

§ 3560.659

housing to a qualified nonprofit organization or public body in accordance with § 3560.659.

(2) If housing opportunities for minorities would be lost as a result of prepayment, the borrower will offer to sell the housing to a qualified nonprofit organization or public body in accordance with § 3560.659.

(b) If the borrower does not elect or agree to enter an agreement in accordance with paragraph (a) of this section, then the Agency will assess the impact of prepayment on two factors: housing opportunities for minorities and the supply of decent, safe, sanitary, and affordable housing in the market area. The Agency will review relevant information to determine the availability of comparable affordable housing for existing tenants in the market area and if minorities in the project, on the waiting list or in the market area will be disproportionately adversely affected by the loss of the affordable rental housing units.

(1) If restrictive-use provisions are in place, the borrower will agree to sign the restrictive-use provisions, as determined by the Agency, and at the end of the restrictive-use period, offer to sell the housing to a qualified nonprofit organization or public body in accordance with § 3560.659.

(2) If the Agency determines that prepayment will have an adverse impact on minorities, then the borrower must offer to sell to a qualified nonprofit organization or public body in accordance with the provisions of paragraph (a) of this section.

(3) If the Agency determines that the prepayment will not have an adverse effect on housing opportunities for minorities but there is not an adequate supply of decent, safe, and sanitary rental housing affordable to program eligible tenant households in the market area, the loan may be prepaid only if the borrower agrees to sign restrictive-use provisions, as determined by the Agency, to protect tenants at the time of prepayment.

(4) If the Agency determines that there is no adverse impact on minorities and there is an adequate supply of decent, safe, and sanitary rental housing affordable to program eligible tenant households in the market area the

7 CFR Ch. XXXV (1-1-10 Edition)

prepayment will be accepted with no further restriction.

(c) If the borrower agrees to the restrictive-use provisions, as determined by the Agency, the applicable language must be included in the release documents and the borrower must execute a restrictive-use agreement acceptable to the Agency and a deed restriction.

(d) If the borrower will not agree to applicable restrictive-use provisions, as determined by the Agency, the borrower must offer to sell to a nonprofit or public body in accordance with § 3560.659 or withdraw their prepayment request.

[69 FR 69106, Nov. 26, 2004, as amended at 73 FR 65506, Nov. 4, 2008]

§ 3560.659 Sale or transfer to nonprofit organizations and public bodies.

(a) *Sales price.* For the purposes of establishing a sales price when a borrower is required or elects to sell a housing project to a nonprofit organization or public body, two independent appraisals will be ordered, one by the Agency and one by the borrower. Both appraisals will conclude market value and be in accordance with subpart P of this part. If the borrower's assessment of the Agency's appraised market value indicates that no further appraisal is needed, the borrower may agree to accept the Agency's appraisal.

(1) The expense of the borrower's appraisal shall be borne by the borrower. The appraiser selected may not have an identity of interest with the borrower.

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

(b) *Marketing to nonprofit organizations and public bodies.* If a borrower must offer the property for sale to a nonprofit organization or public body under this paragraph, the borrower must take the following actions to inform appropriate entities of the sale:

(1) The borrower must advertise and offer to sell the project for a minimum of 180 days. The borrower may choose to suspend advertising and other sales efforts while eligibility of an interested

purchaser is determined. If the purchaser is determined to be ineligible, the borrower must resume advertising for the balance of the required 180 days.

(2) The Agency will assist the borrower in initially notifying nonprofit organizations and public bodies.

(3) The borrower must provide the nonprofit organizations and public bodies contacted with sufficient information regarding the housing project and its operations for interested purchasers to make an informed decision. The information provided must include the minimum value of the housing project based on the market value determined in accordance with paragraph (a) of this section.

(4) If an interested purchaser requests additional information concerning the housing project, the borrower must promptly provide the requested materials.

(c) *Preference for local nonprofit and public bodies.* Local nonprofit organizations and public bodies have priority over regional and national nonprofit organizations and public bodies. The Agency may determine that no local nonprofit organizations or public bodies are available to purchase the housing project. After this determination, the borrower may accept an offer from a regional or national nonprofit organization or public body.

(d) *Eligible nonprofit organizations.* To be eligible to purchase properties under the conditions of this subpart, nonprofit organizations may not have among its officers or directorate any persons or parties with an identity-of-interest (or any persons or parties related to any person with identity-of-interest) in loans financed under section 515 that have been prepaid. In addition to local nonprofit organizations, eligible nonprofit organizations include regional or national nonprofit organizations or public bodies provided no part of the net earnings of which accrue to the benefit of any member, founder, contributor or individual.

(e) *Requirements for nonprofit organizations and public bodies.* To purchase and operate a housing project, a nonprofit organization or public body must meet the following requirements:

(1) The purchaser must agree to maintain the housing project for very

low- and low-income families or persons for the remaining useful life of the housing and related facilities. However, currently eligible moderate-income tenants will not be required to move.

