ready for funding.	16
	(f) Processing the incentives.	17
	(g) Restrictive-use provisions.	18
1965.215	Borrower rejection of incentive offer - approving/disapproving prepayment.	18
	(a) Approving or disapproving prepayment.	18
	(b) Determining the need for housing.	18
	(c) Conditions under which prepayment may be approved.	18
	(d) Borrower notification of approval or disapproval of prepayment.	21
	(e) Processing acceptance of prepayment.	21
	(f) Denial, postponement, waiver, or withdrawal of prepayment request.	28
	(g) Borrower appeals of prepayment disapproval.	29
1965.216	Borrower not subject to restrictive-use provisions nor prohibition on prepayment, no incentive agreement is reached and prepayment cannot be accepted.	29
	(a) Determination of fair market value.	29
	(b) Efforts to market and sell the project to nonprofit organizations or public agencies.	30
	(c) Qualifications of nonprofit borrower to purchase.	31
	(d) Priority between nonprofit organizations and public agencies.	33
1965.217	Processing applications for transfers to nonprofit corporations or public agencies.	33
	(a) Determining eligibility.	33
	(b) Appeal rights when a purchaser is not selected.	33
	(c) Authorization for transfer.	33
	(d) Special loans and grants available to nonprofit organizations and public agencies.	34
	(e) Servicing Office actions when a transfer and subsequent loan is authorized.	37
	(f) Rental subsidies.	38

<u>Sec.</u>		<u>Page</u>
1965.218	Accepting prepayment when nonprofit organizations do not apply to purchase or funds are not available.	38
	(a) No offer to purchase.	38
	(b) Funds are not available.	39
1965.219	Rural Development processing of prepayment.	39
1965.220 - 1965.221	[Reserved]	39
1965.222	Violations of restrictive-use provisions.	39
1965.223	Relationship with acceleration of accounts, bankruptcy, foreclosure, or inventory properties.	40
	(a) Acceleration of accounts.	40
	(b) Foreclosure.	40
	(c) Inventory property.	41
	(d) Bankruptcy.	41
1965.224	Prepayment of loans caused by advance payments on the account.	41
1965.225 - 1965.248	[Reserved]	41
1965.249	Exception authority.	41
1965.250	OMB control number.	42

Exhibits to Subpart E:

- Exhibit A-1 - Required Clauses for Active Borrowers With Projects Subject to Restrictive-Use Provisions as a Result of Specific Loan Making or Loan Servicing Actions
- Exhibit A-2 - Required Clauses for Projects Made Subject to Restrictive-use Provisions When a Loan is Transferred to a Nonprofit Organization or Public Agency to Avert Prepayment
- Exhibit A-3 - Required Clauses for Prepaid Projects Which Were Subject to Restrictive-use Provisions Prior to the Prepayment
- Exhibit A-4 - Required Clauses for Prepaid Projects Which Became Subject to Restrictive-use Provisions at the Time of Prepayment
- Exhibit B - Report on Prepayment
- Exhibit C - Checklist for Requesting Prepayment

- Exhibit D - Methodology for Determining Prepayment Incentives
- Exhibit D-1 - Worksheet for Incentive Calculations
- Exhibit E - Administrative Guidance for Making Prepayment Determinations
- Exhibit F - Prepayment and Displacement Prevention Grant Agreement
- Exhibit G-1 - Restrictive-Use Agreement
(To be used with Exhibit A-3 of this subpart)
- Exhibit G-2 - Restrictive-Use Agreement
(To be used with paragraph (A) to Exhibit A-4 of this subpart)
- Exhibit G-3 - Restrictive-Use Agreement
(To be used with paragraph (B) to Exhibit A-4 to this subpart)
- Exhibit G-4 - Restrictive-Use Agreement
(To be used with paragraph (C) to Exhibit A-4 to this subpart)

PART 1965 - REAL PROPERTY

Subpart E - Prepayment and Displacement Prevention of
Multi-Family Housing Loans

§ 1965.201 General.

Requests to pay Multi-Family Housing (MFH) loans in full require that certain actions be taken to ensure the affordability of housing for specified tenants for a guaranteed period of time. The requirement applies to all projects, whether or not they are subject to restrictive-use provisions or prohibitions on prepayment. This subpart provides step-by-step guidance for use by Rural Development and MFH borrowers when prepayment requests are made. The steps outlined are mandated by the Rural Rental Housing Displacement Prevention Provisions of the Housing and Community Development Act of 1987. When a MFH project is subject to multiple Rural Development MFH loans, and the borrower offers prepayment or payment in full for one or more but not all of the MFH loans on the project, the borrower will not be allowed to pay off the most restrictive loan without invoking the prepayment provisions of this Subpart, unless the borrower agrees to be bound by the more restrictive provisions for the balance of the time period remaining on the more restrictive loan being paid in full.

§ 1965.202 Definitions.

Affordable housing. Housing with a rent rate which does not create new or increased rent overburden for tenants of prepaying projects.

Displaced tenant. A displaced tenant is a tenant who is either forced to move from a project or a tenant who experiences new or increased rent overburden as a result of prepayment of a MFH loan. The new or increased rent overburden may occur at the time of prepayment or at any time in the future restrictive-use provisions are in force.

Income limits. Very low, low, and moderate income are defined in accordance with Appendix 9 of HB-1-3550 (available in any Rural Development Office). (Revised 01-23-03, SPECIAL PN.)

Letter of priority entitlement (LOPE). A letter issued by Rural Development to a tenant displaced through a prepayment action that will give the tenant priority on waiting lists at any Rural development project for which they may qualify.

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Local nonprofit corporation or public agency. A public agency or nonprofit corporation which operates primarily in the local community and its trade area. Local nonprofit corporations must have a broad based board reflecting various interests in the community or trade area. A public agency must be organized in accordance with State and local statutes. Either type of organization must include as one of its primary purposes developing or managing low-income housing or community development projects, which meet the requirements of § 1944.211 (a)(10)(i) of Subpart E of Part 1944 of this chapter. County-wide agencies/corporations may meet the definition of local organization if, in the judgment of the District Office, the community's trade area is county-wide. Tenant associations and cooperatives may meet the definition if they are organized as nonprofit organizations.

Market Area. The market area is the community in which the project is located and those outlying rural areas which are impacted by the project (excluding all other established communities).

Minorities. Individuals such as members of the following groups: African-American, not of Hispanic Origin; Hispanic; American Indian or Alaskan Native; and Asian or Pacific Islander. Refer to RD Instruction 1900-A (available in any Rural Development office) for further clarification and a description of each group.

Prepayment. A loan which has been paid by the borrower in full, before the loan maturity date. After a prepayment, no Rural Development loan remains on the property and the property is removed from the Rural Development program, although restrictive-use provisions may remain.

Prohibition on prepayment. Loans which may not be prepaid prior to the final amortization date as described in § 1965.208 of this subpart.

Protected population. Individuals or families, whether very low, low, or moderate income, who are current tenant or wish to occupy rural rental housing (RRH) or labor housing (LH), and who are protected by a particular restrictive-use provision.

Regional or national nonprofit corporation or public agency. Any public agency or nonprofit corporation meeting the conditions in §1965.216 (c) of this subpart, which operates in an area larger than the local community and its trade area, or, if a nonprofit corporation, does not also have a broadly-based membership and board of directors reflecting various interests in the community or trade area, and does not have among its officers or directorate persons or

parties with a material interest in (or persons or parties related to any person or party with such an interest) in loans financed under Section 515 that have been prepaid. The primary purposes of the organization need not include developing or managing low-income housing or community development projects.

Rent overburden. Shelter costs (rent and anticipated utility costs) exceeding 30 percent of a tenant's adjusted income, or the amount of payment designated by a third-party payor as shelter cost, whichever is greater.

Restrictive-use provisions. Conditions restricting the use of the property to housing for very low-, low- and/or moderate-income tenants, whether or not the Rural Development loan is in force or has been paid in full as described in §1965.209 of this subpart.

Section 8. Tenant rental subsidies as provided under the Housing and Urban Development (HUD) Section 8 Housing Assistance Payment Program.

Unsubsidized conventional housing. Housing which receives no interest or project based rent subsidies, and which has no maximum income limits for its residents. When a borrower submits a request for prepayment of the Rural Development loan, the anticipated use of the project will be considered as unsubsidized conventional housing.

§1965.203 Nonprofit organization and public agency interest lists.

Nonprofit organizations and public agencies interested in being notified of projects being offered for sale by Rural Development borrowers wishing to prepay should contact Rural Development. Local nonprofit and public agencies wishing to purchase projects in one district need only contact the applicable Rural Development District Office. Organizations or agencies interested in one state only should contact the Rural Development State Office. National and regional nonprofit organizations interested in receiving multi-state notifications should contact the Rural Development National Office. Interested organizations should submit their names, addresses, contact persons, and the areas in which they wish to purchase. The notification to Rural Development must be updated annually if the organization wishes to continue to receive notifications of pending prepayments. Rural Development will send notices requesting the update at least 30 days prior to removing the organization's name from the list. The National Office will not verify the eligibility of the organizations requesting notification, but will periodically forward the names of interested organizations to State Offices. The State Office will periodically compile a list of interested nonprofit organizations and public agencies and forward the list to its District Offices.

§1965.204 Processing prepayment requests and related rent increases.

(a) Chronological order of steps in processing prepayment requests.

Prior to approving prepayment of an Rural Development MFH loan, Rural Development must determine the eligibility and ability of the borrower to prepay the loan; attempt to keep needed housing in the very low-, low-, and moderate-income market; and ease the transition of tenants that may be affected by the conversion of a federally-financed project to unsubsidized conventional housing. The remainder of this procedure provides the chronological order for the actions to be taken:

- (1) Borrower written request for prepayment (§1965.205 and Exhibit C of this subpart).
- (2) Required notifications (§1965.206 of this subpart).
- (3) Evaluation of borrower ability to prepay (§1965.211 and Exhibit E of this subpart).
- (4) Rural Development incentive offer and borrower decision regarding incentives (§§1965.213 and 1965.214 and Exhibits D and E of this subpart).
- (5) Evaluation of project need by Rural Development (§1965.210 and Exhibit E of this subpart).
- (6) Approval of prepayment under exception authority (§1965.215 and Exhibit E of this subpart).
- (7) Sale to nonprofit organizations or public agencies (§§1965.216 and 1965.217 of this subpart).
- (8) Approval of prepayment in the absence of interest in purchase by nonprofit organization or public agency (§§1965.218 and 1965.219 of this subpart).
- (9) Actions to be taken in the event of restrictive-use violations (§1965.222 of this subpart).
- (10) Relationship of these procedures to other servicing actions (§1965.223 of this subpart).
- (11) Prepayment of loans due to advance payments or completion of amortized payments (§1965.224 of this subpart).

(b) Rent increases resulting from prepayment process. If rent increases are necessary due to the making of an equity loan to avert prepayment with or without a transfer, the procedures for tenant

notifications and comment will be followed as set forth in paragraph IV B of Exhibit C to Subpart C of Part 1930 of this chapter. The reason for the rent increase will be shown as "to meet the additional expense incurred in order to avert removal of (name of project) from the Rural Development program." (Revised 08-30-93, SPECIAL PN.)

§1965.205 Borrower request to prepay.

(a) Prior to initiating a formal prepayment request, borrowers considering prepaying their loans should meet with the applicable Rural Development Servicing Office to discuss the prepayment request and the requirements of this procedure. The borrower will be provided with Exhibit C of this subpart, to aid in completing the prepayment request package.

(b) At the meeting, the Servicing Office will inform the borrower that the project will be evaluated as unsubsidized conventional multi-family housing for the purposes of determining eligibility for incentives. An appraisal will be completed to determine if any equity exists in the project when valued as unsubsidized conventional multi-family housing. The components of the incentive offer, if any, will be dependent upon the amount of equity as follows:

(1) If the project has equity in excess of the borrower's initial investment, an equity loan and a combination of additional incentives may be considered;

(2) If no equity exists, but it can be shown that the project can be prepaid and operated successfully in the subject market, a combination of incentives not including an equity loan will be considered; or

(3) If, based upon the Servicing Office's knowledge of the market it appears likely the project would not qualify for an equity loan, the Servicing Office should so inform the borrower during the meeting. However, in no instance will the Servicing Office personnel discourage eligible borrowers from submitting a prepayment request, should the borrower so desire.

(c) Borrowers seeking to prepay MFH loans must submit a complete prepayment request to the Servicing Official at least 180 days in advance of the anticipated prepayment date (unless an exception is granted in accordance with §1965.215 (f)(2) of this subpart). A prepayment request will not be considered complete nor will the 180-day period begin until all of the following items have been submitted:

- (1) A written request to prepay the Rural Development loan on a specified date;
- (2) Complete and documented information necessary to prepare the prepayment report as outlined in Exhibit B of this subpart and to make the required determination needed to develop an incentive offer as outlined in Exhibit D of this subpart. Exhibit C of this subpart should be used as guidance for the documentation necessary to complete the request;
- (3) Documentation of the borrower's ability to prepay under the conditions specified in the prepayment request. Exhibit C of this subpart should be used as guidance for the documentation necessary;
- (4) Certification that the housing will continue to be administered in accordance with Fair Housing Act policies;
- (5) A statement from the borrower accepting restrictive-use provisions in the release documents if the borrower wishes to prepay the loan subject to restrictions; and
- (6) Evidence that actions required by any applicable State laws related to prepayment have been met.

§1965.206 Review of borrower prepayment request by Servicing Office.

The Servicing Office will determine whether the prepayment request is in conformance with §1965.205 of this subpart. Within 15 working days of receipt of a prepayment request, the Servicing Office will take the following actions:

- (a) Return of incomplete requests. If an incomplete request is submitted, the Servicing Official will return the request to the borrower specifying the additional information needed.
- (b) Receipt of complete requests. If a complete prepayment request is submitted, the Servicing Official will:
 - (1) Acknowledge the request. Send an acknowledgment letter to the borrower specifying the date of receipt of the complete request and informing the borrower that prepayment commitments should not be finalized until Rural Development issues a letter of approval.
 - (2) Notify current tenants. Notify each tenant household by Certified Mail, Return Receipt Requested, of the receipt of the prepayment request and prepare notices for the borrower to post

in public areas of the project. The notices are to remain posted until a final determination is made on the prepayment request or the prepayment offer is withdrawn. The Servicing Official will not wait to determine if submitted information is accurate or if the prepayment will be accepted or denied before notifying tenants. Rural Development Guide Letter 1965-E-2 (available in any Rural Development office) may be used as a guide. The following issues are to be addressed in the letter:

- (i) The borrower proposes to prepay the Rural Development loan and remove the housing from the Rural Development program if all prepayment requirements imposed by Rural Development are met;
- (ii) Rural Development's preliminary determination that the borrower's request to prepay will/will not be approved;
- (iii) The likely effect of the prepayment on tenants living at the project. Include:
 - (A) the level at which rents at the project are projected to be set if prepayment is accepted;
 - (B) restrictive-use provisions the borrower has agreed to maintain and the term of the restrictions;
 - (C) whether Section 8 or State or local subsidy will remain with the project; and
 - (D) whether the borrower has the option to terminate Section 8 assistance at the next renewal period (opt-out), and if so, when.
- (iv) Rural Development must make a determination as to whether tenants would be displaced due to increased rents, and whether there is alternative housing available in the community that is comparable in quality, size, location and rent structure before deciding to accept the prepayment;
- (v) Conditions under which prepayment will be accepted;
- (vi) A 30-day tenant comment period will be available for tenants to present comments concerning the proposed prepayment. Tenants will be allowed to review the information used by Rural Development to make the determinations regarding prepayment;

(vii) Tenants will be given immediate priority for other federally-financed housing if there will be any displacement;

(viii) Tenants will be kept apprised of all decisions reached regarding acceptance of the prepayment and action dates;

(ix) Tenants will be given the opportunity to submit evidence at any appeal hearing the borrower may request;

(x) If prepayment is accepted, tenants choosing to stay in their units and pay the higher rents, with or without Federal, State, or other subsidy, are entitled to do so, unless evicted for cause unrelated to prepayment; and

(xi) Any other information relevant to the case.

(3) Notify National Office. The Servicing Office is to notify the Rural Development State Office, who will notify the Assistant Administrator, Housing, Rural Development National Office, in writing using the format of Rural Development Guide Letter 1965-E-1 (available in any Rural Development office). National Office notification must be sent by the State Office within 20 working days of the receipt of a complete request by the Servicing Office.

(4) Notify other agencies. The Rural Development State and Servicing Offices, as appropriate, will notify other agencies of the borrower's intent to prepay the Rural Development loan. The agencies contacted will include nonprofit organizations; local, State, and Federal agencies; and public organizations who have expressed an interest in purchasing a project and who provide housing assistance to low- and moderate-income people. The interest list, compiled in accordance with §1965.203 of this subpart, is to be used in notifying organizations of the borrower's intent to prepay. Letters sent to the agencies will inform the organizations of the offer to prepay, the extent of any anticipated displacement, and the possibility of transfer with incentives or sale to a nonprofit organization or public agency. Organizations contacted will be advised that an offer to sell may be forthcoming. Generally, the Rural Development State Office will notify State and Federal agencies and the appropriate Servicing Office will notify local agencies.

(5) New tenant notification.

(i) The borrower will be required to submit for approval proposed language to be used as an addendum to leases for all tenants moving into the project while the prepayment request is pending. The language will specify the effect of the prepayment on the tenants if prepayment is accepted. The recommended language to be included in the leases is as follows:

"The mortgage on this project may be repaid to the Federal Government on or after (date). (At that time)/ (date restrictive-use provisions expire)/ (other relevant date), your rent may be raised to ____/ and/or you may be asked to move from this project."

(ii) The borrower will also be required to provide new tenants with copies of all letters sent to existing tenants advising them of the status of the prepayment. The Servicing Office will also send new tenants any additional correspondence sent to existing tenants, but will inform the new tenants that they will not be eligible for an LOPE.

(6) On-going tenant notification. The Servicing Office will periodically notify tenants of the status of the prepayment request and actions being taken. Tenant notifications are to continue until the loan is prepaid, an incentive or loan to a nonprofit is obligated, or the prepayment request is withdrawn. Notification will be sent to tenants as each decision is made or one year after the last notification, whichever is earlier.

§1965.207 Prohibition on prepayment for loans made on or after December 15, 1989, to build or acquire new units.

Loans made on or after December 15, 1989, to build or acquire new RRH units may not be prepaid for the life of the loan, even if the borrower is willing to sign restrictions agreeing to operate the project for low- and moderate-income people after prepayment. The prohibition and conditions for use are described in Subpart E of Part 1944 of this chapter.

§1965.208 Restrictive-use provisions related to LH projects with grants.

For LH projects with any size grant, no incentive will be offered since the grant agreement obligates the borrower to operate the housing for its intended use for a 50-year period.

§1965.209 Restrictive-use provisions after prepayment.

(a) Restrictive-use provisions protect tenants in prepaid projects from future rent increases that would create new or increased rent overburden. Restrictive-use provisions apply to all loans approved between December 21, 1979, and December 14, 1989, all subsequent loans approved on or after December 15, 1989, and those loans approved prior to December 21, 1979, subsequently made subject to restrictive-use provisions as a result of:

- (1) A servicing action;
- (2) Acceptance of prepayment incentives; or
- (3) Restrictions accepted as a condition of prepayment as specified in this subpart and Exhibits A-1 through A-4 of this subpart.

(b) The restrictions mandate that conditions of occupancy, rent, and charges other than rent be maintained so that the housing will continue to be affordable to the protected population of tenants. Priority for tenants entering the project after prepayment must continue to be for those tenants in the lowest income category in the protected population, if determined eligible for the units. Borrower responsibilities under restrictive-use provisions are discussed in greater detail in §1965.215 (e)(6) of this subpart.

§1965.210 Loans approved prior to December 15, 1989 - RHS actions when processing prepayment requests.

For loans approved prior to December 15, 1989, that have not subsequently accepted prepayment incentives, the Servicing Office or other designated office must evaluate the need for the housing to determine the level of incentives to be offered, including equity loans, and whether the prepayment may be legally accepted with or without restrictive-use provisions. A reasonable effort must be made to enter into an agreement with the borrower to maintain the housing for low-income use that takes into consideration the economic loss the borrower may suffer by foregoing prepayment. When developing an incentive offer, the Servicing Office or other designated office must first offer incentives other than equity loans, unless it is determined that alternative incentives are not adequate to provide a fair return to the borrower, prevent prepayment of the loan, or prevent displacement of the tenants. The guidance provided in §§1965.213 and 1965.214 and Exhibit E of this subpart will be used to determine the appropriate incentive package. Once an incentive offer has been accepted on a project, the project will be considered ineligible for future incentive offers until such time as the restrictive-use period associated with the incentive offer has expired. (Revised 05-07-97, SPECIAL PN.)

§1965.211 Evaluation of the borrower's ability to prepay the loan.

The borrower's ability to prepay the loan will be evaluated in accordance with Exhibit E of this subpart. If it is determined the borrower does not have the ability to finance the prepayment, the prepayment request will be denied. The borrower will be notified of the reasons for the decision and appeal rights will be given.

§1965.212 Appraisals.

To determine the appropriate incentives to offer a borrower, an appraisal must be completed. The purpose of the appraisal is to determine if the borrower's current equity in the project exceeds the initial investment. The project will be appraised as unsubsidized conventional multi-family housing. The effect on value of any hard and soft costs of conversion of the project from subsidized housing to unsubsidized conventional housing will be considered. Additionally, project reserve accounts and the present worth of any unexpired non-RHS project based tenant subsidies will be valued as assets of the project for inclusion in the appraisal. RD Instruction 1922-B (available in any Rural Development office) will be used for guidance in conducting multi-family housing appraisals. After receipt of the appraisal, the Servicing Official or other designated official will determine the amount of the equity loan, if any, the number of Rental Assistance (RA) units necessary, the amount of annual return on investment to be offered, and whether excess Section 8 rents may be released to the borrower, if applicable.

§1965.213 Offer of incentives to borrowers.

The Servicing Official must offer an incentive package to the borrower as an inducement to not prepay if the borrower's loan(s) is not subject to prohibitions on prepayment or the borrower has not previously accepted incentive offers on the project for which the associated restrictive-use period has not expired. If a prepayment incentive offer which includes an equity loan is accepted, the equity loan may be processed and closed with the current borrower or any eligible transferee.

(a) Availability of incentives. Incentives may be offered only if the restrictive period has expired for any RRH project loan entered into after December 21, 1979, but before December 15, 1987. (Added 05-07-97, SPECIAL PN.)

(b) Available incentives. One or more of the following incentives will be offered to the borrower. The amount of incentives will be determined in accordance with Exhibits D and E of this subpart: (Renumbered and Revised 05-07-97, SPECIAL PN.)

(1) Equity loans. In RRH projects, a subsequent loan may be offered for equity for the difference between the current unpaid

loan balance and a maximum of 90 percent of the project's value appraised as unsubsidized conventional housing. Equity loans may not be offered unless the Servicing Official determines that other incentives offered under this paragraph are not adequate to provide a fair return on the investment of the borrower, to prevent prepayment of the loan, or to prevent the displacement of project tenants. (Revised 05-07-97, SPECIAL PN.)

(2) Rental assistance. Additional RA will be offered if needed by current tenants if found necessary by a market determination of need. The number of RA units offered will be based upon:

(i) The increase in rent overburden that will be experienced by tenants, in the project as a result of the incentives offered. The Multiple Housing Tenant File System (MTFS) will be reviewed to determine the number of tenants that will be rent overburdened by the increase in rents resulting from any subsequent loan made for equity. The number of RA units offered will be equal to the number of tenants experiencing rent overburden; and/or

(ii) A change in the market increasing the need for affordable housing. This criteria will usually be used when the project is experiencing substantial vacancies due to market factors. Generally, if the incentive offer contains a substantial equity loan, it would be unlikely that this provision would be consistent with the determination that the project is located in a strong unsubsidized market.

(iii) Reamortizing the existing debt under the provisions of §1965.70 of Subpart B of this Part should be examined to determine if reamortization will lower existing debt service, thereby reducing tenant rent overburden and the need for additional RA.

(3) Increase the maximum annual return on investment.

(i) Borrower equity. The borrower's equity in the project may be increased. The new equity is the difference between the value of the project appraised as unsubsidized conventional housing in conjunction with the incentive loan (if offered) and the unpaid balances of all loans against the project, including the incentive loan. If no new appraisal is made, equity will be determined by subtracting the outstanding balances of all loans against the project from the value shown in the most recent RHS appraisal completed for the project prior to receipt of the prepayment request.

(ii) Rate of return. Borrowers not eligible to receive an equity loan but who are determined likely to prepay will be offered an incentive package which may include an increased rate of return. The rate to be offered will be the greater of the borrower's current rate established in the initial loan, or 2 percent above the 30-year Treasury Bond rate, rounded to the nearest 1/4 percent. The appropriate Treasury Bond rate will be determined from newspapers or available financial publications and will be the rate published for the first day of the month following receipt of the complete prepayment request. The rate of return for borrowers receiving equity loans will remain at the rate currently established in the initial loan.

(iii) Receipt of increased return. Regardless of any increased return on investment agreed to as part of the incentive offer, the actual withdrawal of the return remains subject to conditions specified in paragraph XII B of Exhibit B of Subpart C of Part 1930 of this chapter.

(4) Excess Section 8 rents. For projects with project-based Section 8 rents, the owner may be permitted to receive rents considered in excess of the amounts needed to meet annual project operating and maintenance, debt service, and reserve expenses. In conjunction with the acceptance of excess Section 8 rents as an incentive, the reserve account will be adjusted to reflect adequate funding for long-term repair, replacement and maintenance costs.

(5) Conversion or modification of interest credit. Convert full profit loans to limited profit Plan II loans or increase the interest subsidy for loans with Section 8 assistance to make contract rents more financially feasible. The conversion would be accomplished by changing the designation of the project to Plan II.

(c) Development of incentive package. (Renumbered 05-07-97, SPECIAL PN.)

(1) Borrowers requesting immediate conversion from low and moderate-income use. The required borrower information and criteria to be used in determining the incentives to offer, along with the steps to develop the incentive offer, are listed in Exhibits D and E of this subpart.

(2) Projects committed to low- and moderate-income use after prepayment by parties other than RHS. In accordance with Exhibits D and E of this subpart, incentives will be reduced in proportion to the length of time a project is committed to low- and moderate-income use after prepayment through requirements of parties other

than RHS. The commitment for extended use may be voluntary or required by legal restrictions on use. The effect on the value of the project will be taken into consideration during the appraisal process.

(3) Adjustment of project reserve accounts. The reserve account must be maintained in conformance with the requirements of paragraph XIII B 2 c of Exhibit B of Subpart C of Part 1930 of this chapter. At the time an incentive offer is developed, the maximum reserve amount should be adjusted to include the costs of any deferred maintenance items or expected long-term repair or replacement costs of the project.

(d) Letter offering incentives to borrowers. Within 20 days of the end of the tenant comment period, a letter will be sent to borrowers outlining the elements of the incentive offer developed in accordance with this section and Exhibits D and E of this subpart. The letter will include the following: (Renumbered 05-07-97, SPECIAL PN.)

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

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

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

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

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

§1965.213 (d) (Con.)

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

14A

(Added 05-07-97, SPECIAL PN)

(08-20-93) SPECIAL PN

§1965.213 (c) (Con.)

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

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

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

(8) Appropriation limitations may restrict available incentives each year. The actual receipt of the preceding incentives may not be forthcoming in the near future. However, the offer is binding on Rural Development. Acceptance of the incentive offer by the borrower will cause the request to be maintained on the waiting list for funding until obligated.

§1965.214 Offering and processing of incentives.

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

(b) Borrower rejects the incentive offer. If the borrower rejects the incentive offer within 30 calendar days, a determination of the continued need for the housing as subsidized housing will be made in accordance with §1965.215 (b) and Exhibit E of this subpart. Tenants will be notified that the borrower has rejected the incentive offer and that a decision will be made by Rural Development whether to accept the prepayment. The tenants will be informed of the factors used in making the decision.

(c) Borrower indicates acceptance of the incentive package. If the borrower indicates a willingness to accept an incentive package which includes an equity loan, a complete loan application in accordance with Exhibit A-11 of Subpart E of Part 1944 of this chapter will be required. If an appraisal of the property has not been completed as required in §1965.212 of this subpart, one will be made at this time in accordance with RD Instruction 1922-B (available in any Rural Development office). The Servicing Official will determine the feasibility of

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

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

(e) Notification that incentives are ready for funding. When the borrower indicates that the final incentive offer is acceptable, and the processing of the incentive application is complete, the Servicing Official will notify the State Office, which in turn will notify the National Office of all required information through use of Rural Development Guide Letter 1965-E-1 (available in any Rural Development office).

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

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

(f) Processing the incentives. When authorization to proceed is received, the Servicing Office will process the incentives, with or without a transfer and make the following amendments to the loan and RA agreements with the assistance of the Office of the General Counsel (OGC), as appropriate (NOTE: If the project is to be transferred at the time the incentive is processed, all obligations will be made to the transferee.):

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

(2) If a conversion of profit type is made, the procedures of paragraph IV A 2 d of Exhibit B of Subpart C of Part 1930 of this chapter will be followed. If the interest subsidy is increased, a new Form RD 1944-7, "Multiple Family Housing Interest Credit and Rental Assistance Agreement," will be executed. (Revised 08-30-93, SPECIAL PN.)

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

(4) Loans for equity will be made in accordance with Subpart E of Part 1944 of this chapter. In accordance with §1951.517 (b)(1) of Subpart K of Part 1951 of this chapter, the equity loan will be established as a Predetermined Amortization Schedule System (PASS) loan and all existing loans on the project will be converted to PASS. All assumptions and transfers will be processed in accordance with §1965.65 of Subpart B of this part. All existing project loans may be consolidated and reamortized in accordance with §§1965.68 and 1965.70 of Subpart B of this part, unless consolidation is not necessary to maintain feasibility of the project for the current tenants or reduce the level of monthly rental subsidies. All delinquent loans must be brought current, cost items paid in full, and project operating and reserve accounts brought current. All project operating and reserve accounts will remain at authorized levels during and after the closing of the incentive package, regardless of whether a transfer was included as part of the prepayment. All taxes, assessments and other liens must be prorated, brought current or paid in full as appropriate. Deferred maintenance identified in previous inspections must be performed before any equity may be received by the borrower or transferor, as applicable.

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

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

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

(b) Determining the need for housing.

(1) The Servicing Office or other designated office will review the following, using Exhibit E of this subpart as a guide:

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

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

(c) Conditions under which prepayment may be approved. In certain instances, prepayment may be approved after a borrower has rejected the incentive offer. If the decision is made to approve a prepayment request, restrictive-use provisions will be inserted in the deed, deed of release or satisfaction, if the project is determined to be needed under the provisions of the following subparagraphs (1)(i) and (ii). The borrower will also execute the applicable restrictive-use

agreement. If the project has Section 8 assistance, the local HUD Area Office must be notified. To determine whether a prepayment offer can be approved, the following decision steps must be followed by the Servicing Office:

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

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

(A) Maintain the housing for low- and moderate-income people for a minimum period of 20 years from the date of the closing of the last loan or servicing action. At the end of the restrictive-use period, offer to sell the housing to a qualified nonprofit organization or public agency in accordance with paragraph (e)(9) of this section and paragraph (A) of Exhibit A-4 of this subpart; or

(B) If 20 years from the date of the closing of the last loan or servicing action has already lapsed, offer to sell the housing to a qualified nonprofit organization or public agency in accordance with paragraph (e)(9) of this section and paragraph (B) of Exhibit A-4 of this subpart;

(ii) If the Servicing Office determines that housing opportunities to minorities will not be materially affected as a result of prepayment, but that there is an inadequate supply of safe, decent, and affordable rental housing within the market area, the borrower may prepay if the borrower agrees to the following restrictions and inclusion of the applicable restrictive-use language found in paragraph (C) of Exhibit A-4 of this subpart and agrees to execute the Restrictive-Use Agreement found at Exhibit G-4 of this subpart:

Maintain the housing for current eligible tenants in occupancy as of the date of the prepayment for the life of the project or until the current tenants are no longer eligible for the housing under Rural Development regulations, or the tenants choose to vacate of their own will. The owner will ensure the tenants will not be displaced due to a change in the use of the housing, an increase in the rental or other charges as a result of the prepayment, or a decrease in income. Existing tenants are protected to ensure that none experience new or increased rent overburden until each voluntarily moves from the project.