(2) The purchaser must agree that no subsequent transfer of the housing project will be permitted for the remaining useful life of the housing project unless the Agency determines that the transfer will further the provision of housing for low-income households, or there is no longer a need for the housing project. Language to be included in the deed, conveyance instrument, loan resolution, and assumption agreement (as applicable) is provided in § 3560.662.

(3) The purchaser must demonstrate financial feasibility of the housing project including anticipated funding.

(4) The purchaser must certify to the Agency that no identity-of-interest relationships in accordance with § 3560.102(g). The purchaser must not have any identity of interest with the seller or any borrower that has previously prepaid or requested prepayment of an Agency MFH loan.

(5) The purchaser must complete an Agency-approved application and obtain Agency approval in accordance with subpart B of this part.

(6) The purchaser must make a good faith offer taking into consideration the value of the housing project as determined in accordance with paragraph (a) of this section.

(f) *Selection priorities.* If more than one qualified nonprofit organization or public body submits an offer to purchase the project at the same time, priority will be given to local nonprofit organizations and public bodies over regional and national nonprofit organizations or public bodies. When selecting between offers equally meeting all other criteria, the borrower will first consider the success of the nonprofit organization's or public body's previous experience in developing and maintaining subsidized housing, with preference given to the most successful. If the offers continue to be equal, the borrower will then consider the number of years experience that the nonprofit organization or public body has had in developing and maintaining

§ 3560.660

subsidized housing, with preference given to the greater number of years.

(g) *Loans made by the Agency or other sources to nonprofit organizations and public bodies.* Agency loans to nonprofit organizations or public bodies may be made for the purposes described in this paragraph. Agency loans will be processed in accordance with subpart B of this part. Loans from other sources will be approved by the Agency in accordance with subpart I of this part.

(1) Agency loans to nonprofit organizations or public bodies for the purchase of a housing project will be based on the appraised value determined in accordance with paragraph (a) of this section.

(2) With proper justification, an Agency loan may be made to help the nonprofit organization or public body meet the housing project's first year operating expenses if there are insufficient funds in the housing project's general operating and expense account to meet such expenses. An Agency loan, for the purpose of covering first year operating expenses, may not exceed 2 percent of the housing project's appraised value determined in accordance with paragraph (c) of this section.

(h) *Advances for nonprofit organizations and public bodies.* The Agency may make advances, in accordance with section 502(c)(5)(c)(i), not in excess of limits established by Congress to nonprofit organizations or public bodies that are purchasing housing under this subpart. Grant funds may be used to cover any direct costs other than the purchase price, incurred by nonprofit organizations or public bodies in purchasing and assuming responsibility for the housing project.

(i) *Waiting list.* If funds for sales to nonprofit organizations and public bodies are limited, the Agency will add the funding requests to the waiting list for incentives and follow the process established in § 3560.657(b) and (c).

(j) *Withdrawal from sales process.* A borrower may withdraw the prepayment request at any time prior to the sale of the property. The borrower will be responsible for any damages associated with breaking a sales contract established with a nonprofit organization or public body.

7 CFR Ch. XXXV (1-1-10 Edition)

(k) *When no offer to purchase is received.* Prepayment with no further restriction may be accepted by the Agency when the borrower agrees to offer the housing project for sale to a nonprofit organization or public body in accordance with § 3560.659 and no good faith offer is received within 180 days from the date that the housing project was advertised for sale to a nonprofit organization or public body, or a good faith offer was received within 180 days from the advertisement date but the offeror was unable to fulfill the terms of the offer within 24 months of the offer date, provided the owner cooperated with the potential purchaser.

[69 FR 69106, Nov. 26, 2004, as amended at 73 FR 65506, Nov. 4, 2008]

§ 3560.660 Acceptance of prepayments.

(a) When the Agency agrees to accept prepayment, the Agency will notify borrowers, in writing, of the conditions under which the Agency will accept prepayment including the specific restrictive-use provisions to which the borrower has agreed and the date by which the borrower must make the prepayment.

(1) Prepayment must be made 180 days from the date of the Agency's prepayment acceptance notice to the borrower.

(2) If the borrower's prepayment is not received within 180 days of the prepayment acceptance notice and the Agency has not agreed to an alternative date based on a written request from the borrower, the Agency may cancel the prepayment acceptance agreement.

(b) Tenants will be notified of the prepayment acceptance agreement in accordance with § 3560.654(c). If a prepayment is anticipated to result in increased net tenant contributions, displacements or involuntary relocations, the tenants, who are affected by such a circumstance, may request a Letter Of Priority Entitlement (LOPE) in accordance with § 3560.159(c). Tenants must request a LOPE within one year of the prepayment acceptance notice date.

(c) Owners will provide certification stating that they will meet state and local laws prior to prepayment acceptance.