(iii) If the Servicing Office determines that housing opportunities to minorities will not be materially affected as a result of prepayment, and that there is an adequate supply of safe, decent, and affordable rental housing within the market area for the foreseeable future, the borrower may prepay without restrictions. The provisions of paragraph (c)(3) of this section will apply.

(2) The loan is subject to restrictive-use provisions and the borrower agrees to continue to adhere to the provisions after prepayment. In accordance with Exhibit A-3 of this subpart, the borrower agrees to continue to maintain the housing in accordance with the restrictions already in effect. The borrower must also agree to execute the Restrictive-Use Agreement found at Exhibit G-1 to this Subpart.

(3) It is determined by Rural Development that restrictions are not needed. If actions in accordance with §1965.206 (b)(2) of this subpart and paragraph (e)(3) of this section have been taken to ensure that alternative rental housing will be made available to each tenant upon displacement, the prepayment may be accepted without restrictions if:

(i) For loans not subject to restrictive-use provisions nor prohibition on prepayment, it is determined by Rural Development that housing opportunities for minorities will not be materially affected as a result of the prepayment. Exhibit E of this subpart will be used to assist in making this determination.

(ii) For loans subject to restrictive-use provisions, it is determined Federal or other financial assistance provided to residents will no longer be provided, due to no fault, action or lack of action on the part of the

borrower. If a borrower applies to have restrictions removed after prepayment because Federal or other financial assistance will no longer be provided, the restrictions will be released only if the loss of Federal or other financial assistance could not have been reasonably anticipated at the time of acceptance of the prepayment.

(iii) Regardless of whether or not the loan is subject to restrictive-use provisions, a determination is made by Rural Development that there is no longer a need for the housing (in accordance with Exhibit E of this subpart).

(4) Projects with both LH loans and grants. If a prepayment is accepted on an LH loan for a project which also has an LH grant, restrictive-use provisions for the project may be released only under the conditions specified in the Grant Agreement.

(5) Documentation. Thorough documentation of the reasons and decision to approve prepayment will be entered in the casefile and appended to the prepayment report. Any additional materials used to reach the decision will be included in the casefile.

(d) Borrower notification of approval or disapproval of prepayment. The Servicing Office or other designated office will notify the borrower as to whether the prepayment has been approved or disapproved within:

(1) 15 days of the borrower's rejection of an incentive offer for loans not subject to restrictive-use provisions nor prohibited from prepayment; or

(2) 60 days of a complete prepayment request by a borrower subject to restrictive-use provisions.

(e) Processing acceptance of prepayment. After approval of a prepayment, the following actions must be taken:

(1) Completion of the prepayment report and notification of the National Office. If prepayment is approved, the Servicing Office or other designated office will complete a prepayment report in the format of Exhibit B of this subpart, and submit the report with all documentation on each prepaid loan to the State Director or other designated official for indefinite retention. Any information for the report supplied by the borrower must include documentation and verification by the Servicing Office. For prepayment of on-farm labor housing units, only items relevant to the on-farm units need be

completed. The State Office will notify the National Office in the format of Rural Development Guide Letter 1965-E-1 (available in any Rural Development office) indicating that the prepayment has been accepted. A copy of the prepayment report will be included in the materials forwarded to the National Office.

(2) Notify interested agencies. All interested agencies notified in accordance with §1965.206 (b)(4) of this subpart will be notified of the decision to accept the prepayment. Agencies which may aid displaced tenants will be advised of any anticipated displacement, the level at which post-prepayment rents will be set and any restrictive-use provisions which will remain in the deeds of release. Other agencies will be advised that no offer to sell will be made.

(3) Notify tenants. The Servicing Office will send an additional notice to tenants at least 60 days prior to the prepayment. The prepayment may not take place less than 60 days from the tenant notification or 180 days from the initial notification unless an exception is allowed in accordance with paragraph (f)(2) of this section. Tenant notices will be sent CERTIFIED MAIL to each tenant and also posted at the project in public areas. Copies of the notice will remain posted at the project until the prepayment is accepted and all existing tenants voluntarily vacate their units. The notice and attachments will contain all of the following information appropriate for the prepayment action and any other relevant information necessary to allow tenants to make informed choices (Rural Development Guide Letter 1965-E-3 (available in any Rural Development office) and attachments are provided as a guide for this purpose). The notice will contain the following applicable statements and information:

(i) All relevant information concerning the prepayment has been reviewed and Rural Development has decided to accept the prepayment on (date).

(ii) Fully detailed reason(s) describing why the prepayment was approved. Also include the reasons for acceptance of the prepayment in less than 180 days (if applicable).

(iii) At the time of prepayment, rents are expected to be \$_____.

(iv) The tenant will be affected by this change on (date the tenant's current lease expires, date of the prepayment, or other mandated date, whichever is later.)

(v) (The following statement should be included if the loan is being prepaid but will retain restrictive-use provisions.) All current eligible tenants may continue to occupy the housing until the tenants decide to voluntarily move, the tenants no longer meet eligibility requirements or the restrictive-use provisions expire on (insert expiration date), whichever is sooner. The rents of current eligible tenants may not be increased as a result of current owner actions to exceed levels which create new or increased rent overburden as established by Rural Development regulations, in accordance with Title V of the Housing Act of 1949, during the period of eligible tenant occupancy during the restricted period. However, declines in tenant income shall not require corresponding reductions in rent levels. A tenant, or those wishing to occupy the housing (if applicable), as well as the Government, may seek enforcement of the provisions. Annual income recertifications will continue to be required in order to protect eligible tenant rents. The preceding requirements are binding on the current owner and any successors in interest.

(vi) (The following statement should be included if the project has project-based Section 8 rents.) Eligible tenant rents will continue to be subsidized by the Department of Housing and Urban Development (HUD) until (insert the date the Section 8 contract expires). (If applicable, include the following) If Section 8 subsidies are not continued after (insert the date the Section 8 contract expires), the owner of the project will continue eligible tenant rents at levels that will not create or increase rent overburden until (insert date the restrictive-use period expires). However, declines in tenant income shall not require corresponding reductions in rent levels.

(vii) (The following statement should be included if project-based HUD Section 8 or other subsidies will expire prior to 2 years after the prepayment.) Eligible tenants currently residing in the project who may subsequently be displaced or experience rent overburden due to the prepayment may qualify for certain protections. The following protections are available to eligible tenants who believe they have experienced displacement or rent overburden:

(A) Letters of Priority Entitlement (LOPE) to other Rural Development housing. Tenants may apply for LOPEs up until the day the tenants' rents are scheduled to be increased. These letters will be valid for 60 days after issuance. All LOPEs will be issued in accordance with Title VI of the Civil Rights Act of 1964, as codified in Subpart E of Part 1901 of this chapter.

(B) Tenants currently receiving rental assistance (RA) will be able to continue to receive RA if they move to other Rural Development financed housing in which they are eligible for RA.

(C) Tenants choosing to stay in their units after prepayment and pay higher rents, with or without Federal, State or other subsidy, are entitled to do so, unless evicted for a cause unrelated to prepayment.

(viii) Eligible tenants residing in prepaying projects will also be sent:

(A) A list of project names, locations, number of apartments, senior citizen or family designation, and unit sizes of other Rural Development projects in the market area.

(B) The names and locations of other subsidized housing; and

(C) Addresses and telephone numbers of the applicable HUD area office, and other agencies which administer housing subsidies or aid in relocation anywhere in the market area.

(ix) Tenants will be allowed to review the information used to make any of the determinations regarding acceptance of the prepayment, prepayment rent increases and alternatives to prepayment.

(4) Issue LOPEs. Upon request by a tenant for an LOPE, the Servicing Official will prepare the letter and forward the letter to the tenant (Rural Development Guide Letter 1965-E-4 (available in any Rural Development office) may be used as a guide). The LOPE, which is to be addressed to Rural Development borrowers, will include:

(i) A tenant with an LOPE has 60 days to apply in writing to other Rural Development projects in any location in the country.

(ii) A tenant with an LOPE is to be placed at the top of all waiting lists in Rural Development projects applied to, which have appropriate units the tenant qualifies for. Such tenants will follow only those tenants with LOPEs who were previously placed on the waiting list. Handicapped tenants on the list for handicapped units which have appropriate design features will maintain priority over non-handicapped tenants with LOPEs.

(iii) The tenant will not be removed from the priority position on the waiting list until the tenant moves to a unit utilizing an LOPE or is purged from the waiting list in accordance with Exhibit B of Subpart C of Part 1930 of this chapter.

(iv) If the tenant holding the LOPE is receiving RA in the prepaying project, and uses the LOPE to move to a Plan II project for which the tenant would qualify for RA, the RA will be transferred to the project to which the tenant moves. The RA will be reassigned to that tenant without competition. RA brought to a project by a tenant from a prepaying project will remain at the receiving project if the tenant subsequently moves to another Rural Development project.

(v) If the tenant's current security deposit of (a specified amount) has not been released by the prepaying project by the date a tenant moves, the new landlord will be encouraged to defer collection of the new security deposit until the tenant's current deposit is refunded, even if the date of release is after the date the tenant occupies the new unit.

(5) Approval of tenant leases. Prior to accepting the prepayment, the Servicing Office will also review and approve a modified tenant lease to be used for all protected tenants during any applicable restrictive-use period. This lease will explain the restrictive-use provisions, who is protected, describe the limits on rents during the period of restrictions, explain that no tenant can have a lease renewal denied for other than "good cause" (which cannot include income level), that charges, rules and regulations, and services may not change substantially from those applicable at present, and explain all other provisions necessary to protect affected tenants including Fair Housing Act Amendment provisions. The lease shall retain provisions for annual income certification. The approved lease, with signatures of both the borrower and Rural Development, will be

maintained by the Servicing Office until expiration of the restrictive-use period, although Rural Development will not be responsible for monitoring compliance. If the owner wishes to make subsequent modifications to the lease, Rural Development will review the lease to ensure that none of the modifications are contrary to the intent of this regulation.

(6) Borrower responsibilities after prepayment. Prior to accepting the prepayment, the Servicing Official will meet with the borrower to discuss borrower obligations under restrictive-use and fair housing provisions remaining in effect after the prepayment is accepted. The Servicing Official will review the applicable restrictive-use requirements, if any, in detail with the borrower. In particular, the Servicing Official will explain that the applicable provisions of Subpart C of Part 1930 of this chapter specific to tenant rights and relations shall remain in effect during the restrictive-use period. Owners of prepaid projects will be responsible for ensuring that rental procedures, verification and certification of income and/or employment, lease agreements, rent or occupancy charges, and termination and eviction remain consistent with the provisions set forth in Subpart C of Part 1930 of this chapter, and also adhere to applicable local, State, and Federal laws. The borrower will be informed that it is the borrower's responsibility to obtain Rural Development concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of the prepayment prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations. Documentation, including annual income recertifications, shall be maintained to evidence compliance in the event there is a future complaint or audit. The former borrower must be able to document that acceptable waiting lists were maintained, units were rented to appropriate tenants, and rents were established at appropriate levels in accordance with the applicable restrictive-use provisions. The former borrower must also agree to make the documentation available for Government inspection upon request. The former borrower and any successors in interest will be required to provide the following signed and dated certification to the applicable Servicing Office or other designated office within 30 days of the beginning of each calendar year for the full period of the restrictive-use provisions:

(Name of owner) certifies that (name of project) is being operated in compliance with the restrictive-use provisions contained in (applicable release document) and the Restrictive-Use Agreement which set forth certain

requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable Rural Development regulations. (Name of borrower) understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the Government to seek enforcement of the provisions.

The borrower must also agree to execute the applicable Restrictive-Use Agreement found at Exhibits G-1 thru 4 to this Subpart.

(7) Servicing Office responsibilities after prepayment. Upon prepayment, the Servicing Office will send a notice to all tenants informing the tenants of the acceptance of the prepayment. The borrower will be notified that a copy of the notice must be posted and maintained in public areas in the project until all restrictive-use provisions expire. Rural Development Guide Letter 1965-E-5 (available in any Rural Development office) will be used for the notice. The Servicing Office or other designated office will monitor receipt of the certification referred to in paragraph (e)(6) of this section and maintain case files on the prepaid project until such time as the restrictive-use provisions expire. The Servicing Office or other designated office will take such actions as necessary to follow-up on receipt of the annual certifications from each prepaid borrower. If the Servicing Office is unable to obtain borrower cooperation, the Servicing Office shall refer the case to the State Office for transmittal to the National Office for further servicing guidance and/or enforcement actions.

(8) Payment in full and release of security. Prior to releasing security instruments, Rural Development must be certain that full payment has been received. Security instruments will be released in accordance with §1965.90 (b) of Subpart B of Part 1965 of this chapter.

(9) Sale to nonprofit organization or public agency at end of restrictive-use period. Borrowers who are subject to the restrictive-use provisions contained in paragraph (A) or (B) of Exhibit A-4 of this subpart are required to attempt to sell the project to a nonprofit organization or public agency at the end of the restrictive-use period. Advertising the project for sale will be carried out in the same manner and time period as required for sale to nonprofits or public agencies within the

program as stated in §1965.216 (b), (c), and (d) of this subpart. Advertising will be conducted for a minimum of 180 days beginning at least 6 months prior to the expiration of the restrictive-use period. If 6 months do not remain between the date of prepayment and the end of the restrictive-use period the project will be advertised for sale for a minimum of 180 days.

(f) Denial, postponement, waiver, or withdrawal of prepayment request.

(1) Denial of prepayment request. Borrowers for whom there is no prohibition on prepayment will be denied a request to prepay if the conditions required for prepayment stated in paragraph (c) of this section and Exhibit E of this subpart cannot be met, or if information submitted with the prepayment request cannot be verified. If the borrower is denied a request to prepay, the Servicing Official will send a letter to the borrower stating the reasons for the denial and the right to appeal the rejection, in accordance with Subpart B of Part 1900 of this chapter and §§1965.213 and 1965.215 and Exhibits D and E of this subpart. The letter denying the prepayment request may revise the original incentive offer if new information documenting the loss the borrower may suffer if not allowed to prepay has been brought to the attention of the Servicing Office. If a letter is sent offering a revised incentive, rights to appeal the denial will not be included.

(2) Postponement of prepayment requests. Prepayment requests will be denied if the request was received less than 180 days in advance of the projected prepayment date unless the Servicing Office determines that there is sufficient time to consider tenant comments, verify information submitted with the prepayment report, and verify that all tenant leases are extended for a 180-day period from the date of the prepayment request and include current rents and conditions. Prepayment will be postponed if necessary to allow sufficient time for the second tenant notification to be sent at least 60 days prior to the prepayment, unless all tenant leases are extended to the end of the 60 days, and at least 30 days has passed since the first notification letters were sent. The extension of tenant leases does not substitute for the insertion of restrictive-use provisions in the release documents or for allowing sufficient time for tenant comments.

(3) Withdrawal or cancellation of prepayment requests. Prepayment authorization will be cancelled if the prepayment is not received within 180 days of the final approval of the prepayment.

(g) Borrower appeals of prepayment disapproval. The borrower may appeal the decision to deny prepayment without restrictive-use provisions within 30 days of the receipt of the rejection, in accordance with Subpart B of Part 1900 of this chapter. The incentive offer may be appealed at the same time if the borrower chooses. Tenants will be notified if a borrower appeal is pending, given the right to send written testimony to the appeal officer, and have one representative at the appeal hearing. If the decision to deny prepayment is upheld or the incentive offer is modified, the borrower will be given an additional 30 days to respond to the incentive offer. Based upon the borrower response and whether the loan is subject to restrictive-use provisions, the Servicing Office will act in accordance with appropriate sections of this subpart. Borrowers subject to restrictive-use provisions will not be granted appeal rights.

§1965.216 Borrower not subject to restrictive-use provisions nor prohibition on prepayment, no incentive agreement is reached and prepayment cannot be accepted.

In instances where the borrower is not subject to restrictive-use provisions and no incentive agreement can be reached between Rural Development and the borrower, and the prepayment cannot be accepted under §1965.215 and Exhibit E of this subpart because a need remains for the housing, the borrower will be required to offer to sell the project to a nonprofit organization or public agency. The following steps will be taken:

(a) Determination of fair market value. Within 60 days of the termination of any appeals or the decision to deny prepayment if no appeal was requested, the fair market value of the project as unsubsidized conventional housing will be determined. The value arrived at will result from two appraisals. One appraisal will be the appraisal contracted and paid for by Rural Development that was used to establish the incentives previously offered. The second appraisal will be obtained and paid for by the borrower. Both appraisals will be conducted by qualified independent appraisers in accordance with RD Instruction 1922-B (available in any Rural Development office). If the fair market values arrived at are within 10 percent of each other, the Servicing Office and the borrower will negotiate to arrive at a mutually acceptable value. If the values differ by more than 10 percent, the independent appraisers will be asked to review their appraisals to determine if the values can be reconciled to within 10 percent. If Rural Development and the borrower are unable to negotiate a mutually acceptable value or the appraisers are unable to reconcile their appraisals within 30 days of the completion of the appraisals, the State Office and the borrower will jointly select a third

independent qualified appraiser whose appraisal will be binding on Rural Development and the borrower. The third appraisal will be completed within 60 days of selection of the appraiser. The cost of the third appraisal shall be divided evenly between Rural Development and the borrower.

(b) Efforts to market and sell the project to nonprofit organizations or public agencies. Once the fair market value of the project has been established, the borrower is to attempt to market the project to nonprofit organizations and public agencies. The following actions are to take place:

(1) The Servicing Official is to provide the borrower with a list of nonprofit organizations and public agencies which have notified Rural Development of their interest in purchasing projects that are attempting to prepay. The list will include nonprofit organizations and public agencies that have notified the Rural Development Servicing, State, and National Offices of their interest.

(2) The Servicing Official will instruct the borrower to contact each nonprofit organization and public agency on the list within 10 days of establishing project fair market value. The sequence of contacting nonprofit organizations and public agencies is set forth in paragraphs (b)(3)(i) and (ii) of this section. Materials notifying nonprofit organizations and public agencies of the project's availability will include sufficient information regarding the project and its operation for interested purchasers to make an informed decision. If an interested purchaser requests additional information concerning the project, the borrower shall promptly provide the requested materials.

(3) 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. However, if the purchaser is determined to be ineligible, the borrower must resume advertising until a minimum of 180 days has passed. The borrower may satisfy the 180-day requirement by continuing advertising and sales efforts during the eligibility review of an interested purchaser. If additional offers are received during this time period, the offers will be reserved as back-up offers until the eligibility determination of the initial purchaser is completed.

(i) Sales preference to local nonprofit organizations or public agencies. The borrower will first advertise the project for sale to qualified local nonprofit organizations

or public agencies as defined in §1965.202 of this subpart. The Servicing Official will be responsible for determining that all appropriate means for contacting such organizations have been utilized including local media, and all necessary information provided. Exclusive advertising to local nonprofit organizations and public agencies must continue for a minimum of 60 days. If more than one qualified nonprofit corporation or public agency submits an offer to purchase the project, a local nonprofit organization or public agency must be given preference over a regional or nationwide organization, regardless of when offers to purchase are received.

(ii) Advertising to regional or nationwide organizations. If no qualified local nonprofit organization or public agency is found to purchase the housing within the first 60 days, the Servicing Official will authorize the borrower to advertise for an existing qualified national or regional nonprofit organization to purchase the housing. Advertising must begin between 60 and 120 days after advertising to local organizations began. Advertisements will be placed, as appropriate, in national housing publications and other media determined appropriate by the State Office or other designated office, including those serving minority groups exclusively.

(c) Qualifications of nonprofit borrower to purchase. Notwithstanding the requirements of §1944.211 (a)(10) of Subpart E of Part 1944 of this chapter, nonprofit organizations for the purpose of this paragraph need not be broadly-based (unless qualifying as a local nonprofit organization as defined in §1965.202 of this subpart) nor organized solely to provide housing. Nonprofit organizations determined qualified to buy the housing through this procedure must:

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

(2) Agree that no subsequent transfer of the housing and related facilities will be permitted during the remaining useful life of the housing and related facilities unless the Rural Development Administrator determines that the transfer will further the provision of housing and related facilities for low-income families or persons, or there is no longer a need for such housing and related facilities. Generally, transfers between

qualified nonprofit organizations and/or public agencies will be acceptable. However, under no condition will a transfer be approved to an entity in which the nonprofit transferor or a member of the nonprofit entity holds an ownership interest.

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

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

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

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

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

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

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

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

- (1) Local nonprofit organizations and public agencies have priority over regional and national nonprofit organizations and public agencies;
- (2) Nonprofit organizations and public agencies with the most successful experience in developing and managing subsidized housing; and
- (3) Nonprofit organizations and public agencies with the longest experience in developing and managing subsidized housing.

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

(a) Determining eligibility. After an option to purchase is signed between a borrower and nonprofit corporation or public agency, the purchasing organization will file a complete application in accordance with §1965.65 (f) of Subpart B of this part. Rural Development will make a determination of the eligibility of the borrower and feasibility of the proposed transfer and subsequent loan. Consolidation and reamortization of the loans will be considered when a transfer takes place.

(b) Appeal rights when a purchaser is not selected. If a nonprofit organization or public agency is not accepted by Rural Development to purchase the project because the purchaser is found to be ineligible, the transfer is found to be not feasible or because the organization has lower priority than another applicant in accordance with §1965.216 (b), (c), or (d) of this subpart, appeal rights will be given to the applicant organization in accordance with Subpart B of Part 1900 of this chapter.

(c) Authorization for transfer. When the transfer and loan(s) are ready to be obligated, the National Office will be notified in the format of Rural Development Guide Letter 1965-E-1 (available in any Rural Development office). If the loan will exceed the State Director's approval authority, the entire case file shall be sent to the National Office for review. The National Office will give approval authority and authorize funding for purchase of projects which have complied with the provisions outlined in this section. Subject to the nationwide maximum funding allowed, the authorizations will be issued in date order the complete prepayment request was received by the Servicing Office.

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

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

(i) A loan sufficient to enable the nonprofit organization or public agency to purchase a project at the fair market value;

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

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

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

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

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

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

(A) The policies and regulations contained in Subpart Q of Part 1940 apply to grantees under this subpart. (Renumbered 07-31-96, PN 264.)

(B) The grantee will retain records for three years from the date Standard Form (SF)-269A, "Financial Status Report," is submitted. The records will be accessible to the Agency and other Federal officials in accordance with 7 CFR part 3015. (Renumbered 07-31-96, PN 264.)

(C) Annual audits will be required if the grantee has received more than \$25,000 of Federal assistance in the year in which the grant funds were received. The audits will be due 13 months after the end of the fiscal year in which funds were received. (Renumbered 07-31-96, PN 264.)

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

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

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

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

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

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

(D) If less than \$10,000 is advanced or reimbursed at the time of submittal of the grant application package and the applicant expects that further advances or reimbursements may be needed, additional funds may be requested so long as the total advanced or reimbursed does not exceed \$10,000. SF-270 will be used to request additional advances or requests for reimbursement. If advance funds are requested, the amount requested may not exceed the amount the grantee expects to use during the 30 days following receipt of the advance. The final draw advance or request for reimbursement shall not be later than the closing date of the transfer and loan and shall be submitted on SF-270;

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

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

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

(iv) Processing grants. The following actions will be taken by Rural Development when a grant application is received:

(A) The Rural Development Approval Official will review each grant application package for the amount authorized. The Rural Development Approval Official will execute and distribute Form RD1944-51, "Multiple Family Housing Obligation Fund Analysis," in accordance with the Forms Manual Insert;

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

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

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

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

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

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

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

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

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

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

(f) Rental subsidies. No transfer will be approved unless there is sufficient RA available for every tenant who would experience rent overburden after the transfer, assuming that all units vacated will continue to be filled by very low or low-income tenants. Sufficient debt forgiveness RA (DFRA), must be authorized for obligation in accordance with paragraph V C of Exhibit E of Subpart C of Part 1930 of this chapter, when authorization to process the loan is given. The National Office will advise the State Office whether RA will be transferred with the project or if RA will be suspended and transferred to another project within the State when authorization to process the transfer is given. If the latter is chosen, all RA needs at the project will be met with DFRA.

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

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

(a) No offer to purchase.

(1) At least 180 days have passed since the offer to sell to a local nonprofit organization or public agency began and the advertisement continued for the full 180 days;

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

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

(4) No qualified nonprofit organization has made a bona fide offer to purchase the property for the appraised fair market value. (NOTE: An offer will be considered to be bona fide if there is a written offer to purchase the project at fair market value, even if the offer is contingent on Rural Development funding when no funding is available.); and

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

(b) Funds are not available. A borrower may be allowed to prepay even if an eligible nonprofit organization or public agency has offered to purchase the project if the following lack of funding exists. All funds for funding nonprofit organizations and public agencies for the purpose of purchasing any project in the country must have been exhausted for a period of 15 months. This determination is not related to the length of time the particular project has been on the waiting list. The National Office will periodically advise State Offices of the status of the waiting list and the availability of funds.

§1965.219 Rural Development processing of prepayment.

When a prepayment is accepted in accordance with §1965.218 of this subpart, the Servicing Office will process the prepayment in accordance with the applicable provisions of §1965.215 (e)(1), (2), (3), (4), and (8) of this subpart.

§§1965.220 - 1965.221 [Reserved]

§1965.222 Violations of restrictive-use provisions.

Should the Servicing Office receive a written complaint or become otherwise aware of a violation of the prepayment restrictive-use provisions set out in Exhibit A-3 or A-4 of this subpart or the Restrictive-Use Agreements set out in Exhibits G-1 thru 4 of this subpart by the owner of a previously Rural Development-financed project, the following actions will be taken:

(a) The complainants will be informed that they may pursue enforcement through the courts.

(b) The Servicing Office or other designated office will conduct a preliminary evaluation of the complaint. This evaluation may necessitate the gathering of additional information. Should the preliminary evaluation indicate the complaint is not valid, the complainant will be so informed. Should the preliminary evaluation indicate the complaint is or may be valid, then the complaint, all facts gathered, an evaluation report, and Servicing Office recommendation will be forwarded to the State Office or other designated office for review and action.

(c) If the State Office or other designated office determines that a violation of the restrictive-use provisions has likely occurred, the Administrator will be notified. The State Office or other designated office will ask the OGC to provide advice in such cases and, if appropriate, refer the case to the Department of Justice or other appropriate agency for enforcement. A copy of any complaint requesting enforcement of the restrictive-use provisions submitted to the Department of Justice or other appropriate agency should also be forwarded to the Administrator.

§1965.223 Relationship with acceleration of accounts, bankruptcy, foreclosure, or inventory properties.

(a) Acceleration of accounts. Accelerations of accounts will be prepared in accordance with Rural Development Guide Letters 1955-A-1 or 1955-A-2 (available in any Rural Development office). Any Rural Development loan made after December 21, 1979, prepaid in response to an acceleration of the account will be required to have the appropriate restrictive-use language inserted in the deed of release or satisfaction, as appropriate upon the advice of OGC. Any Rural Development loan made on or before December 21, 1979, with payment-in-full made in response to an acceleration of the account, will be required to have the appropriate restrictive-use language inserted on the instrument recorded in the real estate records, as appropriate upon the advice of OGC, only if the payment occurs within 1 year after the borrower had initiated a request to prepay the loan(s). The restrictions used will be those contained in Exhibit A-3 of this subpart for loans subject to restrictive-use provisions or prohibited from prepaying. The restrictive-use period will extend for the remaining term of the accelerated loan or length of the existing restrictive-use period, whichever is applicable.

(b) Foreclosure. If a project is sold out of the program at a foreclosure sale, the restrictive-use provisions will be retained and added to the deed in accordance with Exhibit A-3 or A-4 of this subpart and paragraph (a) of this section.

(c) Inventory property. Restrictive-use provisions will be retained for projects taken into or sold out of Rural Development inventory in accordance with Exhibits A-1 through A-4 of this subpart and paragraph (a) of this section, unless a determination is made in accordance with §1965.215 and Exhibit E of this subpart that the restrictions may be released or that the property is determined non-program property. Tenants will receive all appropriate notifications as they would for prepaying projects not being accelerated.

(d) Bankruptcy. Bankruptcy proceedings will have no effect on contractual requirement for restrictive-use.

§1965.224 Prepayment of loans caused by advance payments on the account.

If the loan on a project, in which the last loan to build or acquire new units was obligated prior to December 15, 1989, reaches or falls below six remaining payments due to borrower voluntary advance payments or mandatory extra payments required by Rural Development regulation or law, the borrower will be notified that the final payment on the account cannot be accepted unless a prepayment request is made. Rural Development will inform the borrower that, by law, prepayment regulations must be followed for all loans requesting prepayment subsequent to enactment of the law. The borrower will be required to submit all applicable information required by §1965.205 of this subpart and complete all applicable actions required by this subpart before a final payment can be accepted.

§§1965.225 - 1965.248 [Reserved]

§1965.249 Exception authority.

The Administrator may, in individual cases, make an exception to any requirements of this subpart not required by the authorizing statute if the Administrator finds that application of such requirement would adversely affect the interest of the Government, adversely affect the accomplishment of the purposes of the RRH or LH programs, or result in undue hardship on the tenants by applying the requirements. The Administrator may exercise the authority at the request of the State Director. The State Director will submit the request supported by data that demonstrates the adverse impact, citing the particular requirement involved and recommending proper alternative course(s) of action, and outlining how the adverse impact could be mitigated. Exception to any requirement may also be initiated by the Assistant Administrator for Housing.

RD Instruction 1965-E

§1965.250 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575-0155. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 5 hours per response, with an average of 1.3 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575-0155), Washington, DC 20503.

Attachments: Exhibits A-1, A-2, A-3, A-4, B, C, D, D-1, E, F, G-1, G-2, G-3, and G-4

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Required Clauses for Active Borrowers With
Projects Subject to Restrictive-Use Provisions as a
Result of Specific Loan Making or Loan Servicing Actions

The following Multi-Family Housing projects are subject to restrictive-use provisions as set forth in their loan documents or security instruments:

- (a) All loans approved between December 21, 1979, and December 15, 1989;
- (b) Subsequent loans not made to build or acquire new units approved on or after December 15, 1989;
- (c) Any loans approved prior to December 21, 1979, and subsequently made subject to restrictive-use provisions due to a servicing action (e.g., transfer, reamortization, consolidation) as described in Subpart B of Part 1965 of this chapter, or an incentive to deter prepayment of the loan as described in this subpart.

All loans or servicing actions meeting the above criteria with prepayment incentives obligated or approved after the effective date of this regulation, will be subject to the following restriction. The restriction will be inserted in the deed, conveyance instrument, loan agreement/resolution, assumption agreement, interest credit agreement, or reamortization agreement, as appropriate. The restrictions are applicable for a term of 20 years from the date on which the last loan was closed or made subject to such restrictions as a result of a servicing action or incentive to not prepay.

"The borrower and any successors in interest agree to use the housing for the purpose of housing people eligible for occupancy as provided in Section 514 or Section 515 of Title V of the Housing Act of 1949, as amended, and Rural Development regulations then extant during this 20 year period beginning (the date the last loan on the project is obligated, or date the project was last made subject to the prepayment restrictive-use provisions as a result of servicing actions or incentive to not prepay the loan, authorized under this subpart or other subparts). Until (date), no eligible person occupying the housing shall be required to vacate, or any eligible person wishing to occupy shall be denied occupancy without cause. The borrower will be released from these obligations before that date only when the Government determines that there is no longer a need for such housing, or that such other financial assistance provided the residents of such housing will no longer be provided due to no fault, action or lack of action on the part of the borrower. A tenant or individual wishing to occupy the housing may seek enforcement of this provision, as well as the Government."

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Required Clauses for Projects Made Subject to
Restrictive-use Provisions When a Loan is Transferred
to a Nonprofit Organization or Public Agency
to Avert Prepayment

Multi-Family Housing projects made subject to restrictive-use provisions because of a transfer and subsequent loan to a nonprofit organization or public agency in order to avert prepayment of the loan as described in this subpart are subject to restrictions which are set forth in the loan instruments or security agreements. Loans meeting the preceding conditions with prepayment incentives obligated after the effective date of this regulation will be required to have the following restriction inserted in the deed, conveyance instrument, loan resolution, and assumption agreement, as applicable:

"The borrower and any successors in interest agree to use the housing for the purpose of housing very low- and low-income people eligible for occupancy as provided in Rural Development regulations then extant during the remaining useful life of the project. A tenant or person wishing to occupy the housing may seek enforcement of this provision as well as the Government. Throughout the remaining useful life of this project, no eligible person occupying or wishing to occupy the housing shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be set to meet these conditions. The borrower will be released during such period from these obligations only when the Government determines that there is no longer a need for such housing, or 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 the borrower."

The restrictions are intended to protect only very low- and low-income individuals and families for the remaining useful life of the project, unless the Government subsidy is removed without cause or it is determined there is no longer a need for the housing. These restrictions will not be superceded by new restrictions imposed by subsequent transfers. 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. Moderate-income applicants for the housing will continue to retain priority over ineligible applicants for the housing.

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Required Clauses for Prepaid Projects
Which Were Subject to
Restrictive-Use Provisions Prior to the Prepayment

The required clauses contained in this Exhibit pertain to the following multi-family projects, unless an exception to the restrictive-use provisions has been granted in accordance with this subpart:

- (a) Any loan on the project obligated between December 21, 1979, and December 15, 1989, or subsequent loan not made to build or acquire new units approved on or after December 15, 1989;
- (b) Any loan made subject to restrictive-use provisions as a result of a transfer, consolidation, or reamortization as set forth in this subpart;
- (c) Any loan made subject to restrictive-use provisions as a result of accepting an incentive to not prepay as set forth in this subpart;
- (d) Any loan previously subject to restrictive-use provisions being accelerated.

The preceding projects may only be prepaid if the title to the real property is made subject to the following restrictive-use provisions and incorporated in the security releases. The borrower will also be required to execute the Restrictive-Use Agreement found at Exhibit G-1 to this subpart.

"The owner and any successors in interest agree that the housing located on this property will be used only as authorized under Section 514 or 515 of Title V of the Housing Act of 1949, as amended, and 7 C.F.R. Part 1965, Subpart E, or other regulations then extant until (insert date shown on existing restrictive-use provisions). A tenant or applicant for occupancy may seek enforcement of this provision as well as the Government. During the restricted period, no eligible person occupying or wishing to occupy the housing shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be set so that the effect will not differ from what would have been, had the project remained in the Rural Development program. The owner agrees to keep a notice posted at the project, and in a visible place available for tenant inspection, for the remainder of the restrictive-use period, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates will be consistent with those necessary to maintain the project for (insert "low- and moderate-income" or "very low- and low-income" as shown on existing restrictive-use provisions) tenants for the remainder of the restrictive-use period."

RD Instruction 1965-E
Exhibit A-3
Page 2

The provisions provide protections to the same categories of tenants who were protected while the loan(s) were in effect, to the same extent that the tenants were protected prior to the prepayment and for the length of time remaining under the restrictions prior to the prepayment.

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Required Clauses for Prepaid Projects Which Became
Subject to Restrictive-Use Provisions at the Time of Prepayment

Multi-Family Housing projects which were not subject to restrictive-use provisions prior to prepayment may, generally, only be prepaid if the title to the real property is made subject to one of the following restrictive-use provisions and the provisions are filed with the security releases. The restrictive-use provisions apply to all loans made prior to December 21, 1979, that were not subsequently made subject to restrictive-use provisions as a result of servicing actions after December 21, 1979. The restrictions will also be used for sales of projects at foreclosure for projects not previously subject to restrictive-use provisions. The conditions for which restrictive-use provisions are not required are set forth in §1965.215 of this subpart.

(A) 20-year Restrictive-Use Provisions. These provisions are used when the owner agrees to restrictive-use provisions for a minimum of a 20-year period, and agrees to offer to sell the assisted housing and related facilities to a qualified nonprofit organization or public agency in accordance with Rural Development regulation upon termination of the 20-year period. The period is calculated from the date on which the last loan for the project was obligated or applicable servicing action taken. The borrower will also be required to execute the Restrictive-Use Agreement found at Exhibit G-2 to this subpart.

"The owner and any successors in interest agree to use the housing as required in 7 C.F.R. Part 1965, Subpart E or other regulations then extant during this 20-year period beginning (date of the last loan or servicing action) for the purpose of housing low- and moderate-income people eligible for occupancy. A tenant or applicant for housing may seek enforcement of this provision, as well as the Government. Prior to (date period ends) no eligible person occupying or wishing to occupy the housing shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be established to meet these conditions such that the effect will not differ from what would have been, had the project remained in the Rural Development program. The owner also agrees to keep a notice posted at the project for the remainder of the restrictive-use period, in a visible place available for tenant inspection, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates will be consistent with those necessary to maintain the project for the protected population for the remainder of the restrictive-use period. At the expiration of this period ending (date), the housing and related facilities will be offered for sale to a qualified nonprofit organization or public agency, as determined by Rural Development."

(B) Loans Over 20 Years Old. These provisions are used when all loans were obligated and applicable servicing actions took place for the project over 20 years prior to the prepayment, and the owner enters into an agreement to immediately attempt to offer the project for sale to a nonprofit organization or public agency in accordance with §1965.216 of this subpart. The borrower will also be required to execute the Restrictive-Use Agreement found at Exhibit G-3 to this subpart.

"The owners and any successors in interest agree to immediately offer to sell the housing and related facilities to a qualified nonprofit organization or public agency, as determined by Rural Development."

(C) Current Tenants Restrictive-Use Provisions. These provisions are used when the owner enters into an agreement that no current tenants will be displaced due to a change in the use of the housing or an increase in rental or other charges, as a result of the prepayment, for as long as the current tenants wish to remain at the project. The provision may only be used if it is determined by Rural Development that the conditions specified in this subpart, addressing the effect of prepayment on minorities, handicapped individuals, and families with children in the project and market area, can be met, allowing an exception from the requirement to offer the project to sale to a nonprofit organization or public body. The borrower will also be required to execute the Restrictive-Use Agreement found at Exhibit G-4 to this subpart.

"The owner and any successors in interest agree to use the housing for the purpose of housing eligible low- and moderate-income people occupying the project at the time the prepayment was accepted, as provided in 7 C.F.R. Part 1965, Subpart E, and other applicable regulations then extant. No eligible person currently occupying the housing shall be required to vacate prior to the end of the remaining useful life of the project without cause. Rents, other charges, and conditions of occupancy will be established to meet these conditions. Existing tenants are protected to ensure that none experience new or increased rent overburden until each voluntarily moves from the project. The owner also agrees to keep a notice posted at the project in a place available for tenant inspection, for the remaining useful life of the project or until the last existing tenant vacates, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates for current tenants as of the date of the prepayment will be consistent with those necessary to maintain the project for low- and moderate-income tenants. A tenant may seek enforcement of this provision as well as the Government."

REPORT ON PREPAYMENT

The following items are to be completed. For any item that does not apply, insert "not applicable." Items 1 through 18 are to be completed from information provided by the borrower in the complete application for prepayment. Items 19 through 22 will be completed after the prepayment has taken place.

1. Name of borrower.
2. Name of project.
3. Case and project number.
4. Date of all loan approvals, consolidations, reamortizations, and transfers, whether same or new terms.
5. Type of borrower entity (e.g., individual, limited partnership, nonprofit, public agency) and plan of operation (e.g., Full Profit, Plan II, Plan I Section 8).
6. The total number of units in the project, the number of units occupied by eligible tenants and the number of units in the project with elderly or handicapped households.
7. The estimate of the number of households that will be displaced as a result of prepayment (i.e., rents will increase to more than 30 percent of income or their current rent, whichever is higher) broken down between elderly and family.
8. The estimated average relocation cost of the households being displaced and the total of all households to be displaced.
9. An indication of the displaced household's ability to pay relocation costs (i.e., based on income and assets).
10. The income distribution of the households presently in the project broken down between elderly and family.
11. The current rents and rent levels projected after prepayment (based on market analysis and projected budget).*
12. The number and type of Section 8 or rental assistance units, and whether Section 8 will continue after prepayment.*

- a. The earliest date borrower can "opt-out" of Section 8 (The "opt-out" date may be the next renewal date under the contract).
 - b. The year the Section 8 contract expires and the year Section 8 funds are anticipated to be depleted (not necessarily the same date).
13. Any cause of displacement other than rent.*
 14. The availability of other vacant units in the area, their rental structure, and suitability and affordability for project tenants.
 15. The estimated replacement cost per unit.*
 16. The number of minority households in the housing and on the waiting list, and percentage of minorities in the market area.
 17. The District Office's recommendation on the final action.*
 18. Date of estimated prepayment or actual prepayment, as applicable.
 19. Determine whether restrictive-use provisions were in effect prior to prepayment and date the provisions expire.*
 20. Statement describing whether restrictive-use provisions will be inserted in release of security documents, the restrictions being included and when the restrictions will expire. If an exception was granted, include the basis for the exception.*
 21. List the date tenants were notified of the pending prepayment and the restrictions which would remain in effect, or were told the reasons no restrictions were required.
 22. If the project was not subject to restrictive-use provisions, which incentives were offered to remain in the program. State the reason(s) for non-acceptance (if known).*
 23. If the project was not subject to restrictive-use provisions, describe whether the housing was offered for sale to a nonprofit organization or public agency, and what the result was.*

* These items are not required for on-farm labor housing prepayment requests if the housing cannot be separated from the farm for security purposes.

CHECKLIST FOR REQUESTING PREPAYMENT
(Handout for Borrowers)

If you wish to prepay a Multi-Family Housing loan, you must submit a request to prepay in accordance with RD Instruction 1965-E. The following checklist provides guidance for the required items to be submitted to your Rural Development Servicing Office in order to comply with the requirements for a complete request.

- ___ A. A statement requesting approval to prepay the Rural Development mortgage and remove it from the Rural Development program. Include the project name and location in the request.
- ___ B. Specify the date of the anticipated prepayment. If the prepayment will be in less than 180 days, include a statement agreeing that leases will be extended for all existing tenants at the project and guaranteeing the current rents and living conditions, for at least 180 days or until all current leases expire, whichever is later. The extended lease format will be reviewed by Rural Development prior to accepting the prepayment.
- ___ C. A signed certification that you and successors in interest will continue to administer the housing in accordance with Fair Housing policies after the prepayment.
- ___ D. A statement describing if you expect to prepay with or without restrictive-use provisions in the release documents. (NOTE: Extension of leases as provided in B above, or other statements of intent to maintain the housing for low- and moderate-income individuals and families may not be substituted for restrictive-use provisions.)
- ___ E.
 1. Include the proposed language to be added to the leases of tenants entering the project after the date the prepayment request is made and before prepayment is acted upon, in accordance with §1965.206 (b) (5) of this subpart.
 2. If the loan is to be prepaid subject to restrictive-use provisions, include the lease language to be used subsequent to prepayment, in accordance with §1965.215 (e)(5) of this subpart.
- ___ F. Provide preliminary responses to the questions contained in the prepayment report (Items 1 through 18 on Exhibit B of this subpart), and information required for use in developing the incentive model (Exhibit D of this subpart). The following documentation will be required:

- ___ 1. Form RD 1944-29, "Project Worksheet for Interest Credit and Rental Assistance," showing the occupancy of all units and a determination of 30 percent of each household's adjusted income.
- ___ 2. Materials necessary to determine the average cost of moving a displaced household. To determine the average cost of the actual move, a survey of local moving companies shall be conducted. The moving companies will be asked to provide the average cost of moving a household to alternative housing within the market area of the prepaying project. Average moving costs shall be determined for each size unit in the prepaying project. In addition to the actual moving costs, an estimate of likely expenses the tenant will encounter shall be made. The estimate should include security deposits, utility deposits, and other identifiable moving incidentals.
- ___ 3. Derivation of projected rents:*

Provide a proforma budget developed in accordance with paragraph H of this Exhibit that shows the projected rents for the units after prepayment. The following areas shall be considered when developing the budgets:

(a) Expenses. The budget will utilize historical operating expenses adjusted to reflect operation of the project as unsubsidized conventional multi-family housing. If historical expenses have not met past operating needs such as deferred maintenance, taxes, and required escrows, expenses will be adjusted to show the project operating on a break-even basis. Expenses will also be adjusted to reflect debt service based upon current rates, terms, and loan-to-equity ratios for conventional unsubsidized mortgage financing available for multi-family housing. The expenses developed may consider such items as deductions for decreased tenant and financial reporting requirements and increases for marketing, tenant incentives and operating expenses for amenities added to the project to make the project competitive with existing conventional multi-family housing.

Income shown from rents and other tenant charges shall be based upon documented rents and charges being received in the market by unsubsidized conventional multi-family housing projects. Rents shall be adjusted to reflect the difference in project amenities between the unsubsidized conventional housing and the prepaying project. The

projected rents shall also reflect the changes in the market from the addition of the prepaying project to the unsubsidized market.

(b) An analysis of unsubsidized conventional multi-family housing rents being received at projects that will be competing with the prepaying project in the project's market area. The analysis will show the rents at the competing projects broken down by unit size, list any incentives being offered, the number of units and vacancies at the projects, and a brief physical description of the project including project age, location, and amenities. (NOTE: This information may be obtained from the market survey required in Item 9 of this section.)

- ___ 4. If applicable, a copy of a HUD Section 8 Housing Assistance Payment (HAP) contract clearly showing the expiration date of the contract and all renewal dates. If no restrictive-use provisions are to be included in the release documents, show the date on which you plan to "opt-out" of the HAP contract. If electing to "opt-out," provide evidence that you have taken all steps required by HUD, to date, to "opt-out" by the target date.
- ___ 5. If your State requires that certain actions be taken prior to the housing being removed from the low- and moderate-income housing, provide documentation that all necessary steps have been or are being taken to prepay by the anticipated date.
- ___ 6. If existing tenants at the project have Section 8 certificates or vouchers, provide a copy of HUD's Fair Market Rents as they pertain to the area, or a statement from the local Public Housing Authority (PHA) stating the highest rent levels at which tenants in different size units can be subsidized at this project.*
- ___ 7. (If applicable) If you plan to prepay subject to restrictive-use provisions which protect current tenants only, provide an analysis based on historical turnover at the project showing the number of units likely to remain occupied by eligible tenants for each year after the prepayment.

- ___ 8. (If applicable) A refinancing letter from a financial institution detailing proposed rates, terms, and loan-to-equity ratios, and any plans for the project, including any proposed renovations and conversions to other uses. If there is no financing commitment, include a statement and evidence of how the Rural Development loan will be paid in full.*
- ___ 9. A market survey showing comparable, vacant units in the area and their rent structures. A professional market study is not required to meet this item. Include justification for how determinations of comparability were reached. This survey should include:*
- (a) Location of comparable project;
 - (b) Number of units and bedroom mix;
 - (c) Rental rates by bedroom mix;
 - (d) List of any incentives being offered;
 - (e) Vacancy rate;
 - (f) Age of project;
 - (g) Type of housing (elderly vs family, etc.);
 - (h) List of project amenities, both unit and common area;
 - (i) Size of community;
 - (j) Vacancy and turnover rates in the community for comparable units;
 - (k) Waiting lists and other measures of unmet demand at other housing;
 - (l) Building permits issued for multi-family housing within the last year within the market area;
 - (m) Known future changes in the local economy that may increase or decrease housing needs; and
 - (n) Any other factors which would document the unsubsidized conventional market for the number of units contained in the project at rent levels consistent with those being charged at comparable housing.
- ___ 10. Census figures or other official statistics on the percentage of minorities in the market area. Also include the number of minority households at the project and on the waiting list.

* These items are not required for on-farm labor housing prepayment requests if the housing cannot be separated, for security purposes, from the farm.

- ___ G. Documentation of the ability to prepay with a statement detailing how the prepayment will be financed, including one of the following forms of documentation (materials used to document paragraph F 8 of this Exhibit may be used if applicable):
- ___ 1. Evidence that the project is feasible as a conventional project including: a projected budget with conventional lender interest rate, terms, and debt-to-equity ratios, expenses set at historical levels, and a market survey (showing waiting lists, vacancies, and availability of other suitable housing) showing the demand for unsubsidized conventional housing in the market area at rents that will be required by the above budget. This information may be the same as that provided in paragraphs F 3 and 8 of this Exhibit.
 - ___ 2. Evidence of a letter to the current owner from a financial institution to refinance the project with no unusual contingencies. The letter must be similar to commitment letters issued by the same lender for other conventional projects. The letter must state the amount of the loan as well as rates, terms, and loan-to-value ratio. Contingencies for use should be compatible with the conditions of the proposed prepayment. (NOTE: If it appears from the letter that the lender is unaware of the conditions of the proposed prepayment (e.g., Section 8 "opt-out" or not eligible for low-income tax credits), or if the letter is not clear, the lending officer will be contacted for clarification.)
 - ___ 3. If applicable, an option to sell the housing to a non-Rural Development purchaser. The option must contain no provisions requiring Rural Development financing for the project after the sale nor other stipulations which may indirectly require an Rural Development loan (e.g., ability to obtain tax credits). If applicable, documentation of the purchaser's ability to borrow the funds or pay equity from personal liquid assets.
 - ___ 4. Evidence of cash or liquid assets of the borrower organization to pay the entire loan in full. Provide certification that the cash and/or assets are not simultaneously being shown as available to prepay any other Rural Development loan, nor to meet any other commitment. If the assets belong to an individual and the borrower entity is an organization, submit documentation of

arrangements which have been made for the post-prepayment period (e.g., repayment of loan, option to transfer the project, etc.).

In addition, you must show that any actions required by contract or law (as in paragraphs F 4 and 5 of this Exhibit) prior to prepayment have been completed.

- ___ H. Provide the following information on a completed proforma budget:
(NOTE: As with all information submitted, the Rural Development Servicing Office will evaluate the budget for accuracy.) Current Rural Development budget figures will be used where indicated unless well-documented justification for deviations are provided. The budget prepared may be the same as the budget prepared for in paragraph F 3 of this Exhibit.

METHODOLOGY FOR DETERMINING PREPAYMENT INCENTIVES

Introduction: Borrowers who request to prepay their Rural Rental Housing loans and demonstrate their ability to do so must be offered an incentive to retain the project within the Rural Housing Service (RHS) program. Incentives may be offered only if the restrictive period has expired for any RRH project loan entered into after December 21, 1979, but before December 15, 1987. This Exhibit provides a model to be used to derive the incentive which may be offered. The model is based on the market conditions the project operates in. The equity loan portion of the incentive offer is based on the fair market value of the project as appraised as an unsubsidized conventional project. The remainder of the model compensates the borrower for committing to continued use as low-income housing for an additional 20 years by increasing the return on investment or releasing limitations or return on investment. The final incentive offer will be limited by the procedural requirements contained in Exhibit E of this subpart. When developing an incentive offer, the Servicing Office or other designated office must first offer incentives other than equity loans, unless it is determined that alternative incentives are not adequate to provide a fair return to the borrower, prevent prepayment of the loan(s), or prevent displacement of the tenants. (Revised 05-07-97, SPECIAL PN.)

I. Information needed to make the determination. Prior to determining the incentive offer, the Servicing Office or other designated office must ensure the following information needed to complete the input worksheet contained in Exhibit D-1 of this subpart is available and accurate (NOTE: All documentation used in this determination must be appended to the worksheet).

A. The following information will be assembled by the Servicing Office or other designated office:

1. Most recent appraised value of the project;
2. Current unpaid loan balances;
3. Dollar amount of initial borrower contribution;
4. Borrower's current rate of return on investment;
5. Borrower's current allowable return on investment.
6. If applicable, a determination of the excess funds in the reserve account beyond those needed to fully fund the reserve, pay all outstanding expenses, and meet maintenance needs in the foreseeable future in accordance with §1965.213 (b)(3) of this subpart.

B. The following information will be submitted by the borrower with the prepayment request, in accordance with §1965.205 (b) and Exhibits C and E of this subpart. All information submitted will be reviewed by the Servicing Office or other designated office to ensure accuracy:

1. Current budget for the subject project. A second budget with rents adjusted, if necessary, to meet all required expenses, such as taxes, reserve account transfers, and maintenance needs, may be needed.

2. Rents for comparable unsubsidized conventional housing in the community. Complete documentation should be included showing the unsubsidized conventional market can support the proposed number of units being added at the conventional rental rate shown. These rents should be shown in the following three-step process:

a. Determine the rents for unsubsidized conventional projects in the community.

b. Use the conventional rents shown in a and adjust for amenities and location when compared to the subject project. The basis for the adjustments should be shown.

c. Utilize the conventional rents derived in paragraph I B 2 b of this Exhibit and adjust for the addition of the subject units to the conventional market. Include all other prepayment requests in the same market area which preceded the subject project or were submitted by the same borrower at the same time. Vacancy rates and waiting lists should be taken into account when determining market impact.

3. A project operating budget showing income and expenses for the project as operated as unsubsidized conventional housing. The RHS budget currently in use will be used as a guide for miscellaneous project income and project operating expenses. Rents used will be derived from comparable unsubsidized projects in the subject market area as determined in paragraph I B 2 of this Exhibit. Expenses will be adjusted to deduct costs unique to operating the project as subsidized housing, such as additional reporting, and increased to reflect additional marketing expenses, tenant incentives, etc., as appropriate. If any increase in vacancies is expected as a result of tenant turnover during the conversion, an increased vacancy allowance should be included in the budget. An allowance for depreciation or reserves will be included. No debt service expenses are to be shown.

4. List rates, terms, and loan-to-value ratios for loans available from traditional multi-family mortgage lenders for conventional multi-family housing projects. The lender need not be local to the project, but must be able to lend within the subject market area.

5. If applicable, list the terms of restrictive-use and number of years the project remains legally subject to restrictive-use provisions as required by law or under agreements with State, county, or local government. Describe the estimated expenses required to be paid to displaced tenants by the owner under any applicable state or local laws.

6. If applicable, list the number of years remaining under restrictive-use provisions under any non-RHS project based rental subsidy, if the borrower were to prepay but retain the subsidy. Describe the length of time remaining under the subsidy contract and the renewal options, if any, available to the borrower. The most common example would be a project-based Section 8 contract.

7. If prepayment is to be accepted subject to restrictive-use provisions to protect existing tenants, estimate the average number of units expected to remain in low-income use for each year after the prepayment is accepted until all low-income tenants have relocated, if applicable.

II. Determination of Incentives to be Offered. Incentives to retain the low-income use of the housing will be developed in the following manner:

A. Incentive Equity Loan. A loan as described in §1965.213 (a)(1) of this subpart may be offered to allow a borrower access to equity that has accumulated in a project either through appreciation or debt reduction. Equity loans will be calculated by first determining the fair market value of the project appraised as unsubsidized conventional housing, multiplying the value by 90 percent and subtracting the amount of current debt against the project. The resulting amount is the maximum that may be offered as an equity loan to the borrower. When developing an incentive offer, the Servicing Office or other designated office must first offer incentives other than equity loans, unless it is determined that alternative incentives are not adequate to provide a fair return to the borrower, prevent prepayment of the loan(s), or prevent displacement of the tenants. (Revised 05-07-97, SPECIAL PN.)

Formula:

Current appraised value
x .90
Total
- all existing debt
Maximum equity loan

Example 1

Project size:	36 units	
Initial borrower contribution:		\$ 53,000
Original debt:	\$1,008,000	
Current debt:	\$ 790,000	
Value as appraised as unsubsidized conventional housing:	\$1,250,000	

Calculation:

Current value	\$1,250,000
	<u> x 90%</u>
	\$1,125,000
minus current debt	<u> -790,000</u>
Maximum equity loan	\$335,000

Example 2

All factors the same as in Example 1, except:

Value as appraised as unsubsidized conventional housing:	\$875,000
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Calculation:

Current value	\$875,000
	<u> x 90%</u>
	\$787,500
minus current debt	<u> -790,000</u>
Maximum equity loan	0

In the second example, since the maximum equity loan is less than zero, no equity loan may be offered.

The valuation of the project is market driven. When determining the fair market value of the project, current unsubsidized conventional multi-family housing rents in the project market area are used in conjunction with current operating expenses and expected rates of return for alternative borrower investments. The appraisal shall adjust the operating expenses to reflect operation of the project as unsubsidized conventional housing. The appraisal shall also consider the differences in project amenities between the subject and market comparables used. Appraisals conducted to determine the amount of an equity loan shall consider the present worth of any tenant subsidy contracts that would remain with the project after a prepayment, and the value of existing reserve accounts.

Likewise, projects required by law or agreement to maintain low-income use after prepayment or to incur expenses for tenant relocation will be reduced in value to reflect the loss of options the owner has in the use of the project and the expenses that must be incurred to comply with the restrictions. Examples of such laws or agreements may be State or local laws passed in response to subsidized housing prepayment or restrictions contained in a project-based tenant subsidy contract such as Section 8. Prepayment appraisals are to be conducted in accordance the preceding guidance and with RD Instruction 1922-B.

B. Increasing Return on Investment. In accordance with §1965.213 (a)(3) of this subpart, the incentive offer may include an increased annual return on investment. An increased annual return may be a supplementary incentive in a strong unsubsidized conventional market or the primary incentive when an equity loan cannot be offered.

1. Increased return on investment when an equity loan is offered. When an equity loan is being offered as part of the incentive package, an increase in the annual return on investment may be included. For the increase to be offered, the addition of the increased return must be considered necessary in order to obtain the borrower's cooperation in extending the low-income use of the project. The cost of the increased return must be feasible within the final project budget and must not increase tenant rent overburden, unless rental assistance is available to offset the overburden.

For projects receiving equity loan offers, the amount of the increase is calculated by redetermining the current equity position of the borrower after making the equity loan and applying the original rate of return to the new equity position.

Formula:

Current appraised value
 - all existing debt
- new equity loan
 New equity position
x original rate of return
 New annual return on investment

Example 3

All factors the same as in Example 1. In addition:

Original rate of return: 8%
 Original return on investment: \$4,240 (\$53,000 x 8%)

Calculation:

Current appraised value	\$1,250,000
- all existing debt	-790,000
<u>- new equity loan</u>	<u>-335,000</u>
New equity position	\$125,000
<u>x original rate of return</u>	<u>x 8%</u>
New annual return on investment	\$10,000

2. Increased return on investment when an equity loan is not offered. For a borrower to be offered an increased annual return on investment when no equity loan is being offered, the following conditions must be met:

- a. An estimate of value or an appraisal of the property indicates that insufficient equity exists for an equity loan to be offered when the project is valued as unsubsidized conventional housing;
- b. As a result, the borrower has no opportunity to sell the project for more than the currently owed debt plus original equity;
- c. The borrower has proven the ability to obtain funds to prepay the Rural Development debt; and
- d. The offer of an incentive to the borrower will encourage the borrower to extend the low-income use of the project.

The purpose of the incentive is to offer the borrower fair compensation to remain in the program. An appraisal would not show sufficient value on which to offer an equity loan, as it would show either the same or less value in the project than previously appraised. Therefore, the last Rural Development appraisal completed for the project prior to receiving the prepayment request will be used.

The increased annual return on investment will be based upon two factors: redetermining the current equity in the project using the last appraisal and determining an appropriate rate of return.

The first factor to determine is the current equity position of the borrower, the total existing debt is subtracted from the value of the project as determined in the last Rural Development appraisal completed on the project prior to receiving the prepayment request.

Formula:

Appraised value as determined in last Rural Development
 appraisal completed prior to receiving
 prepayment request
- total existing debt
New equity position

The second factor to determine is the appropriate rate of return to apply to the new equity position. The rate to be used must be fair when

compared to alternative investment opportunities the borrower may have if the borrower had access to the equity in the project. The rate to use will be the greater of the existing rate of return or 2 percent above the 30-year Treasury Bond rate rounded to the nearest one-quarter of 1 percent. To determine the correct Treasury Bond rate, consult a local or national newspaper or other publication that lists 30-year Treasury Bond rates for the first day of the month or first business day of the month after the initial prepayment request is received. The file will be documented to show the source and date of the publication used to determine the rate.

Formula:

Appraised value as determined in last Rural Development appraisal completed prior to receiving prepayment request
- total existing debt
 New equity position
 x rate of return (Current 30-year Treasury Bond rate plus 2 percent rounded to the nearest one-quarter percent or current rate of return, whichever is greater)
 New return on investment

Example 4

Example 2 where the maximum equity loan was calculated to be \$0 is used. Additionally:

Original rate of return:	8%
Original return on investment:	\$4,240 (\$53,000 x 8%)
Last Rural Development appraisal:	\$1,061,000
Treasury bond rate:	7.58%

First, determine the appropriate rate to use. As the treasury bond rate of 7.58% plus 2% rounded to 9.5% is greater than the original 8% rate of return, 9.5% is used.

Last Rural Development appraisal	\$1,061,000
minus existing debt	<u>- 790,000</u>
New equity position	\$271,000
x new rate of return	<u>x 9.5%</u>
New annual return on investment	\$25,745

C. Use of excess reserve funds to offset equity loan advances. In instances where large amounts of excess reserve funds have accumulated possibly due to third party subsidy payments, the excess funds may be used to offset the costs of the incentive. When an incentive equity loan is being offered, the excess reserve funds will be used to reduce the amount of loan that would be offered.

The first item to determine is the amount of the excess reserve funds. The maximum required reserve amount must be determined by multiplying the annual reserve requirement found in the loan agreement or resolution by the number of years and months since loan closing. Once determined, the amount of approved disbursements from the reserve is subtracted. The remainder is the authorized reserve level. A determination of any needed repairs or anticipated replacements and their costs must also be made. Funds for anticipated repairs or replacements will be retained in addition to the authorized reserve level. After calculation of the authorized reserve level and the funds needed for repairs and replacements, the total is subtracted from the current reserve balance to arrive at the amount of excess reserve funds available for incentive use. The reserve account shall remain in compliance with the provisions of paragraph XIII B 2 c of Exhibit B of Subpart C of Part 1930 at all times.

Formula:

Current reserve level
- Current required reserve level (maximum required
reserve level minus authorized disbursements)
- Funds needed for repairs or replacements
Excess reserve funds

When it has been determined that a project qualifies for an equity loan incentive, the amount of excess reserve funds will be deducted from the equity loan amount and provided to the borrower as equity. Any equity loan amount that cannot be paid from excess reserve funds will be offered to the borrower in the form of an equity loan.

Formula:

Excess reserve funds
- Equity loan amount
Amount to be offered as equity

Example 5

All factors the same as in Example 1. In addition:

Current amount of reserve account:	\$335,000
Amount required to be in reserve:	\$100,800
Amount of authorized disbursements:	\$ 38,800
Amount of needed repairs:	\$ 25,000

Determination of amount of excess reserves:

Amount required to be in reserve	\$100,800
<u>- Amount of authorized disbursements</u>	<u>- 38,800</u>
Current required reserve amount	\$62,000

Current amount of reserve account	\$335,000
- Current required reserve amount	62,000
<u>- Amount of needed repairs</u>	<u>25,000</u>
Amount of excess reserves	\$248,000

Amount of equity loan (example 1)	\$335,000
<u>- Amount of excess reserves</u>	<u>-248,000</u>
Amount of equity loan to be offered	\$87,000

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WORKSHEET FOR INCENTIVE CALCULATIONS

- (1) Project name: _____
- (2) Project location: _____
- (3) Project size: _____ units
- (4) Original debt: \$_____
- (5) Current balance as of ___/___/___: \$_____
- (6) Initial borrower contribution: \$_____
- (7) Last Rural Development appraised value prior to prepayment request: \$_____
- (8) Value as appraised as unsubsidized conventional housing: \$_____
- (9) Original rate of return on initial borrower contribution: _____%
- (10) Original annual return on investment: \$_____
- (11) 30 year treasury bond rate as of ___/___/___ (first of month following receipt of the prepayment request): _____%
Source of rate: _____
- (12) Current amount of reserve account: \$_____
- (13) Amount required to be in reserve account: \$_____
- (14) Amount of authorized reserve disbursements: \$_____
- (15) Amount needed for repairs or replacements: \$_____
- (16) Number of years remaining under third party tenant subsidies: _____ years
- (17) Number of years of restrictive-use remaining under:
 - (a) Third party tenant subsidy program: _____ yrs.
 - (b) State or local law: _____ yrs.
- (18) Estimated costs required by state or local law owner would likely incur by prepaying: \$_____

- (19) Market rents for comparable unsubsidized multi-family housing:
- Studio \$_____
 - 1 BR \$_____
 - 2 BR \$_____
 - 3 BR \$_____
 - 4 BR \$_____
- (20) Current vacancy rate for comparable unsubsidized multi-family housing: _____%
- (21) Average operating cost per unit per year for comparable unsubsidized multi-family housing: \$_____/unit/year

ADMINISTRATIVE GUIDANCE FOR MAKING PREPAYMENT DETERMINATIONS

TABLE OF CONTENTS

<u>Sec.</u>	<u>Page</u>
I. Purpose.	1
II. Documentation submitted with the prepayment request.	1
A. Determination that the request is complete.	1
B. Review of complete requests for accuracy.	2
C. Use of information submitted to understand the project and the market.	2
D. Preliminary determination of action to be taken.	8
III. Evaluation of the ability to prepay.	9
A. Market analysis.	9
B. Financing letters.	9
C. Purchase offers.	10
D. Borrower assets to repay the loan.	10
IV. Incentives to not prepay.	11
A. Criteria for selection of incentives.	11
B. Development of specific incentive package.	11
V. Determining whether prepayment may be accepted.	13
A. Determination that there is no longer a need for the housing and related facilities in the Rural Development program.	13
B. Borrower elects to prepay subject to restrictive-use provisions.	15
C. Rural Development determines that restrictive-use provisions are required in the release documents.	15
D. Determination that housing opportunities for minorities will not be materially affected.	15

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ADMINISTRATIVE GUIDANCE FOR MAKING PREPAYMENT DETERMINATIONS

I. Purpose.

This exhibit provides guidance to Rural Development Servicing Offices and other designated offices in making determinations required under this subpart. Prepayment requests received from borrowers not subject to restrictive-use provisions and borrowers who are subject to restrictive-use provisions but are attempting to prepay require that several administrative determinations be made in order to accept or deny prepayment.

An evaluation of the borrower's ability to prepay must first be made. The Servicing Office's determination regarding the borrower's ability to prepay will serve as the basis for further decision making on the prepayment request. The next determination involves the development and offering of incentives to all eligible borrowers who have the ability to prepay. The third determination is to decide whether the prepayment can be accepted, and if so, what restrictions, if any, will be placed on the use of the project. If the prepayment cannot be accepted, the project will be offered to nonprofit organizations and public agencies for sale.

While the evaluations involved are an ongoing process, most of the analysis necessary to make the decisions is completed prior to making the incentive offer. By virtue of the analysis required, the evaluations may not always be able to be completed in the sequence implied by regulation. The decisions reached by Rural Development will be provided to the borrower in the proper sequence, however.

The model(s) provided in Exhibit D of this subpart specifies the incentive offer which may be made. However, the size of the incentive will be governed by determinations made by the Servicing Office or other designated office assessing the need for subsidized housing and financial alternatives available to the borrower if the project were prepaid. In analyzing the prepayment request, assumptions of the borrower's motives for requesting prepayment may not influence the determination process so long as the borrower can demonstrate the ability to prepay the loan; the analysis is to be carried out in the same manner whether the borrower actually wishes to prepay or hopes to receive an incentive offer to not prepay. ALL EVALUATIONS AND DECISIONS MUST BE COMPLETELY SUPPORTED BY FACTS AND CLEARLY DOCUMENTED.

II Documentation submitted with the prepayment request.

A. Determination that the request is complete. A request to prepay is not complete unless it contains thorough and accurate information required by Exhibit C of this subpart. A quick review of the information

submitted should be made immediately upon receipt to determine that the information appears to be complete. If there are obvious errors or omissions (e.g., missing proforma budgets or conventional rents projected at a level too high for the market), the request will be determined to be incomplete and will be returned to the borrower with a letter identifying the deficiencies.

B. Review of complete requests for accuracy. All information should be reviewed for accuracy. However, special attention should be paid to the accuracy of the projected budgets and the conventional market data (Items #4 and #9 as well as the proforma budget required by the application checklist contained in Exhibit C of this subpart).

1. Rural Development budgets must be updated, if necessary, to show positive cashflow covering expenses for transfers to reserves, tax and insurance costs, maintenance costs necessary to keep the project up to Rural Development standards, and a return on investment. Projected conventional budgets submitted must be consistent with the preceding Rural Development budget. The budget should be examined to determine whether the amount of the projected mortgage payment is consistent with the amount of mortgage to be acquired, and at rates and terms consistent with those in the market. An allowance must have also been made for depreciation and/or replacement reserves. Watch for unrealistically low projections of conventional costs, and correspondingly low conventional rents needed to make the project financially feasible in the market.

2. The market survey of rents must include the rent of comparable unsubsidized housing in comparable locations. Factors affecting rents in the conventional housing which are not comparable to the Rural Development housing should be adjusted. A projection of rents which could be charged at the project must take into account the effect of adding the number of units which are proposed to be prepaid to the conventional market. If more than one prepayment request is being made in the same community, the effects of adding all prepaying units to the same conventional market must be taken into account. Turnovers, waiting lists, and vacancy rates at comparable subsidized and conventional housing should be accurately reflected. Unrealistically high or low conventional rents for the market should not be accepted. It is critical to determine the actual rent the prepaying project could receive as a conventional project in the market.

C. Use of information submitted to understand the project and the market. Analyze all information so that the project and market are fully understood. The analyses of information submitted will be used to make various determinations later in the process.

1. Guidelines for conducting the rental market analysis.

a. Definition of the market area. For the purpose of the analysis, the housing market area is the community in which the project is located and those outlying rural areas which are impacted by the project (excluding all other established communities).

b. Determining that a surplus of rental housing (soft market) does not exist. Experience has shown that certain market conditions are indicative of a soft rental market. The existence of one or more of these conditions does not automatically establish the market area as a soft market, but indicates the need for further analysis.

(1) Upward trends in the number of defaults and foreclosures in rental projects and the existence of a large inventory of acquired properties by lenders.

(2) Unusually low rents being asked for new units or widespread use of concessions for both new and existing units. Widespread use of short-term leases.

(3) Increases in overall rental vacancy rates and increases in vacancies in existing rental projects which had previously had a history of high occupancy.

(4) Excessive number of vacant rentals (particularly apartments) of particular size, age, project or unit type, or other common characteristic.

(5) Rental vacancy rates of greater than 10 percent overall and 12 percent or more in multi-family rental projects for a sustained period (24 months).

(6) Flat or stable rents in existing projects or rent increases smaller than what could be expected from normal increases in property taxes, utilities, maintenance costs or inflation.

(7) Newly built rental units are being absorbed at a slower rate than in previous periods, vacancies in existing projects are on the market for a longer period, or new units are being absorbed at the expense of existing units.

(8) Significant declines in waiting lists and increases in the size and frequency of advertising.

(9) Construction or proposed construction of a substantial number of rental units.

(10) Downturns in the local economy, as indicated by declining employment growth, reductions by major employers or increased unemployment or evidence that future growth will not be sufficient to increase demand to levels needed to absorb the supply.

A rental vacancy rate of 10 percent or more should generally be considered excessive for almost all markets, unless the area is experiencing a sustained and rapid rate of growth and the 10 percent vacancy rate reflects new multi-family developments being built and coming on-line to meet the rapid growth in the area. In market areas with moderate to low levels of household growth, rental vacancy rates of less than 10 percent may also be considered excessive, especially if the impending increase in supply is significant. A vacancy rate cannot be the sole basis for the soft market determination. The current vacancy situation must be considered in the context of other factors.

c. Extent and length of time of soft market conditions.

Because a housing market is dynamic, the extent of the surplus condition and the estimated length of time the condition is expected to last are important factors in the identification of a soft market. For the purposes of analyzing the market, an area is considered a soft market if:

(1) There is currently a surplus of rental housing such that the current excess supply of vacant available housing, plus units currently under construction that will enter the market within the next 24 months, is expected to exceed demand for at least the next 24 months; or

(2) The market is anticipated to become a soft market within the next 12 months if, based on the housing production (units currently under construction or with firm planning commitments), in combination with the current supply of available vacant units, supply is expected to exceed demand for at least 24 months.

d. Source and content of materials for analysis. The analysis should be based upon the market material received from the borrower and from knowledge of the market area. The market material should take into account data from the most recent Decennial Census and the most recently available, locally obtainable data on such factors as: changes in population, households and employment, the housing inventory, residential

construction activity, and recent trends in the absorption of rental housing. A determination of market conditions must be a comprehensive view of market forces and trends and comprise the following:

(1) Forecasts of employment, incomes, population and household growth, and other relevant economic factors.

(2) Estimates of supply and demand taking into consideration marketability factors, such as the time period necessary to successfully absorb the projects comprising the existing and planned supply.

(3) Analysis of the potential number of units eligible to prepay during the forecast period relative to any excess supply of vacant available housing plus units currently under construction.

(4) Estimates of current and future rental vacancies and vacancy rates.

(5) Evaluation of local market absorption rates in terms of reduction of supply and evaluation of rental absorption experience in the area, so as to determine whether new projects coming on the market are adversely affecting existing inventories, that is, successful occupancy is being achieved at the cost of creating sustained vacancies in existing units.

e. Issues to be addressed in determining feasibility of the project as conventional housing.

(1) What rent would the borrower need to break even in the conventional market?

(2) What rent could the borrower reasonably expect to receive at the project in the conventional market? What vacancy rate, turnover rate, or waiting list is the project likely to experience at these rents?

(3) Based on projected rental rates, vacancies, turnover, and waiting lists, can the borrower expect to attain positive cash-flow if the project is converted to conventional housing? If so, how much above the amount needed to break even can the borrower expect to receive as profit? If not, how much deficit can be expected if the project is converted to conventional housing?

f. Issues to be addressed in determining the need for the prepaying project in the low- and moderate-income market, either with Rural Development financing and subsidies or without.

(1) What is the vacancy rate and the size of the waiting list at the subject project for all unit sizes, both with or without rental assistance (RA)?

(2) What is the vacancy rate and size of the waiting list at other subsidized projects in the market, with similar size units, both with or without RA, Section 8, or other tenant subsidy?

(3) If this project presently has no rental subsidy, are rents the borrower is likely to receive in the conventional market higher than rents the present tenants in the project are currently paying, whether basic rent or with overage?

(4) Are there sufficient long-term vacancies at other subsidized projects in the community that can compensate for the units lost at this project if prepaid?

(5) Are there ineligible tenants living at this project? If so, is this because there is a surplus of subsidized housing in the community or because the market requires more RA at this project?

(6) Has additional subsidized housing been built in the community during the past year, or is there additional subsidized housing being built or planned for the future?

(7) Do population trends or anticipated development in the area indicate that the population is likely to change in the foreseeable future?

g. Other information to be evaluated significant to the project. Examples may be:

(1) Is there project-based Section 8 at the project?

(a) If so, has the borrower indicated a willingness to sign restrictive-use provisions for the remainder of a 20-year period? Is the Section 8 contract amount likely to last for the remainder of a restrictive-use period without possibility of a borrower "opt-out" if such a restriction is signed?

(b) If the borrower is not willing to sign restrictive-use provisions, when is the first date the borrower can "opt-out" of the Section 8 contract? The Department of Housing and Urban Development (HUD) should be contacted to confirm this date, and to determine if the borrower has taken all action necessary to fulfill requirements to "opt-out" by the time of the prepayment request. If the borrower has not taken required actions, what is the first date that "opt-out" is possible?

(2) Are there State or local laws restricting the conversion of the housing? If so, what is the earliest date the borrower could feasibly remove the project from low- and moderate-income use? What other costs will be incurred due to legal requirements?

(3) Has the borrower indicated a willingness to accept restrictive-use provisions in order to prepay? If the borrower qualifies for the 20-year restriction, when will the restriction expire? If the restriction protecting only current tenants is applicable, how many units are likely to become available for conventional use each year, based on historical turnover, and when is the last current tenant likely to have moved out? Is the low-income market in the community likely to suffer because the prepayment was accepted?

(4) Have there been documented, on-going problems with the borrower such that Rural Development would consider the borrower ineligible for future funds for a new project? If so, should the incentive be constructed in such a way so as to encourage the borrower to transfer the project to a new borrower?

(5) Did the notification to tenants result in any comments? What was their content? Did it appear they were submitting their own opinions or that they had been asked by the borrower to comment?

h. Housing opportunities for minorities will not be materially affected. The determination that housing opportunities for minorities will not be materially affected must include assessment, with the Rural Development State Civil Rights Coordinator's input, of:

(1) The percentage of minorities residing in the housing to be prepaid, and the percentage of minorities residing in projects in the market area where displaced tenants are most likely to move;

(2) 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, or to areas with a concentrated minority population and/or to areas with a concentration of substandard housing;

(3) 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

(4) 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.

2. Documentation of market analysis. The Servicing Official or other designated official is not required to complete a detailed report for the housing market being analyzed. However, the analysis should be documented for the file and be as comprehensive and explicit as needed to assure an understanding of the rationale of the analysis and its conclusions, findings, and recommendations. The market analysis review is expected to contain a specific determination of whether the market area is soft or able to support the prepaying project as an unsubsidized conventional project.

D. Preliminary determination of action to be taken. After the preceding initial evaluations are made, the Servicing Office or other designated office must make preliminary decisions and determine the direction action on the request will take. As further information is gathered and analysis conducted, the direction may change. Under no circumstances will the decisions regarding incentives to be offered or to accept prepayment be made for servicing reasons. The following decisions are to be fully documented:

1. Determine whether the project is feasible in the conventional market, and if so, to what degree. Determine whether the conversion to conventional housing is a sound financial decision for the borrower, and is prepayment of the loan a real possibility;

2. Determine whether the project is needed in the very low- and low-income market, and if so, how many units are needed. If not, is there a surplus of affordable very low- and low-income housing in the market, and would a prepayment be beneficial to consolidate tenants in projects which now have high vacancies;

3. Determine whether the project would continue to serve very low- and low-income tenants even if the project is removed from the Rural Development program and all restrictions expired. Would there be an effect on the very low- and low-income market in the long run if the prepayment were accepted with or without restrictive-use provisions;

4. Determine whether there are documented reasons that the borrower should be encouraged to transfer ownership within the Rural Development program;

5. Determine whether prepayment of the project will negatively impact minorities in the project and the market area; and

6. Determine whether any other conditions apply which may be unique to the project or market and could impact decision-making.

III. Evaluation of the ability to prepay.

If there are no legal or other restrictions prohibiting the borrower from prepaying as set forth in paragraph II. C. of this exhibit, an evaluation must be made of the borrower's financial ability to prepay. In many cases, the borrower will have submitted documentation which is sufficient to establish prepayment ability. In other cases, an evaluation must be made of the documentation submitted to be certain that the ability to prepay is sufficiently documented. This evaluation will be entered in the running case record. Borrowers will be advised by means of paragraph G of Exhibit C of this subpart of the information which can be used as documentation and the type of analysis required by the Servicing Office or other designated office to review the documentation. Difficulties in meeting the criteria to establish the ability to prepay should be documented in the running case record. Future Rural Development decisions concerning levels of incentives and acceptance of prepayment may be impacted by the strength of the borrower's prepayment ability.

A. Market analysis. A market analysis review as outlined in paragraph II. C. of this exhibit will be conducted.

B. Financing letters. Financing letters submitted must be original and signed and dated by the appropriate financial institution officer. The letter must state the loan will be made to the current borrower,

unless there is an option to purchase the project out of the program with no unacceptable contingencies (See paragraph III. C. of this exhibit).

1. Financial institution letter. Financial institution letters must show the size of the loan along with the rates, terms, and debt-to-equity ratio. The letter must show the loan is at least large enough to refinance the outstanding Rural Development balance unless the borrower is contributing additional equity. Any requirements stated as conditions for the loan must be evaluated. Examples may include requirements that tenant subsidies remain with the project, tax credits continue, bank credit standards be met, market evaluations or underwriting guidelines be met, or that rents be set at specific levels. If it appears that the lender is unaware of the conditions surrounding the prepayment (e.g., that the borrower plans to "opt-out" of Section 8), the lender should be contacted to determine that the conditions were understood when the letter was written. If the lender specifies market criteria or rents, a market analysis must be submitted by the borrower and evaluated by Rural Development to determine if the project can meet the specified conditions. If the letter raises any questions, the lender should be contacted for clarification.

2. Financial institution policy and lending criteria. If the lender's letter describes the lending criteria in general terms, the criteria should be evaluated to determine if the bank would actually make a loan in an amount sufficient to prepay the project. In all cases rates, terms, and maximum loans available must be included in the letter for the evaluation to be made. If there are questions, the lender should be contacted for clarification.

3. Vague statement of intent. In no case should a statement be accepted as documentation of the ability to prepay that the bank would consider making a loan or would welcome an application.

C. Purchase offers. Purchase offers should be evaluated in the same manner as bank letters. Any contingencies (e.g., subsidies, tax credits) must be legitimate in the context of the prepayment. If the purchase offer is contingent upon receiving a mortgage, the above evaluations concerning the availability of mortgage financing must be made.

D. Borrower assets to repay the loan. It should be determined that assets shown belong to the borrower entity, are realistically valued and liquid or easily convertible. Most real estate investments would not normally be considered easily convertible. Long-term investments must be evaluated to determine their face value, and to determine if they are easily convertible. The assets should be reviewed to determine that they are not committed as security elsewhere, and that the assets are sufficient for the prepayment request and all others currently pending in this and other States. If it appears that personal assets are being used

as permanent resources because commercial financing would be difficult to obtain, the information is to be entered in the running case record. If the assets belong to an individual and the borrower entity is an organization, the arrangements which have been made between the individual and the organization for the sale of the project or repayment of a loan after the prepayment must be reviewed. Scarce financing resources could provide information concerning the local market and affect the level of incentive offers to not prepay.

IV. Incentives to not prepay. Utilizing information from all sources, a thorough analysis should be made of the housing market to determine the need for housing and alternative uses for the RHS project. The analysis will be documented in the running case record and is to form the basis for the incentive offer. Incentives may be offered only if the restrictive period has expired for any RRH project loan entered into after December 21, 1979, but before December 15, 1987. (Revised 05-07-97, SPECIAL PN.)

A. Criteria for selection of incentives. The incentives offered must be in accordance with this subpart and meet the following criteria:

1. Be considered necessary by local market conditions and commensurate with the alternative uses for the housing in the community;
2. Provide a fair return to the borrower;
3. Preserve needed housing at affordable levels, so that there is no greater rent overburden, as specified in §1965.202 of this subpart at the project after the incentive is granted than there was before;
4. Be determined to be the least costly alternative for the Federal Government;
5. Be commensurate with the borrower's capability and willingness to continue to meet the purposes of the program, as documented by past experience with the present borrower or anticipated experience with a transferee, if any.
6. When developing an incentive offer, the Servicing Office or other designated office must first offer incentives other than equity loans, unless it is determined that alternative incentives are not adequate to provide a fair return to the borrower, prevent prepayment of the loan(s), or prevent displacement of the tenants. (Added 005-07-97, SPECIAL PN.)

B. Development of specific incentive package. An incentive offer must be made whenever a prepayment request would remove the project from the RHS program. The offer will be developed in accordance with the model provided in

Exhibit D of this subpart. The model sets the incentives to be offered at levels consistent with conventional unsubsidized multi-family real estate values in the local market. The offer allowed by the model is reduced as the financial incentive for conversion is reduced. The model allows minimal offers to those who would not be able to obtain equity funds in the private market, but do have the capability to prepay due to large cash reserves or personal resources. In these instances, the incentives are offered to reimburse the borrower for committing assets to a 20-year restrictive-use period, and foregoing possible alternative uses for their funds. In addition to the incentive model in Exhibit D of this subpart, the following guidelines must be considered for all incentives offered:

1. The model will be applied in all cases so that incentive offers will be individually derived based on local unsubsidized conventional multi-family housing real estate values. As such, it is unlikely that any two offers will be identical, even to the same borrower;
2. Any incentive(s) offered should assure that the project will remain financially feasible while continuing to house the tenants occupying the project at the time the incentive offer is made;
3. Incentives offered should take into account the extent that the housing is needed as low-income housing in the market. Vacancy rates and waiting lists at the project and other low-income projects must be analyzed. Market data submitted for proposed projects should be utilized and tenant comments considered;
 - a. If a prepayment could be legally accepted with no restrictions because the housing is clearly not needed in the low-income market, the incentive offered would not include an equity loan, regardless of the maximum offer allowed by the model;
 - b. If it can be determined that the project will continue to serve low-income tenants because of the existence of continued Section 8 subsidy and either restrictive-use provisions or the inability to "opt-out" of the subsidy, the model would require the incentive offer to be reduced accordingly, based on the number of years the housing would continue to serve the low-income population after the prepayment; and
 - c. NO INCENTIVE MAY BE OFFERED WHICH WILL LEAD TO DISPLACEMENT OF TENANTS or to the termination of low- or moderate-income use for the 20-year restrictive-use period. Therefore, sufficient RA must be allocated to the project so that no tenants are subject to rent overburden as a result of the incentive package.

4. Whenever the borrower is determined to have the ability to prepay, the incentive offer allowed by the model will be offered. However, the offer may be subject to conditions. The incentive offer may not be reduced because of servicing problems with the borrower. However, if there are documented problems with the borrower, the offer can be made contingent on transfer of the project to an acceptable purchaser. The offer can further offer a smaller incentive if such a transfer does not take place. Determinations made of borrower eligibility to receive an equity loan are carried out in the same manner as eligibility determinations made for new loans; and

5. Incentive offers for full profit projects will be developed in the same manner as for limited profit projects. If low-income housing is needed in the community, full profit borrowers should be offered interest credit along with the other incentives derived from the incentive model. An offer to a full profit borrower must be conditioned on conversion to limited profit, whether the project is maintained by the same owner or sold to an acceptable transferee.

V. Determining whether prepayment may be accepted. If the borrower rejects the incentive offer, a determination will be made as to whether prepayment can be accepted. Section 1965.215 of this subpart specifies the conditions which must be met if prepayment is to be accepted. The following issues must be addressed when making the determination that prepayment may be accepted. IF THERE IS ANY DOUBT ABOUT THE ACCEPTABILITY OF PREPAYMENT, THE PREPAYMENT SHOULD NOT BE ACCEPTED. IF THERE IS ANY DOUBT ABOUT THE ACCEPTABILITY OF PREPAYMENT WITHOUT RESTRICTIVE-USE PROVISIONS, THE RESTRICTIVE-USE PROVISIONS SHOULD BE INSERTED.

A. Determination that there is no longer a need for the housing and related facilities in the Rural Development program. The reasons for a decision that the housing is not needed must be fully documented in the running case record. A determination may be made that there is no longer a need for the housing if any of the following conditions can be met;

1. Adequate, affordable alternative housing is available in the community. Affordable (no new or increased rent overburden), vacant, decent, safe and sanitary, non-assisted alternative housing, or vacant assisted units for which there is no waiting list, are available to the tenants who are likely to be displaced as a result of the change or rent increase. To make the determination that adequate, affordable housing is available in the market, there must be at least one affordable long-term vacancy in a unit of appropriate size for each eligible tenant who may be displaced. The actual ratio of available units to displaced tenants should be based

on the population of the market and project so that there is no doubt that sufficient units will be available as each affected tenant would need to move. The determination may be made that adequate alternative housing is available if:

a. There are vacant units in the prepaying project and/or units filled by ineligible tenants because eligible tenants cannot be found to fill the units;

b. There are no prospective eligible tenants on the waiting list or in the community who would have occupied the units at the project if the units had been available;

c. There are no waiting lists for eligible tenants at other Rural Development or subsidized projects in the market area;

d. No Rural Development or subsidized projects have been built in the same market during the past year, and there are no active applications to build subsidized housing projects in the market area in the future;

e. There are long-term vacancies in other subsidized housing projects or comparable conventional units with rents affordable to eligible tenants in the community; and

f. It does not appear that additional subsidized housing will be needed for a minimum of the period restrictive-use provisions would have protected tenants if restrictive-use provisions would have been required. It may be necessary to review population projections for the market or industry growth plans to make this determination.

2. The project will continue to serve the low-income population in the local market. NO TENANT AT THE PREPAYING PROJECT WILL BE DISPLACED and prospective low-income tenants wishing to live at the project will be allowed to do so. There will be no change in the use of the housing or related facilities after the prepayment. There will be no likely increase in rental or other charges as a result of prepayment which will create rent overburden, either for current or potential tenants, for a minimum of the period restrictive-use provisions would have protected tenants if restrictive-use provisions would have been required; or

3. The housing is located on an individual farm. The housing was designed to be occupied by on-farm laborers, cannot be separated from the remainder of the farm for security purposes, and is no longer needed to house laborers for the farm.

B. Borrower elects to prepay subject to restrictive-use provisions. If an eligible borrower agrees to become subject to restrictive-use provisions, the prepayment may be accepted. The running case record must contain adequate documentation showing that the borrower was aware of the implications of the restrictions signed and that the restrictions will remain with the project even if the project is sold.

C. Rural Development determines that restrictive-use provisions are required in the release documents. The determination that prepayment may be accepted only with restrictions must be made if there is any possibility that rents could be increased. A borrower agreement to not increase rents, extend the term of current leases, or continue to accept third-party subsidy (e.g., Section 8) may not be used as a substitute for restrictive-use provisions. Restrictions will be inserted if an analysis of the following issues indicates that the borrower will need to and/or will have the option of increasing rents or that comparable housing may not remain available:

1. An evaluation of the proforma budget using current operating costs does not show that the borrower can feasibly operate the project as unsubsidized conventional housing at current rents;
2. An evaluation of conventional rents in the market shows that the market would allow the borrower to raise rents;
3. The only protection of tenants' rents is a third-party subsidy, regardless of whether or not the borrower indicates the intention to continue to accept the subsidy; or
4. The available housing determined to be comparable is not expected to be available for an extended period of time, either because of age or because the owner may be allowed to "opt-out" of a subsidy program.

D. Determination that housing opportunities for minorities will not be materially affected. Regardless of the results of the above analyses, no prepayment may be accepted without restrictive-use provisions unless it can be documented that the prepayment will have no material affect on minorities, either at the project or in the market area, in accordance with guidance provided in Paragraph II.C.1.h. of this Exhibit. If this determination cannot be made, the restrictive-use provision contained in paragraph (A) of Exhibit A-4 of this subpart is to be used. The restriction will remain in effect for 20 years from the last loan or servicing action on the project. At the end of the 20-year period, the restriction requires that the project be sold to a nonprofit organization or public agency.

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PREPAYMENT AND DISPLACEMENT PREVENTION GRANT AGREEMENT

THIS AGREEMENT dated _____, 20__, between
_____ which is organized
and operating under _____
_____ herein call "Grantee,"

(Authorizing Statute)

and the United States of America acting through the Rural Development,
Department of Agriculture, herein called "Grantor," WITNESSETH:

WHEREAS:

Grantee has determined to undertake a project of acquisition of a multi-family housing project financed by the Grantor to house rural residents and has duly authorized the undertaking of such a project.

Grantee wishes to obtain grant funds to assist in the costs of acquisition of such project.

Grantor has agreed to grant the Grantee a sum not to exceed \$_____ subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time it is determined that the Grantee has failed to comply with the conditions of the grant.

NOW, THEREFORE, In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 502 of the Housing Act of 1949 to cover any direct costs (other than the purchase price) incurred by the organization or agency in purchasing and assuming responsibility for the housing and related facilities involved, as defined by applicable Rural Development instructions.

GRANTEE AGREES THAT GRANTEE WILL:

A. Attempt to acquire said project in accordance with Rural Development regulations.

B. If acquired, either directly or through contract, manage, operate and maintain the project continuously in an efficient and economic manner.

C. Make services of said project available within its capacity to all eligible rural residents without discrimination because of race, color, religion, sex, age, handicap, marital or familial status, or national origin. For more specific requirements see 7 CFR Parts 3 and 15, Subparts A and B.

D. Provide Grantor with such periodic reports as it may require and permit periodic inspections of its operations by a representative of the Grantor.

E. To execute Forms Rural Development 400-1, "Equal Opportunity Agreement," and RD 400-4, "Assurance Agreement," and to execute any other agreements required by Grantor which Grantee is legally authorized to execute. If any such form has been executed by Grantee as a result of a loan or transfer being made to Grantee by Grantor contemporaneously with the making of this grant, another form of the same type need not be executed in connection with this grant.

F. Upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will repay to Grantor forthwith the original principal amount of the grant stated hereinabove, with interest at the rate of 5 percentum per annum from the date of the default. Default by the Grantee will constitute termination of the grant, thereby causing cancellation of Federal assistance under the grant. The provisions of this Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it of previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made. For further provisions regarding enforcement see 7 CFR 3016.43.

G. Return immediately to Grantor, as required by the regulations of Grantor, any grant funds actually advanced and not needed by Grantee for approved purposes.

H. Provide Financial Management Systems, as more specifically provided in 7 CFR 3016.20, which will include:

1. Accurate, current and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.
2. Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

3. Effective control over and accountability for all funds. Grantee shall adequately safeguard all such funds and shall assure that they are used solely for authorized purpose.

4. Accounting records supported by source documentation.

I. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after grant closing except that the records shall be retained beyond the 3-year period if audit findings have not been resolved. Microfilm copies may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's government which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts, and transcripts.

J. Provide an audit report pursuant to 7 CFR 3016 prepared in sufficient detail to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this Agreement.

K. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursements for program purposes when the Grantee is a unit of local government. States and agencies or instrumentalities of states shall not be held accountable for interest earned on grant funds pending their disbursement.

L. Except as specifically provided in this agreement, comply with the applicable provisions of USDA's general grant regulations set out in 7 CFR 3016.

M. Comply with the requirements of 7 CFR 3017, Subpart F, relating to drug-free workplace requirements and 7 CFR Part 3018 relating to restrictions on lobbying.

GRANTOR AGREES THAT IT:

A. Will make available to Grantee for the purpose of this Agreement not to exceed \$_____ which it will advance to Grantee in accordance with the actual needs of Grantee as determined by Grantor.

B. Will assist Grantee with such assistance as Grantor deems appropriate in acquiring the project.

C. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without available consideration, upon such terms and conditions as Grantor may determine to be (1) advisable to further the purpose of the grant or to protect Grantor's financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

TERMINATION OF THIS AGREEMENT:

This Agreement may be terminated for cause in the event of default on the part of the Grantee as provided in paragraph F of this exhibit or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the grant will not produce beneficial results commensurate with the further expenditure of funds.

IN WITNESS WHEREOF Grantee on the date first above written has caused these presence to be executed by its duly authorized

_____ and attested and its
corporated seal affixed by its duly authorized

ATTEST:

By _____

(Title)

By _____

(Title)

UNITED STATE OF AMERICA
RURAL DEVELOPMENT

By _____

(Title)

(Name of Owner) certifies that (Name of Project) is being operated in compliance with the restrictive-use provisions contained in (Applicable release document) and the Restrictive-Use Agreement which sets forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable Rural Development regulations. (Name of Owner) understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the United States to seek enforcement of the provisions.

Date: _____

Owner: _____

By: _____

(Title)

oOo

(Name of Owner) certifies that (Name of Project) is being operated in compliance with the restrictive-use provisions contained in (Applicable release document) and the Restrictive-Use Agreement which sets forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable Rural Development regulations. (Name of Owner) understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the United States to seek enforcement of the provisions.

Date: _____

Owner: _____

By: _____

(Title)

oOo

(Name of Owner) certifies that (Name of Project) is being operated in compliance with the restrictive-use provisions contained in (Applicable release document) and the Restrictive-Use Agreement which sets forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable Rural Development regulations. (Name of Owner) understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the United States to seek enforcement of the provisions.

Date: _____

Owner: _____

By: _____

(Title)

oOo

(Name of Owner) certifies that (Name of Project) is being operated in compliance with the restrictive-use provisions contained in (Applicable release document) and the Restrictive-Use Agreement which sets forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable Rural Development regulations. (Name of Owner) understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the United States to seek enforcement of the provisions.

Date: _____

Owner: _____

By: _____

(Title)

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