UNITED STATES DEPARTMENT OF AGRICULTURE

RURAL HOUSING SERVICE

HB-2-3560

SUBJECT: Multi-Family Housing Asset Management Handbook

TO: Rural Development, Rural Housing Service

EFFECTIVE DATE: Date of approval

EXPIRATION DATE: 40 years from Date of Approval.

OFFICE OF PRIMARY INTEREST: Multi-Family Housing**,** Direct Loan Origination Branch, under the Rural Housing Service (RHS), a part of Rural Development (RD), an Agency within the United States Department of Agriculture (USDA)

INSTRUCTIONS: Handbook - HB-2-3560.

AVAILABILITY: This Handbook is available on the website:
https://www.rd.usda.gov/resources/directives/handbooks

PURPOSE: This Handbook provides USDA staff, borrowers, and property managers with uniform, mandatory guidelines to administer, monitor, and manage USDA Rural Development Multifamily Housing programs (Sections 514, 516, and 515). It ensures strict federal regulatory compliance, standardizes nationwide financial and operational procedures, and safeguards the government's investment by forcing properties to remain physically sound and financially viable. Additionally, the handbook establishes clear protocols for protecting tenant rights, verifying income eligibility, and enforcing civil rights and fair housing laws across all funded properties.

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CHAPTER 1: INTRODUCTION

SECTION 1: INTRODUCTION TO THE ASSET MANAGEMENT HANDBOOK

1.1 ABOUT THIS HANDBOOK

This handbook provides Multi-Family Housing staff with guidance about the Agency's procedures for overseeing borrowers' performance in meeting their responsibilities under the program. Its goal is to help MFH Servicing Officials provide consistent, effective oversight of projects financed by the Agency to ensure that they are operated in accordance with applicable regulatory and administrative requirements. This role is defined as asset management.

This handbook presents the Agency's asset management procedures for:

Section 515 Multi-Family Housing projects:

Rural rental housing (including congregate housing and group homes); and

◊ Rural cooperative housing.

- Section 514/516 Farm Labor Housing projects:

◊ Off-farm labor housing; and

◊ On-farm labor housing.

The guidance provided by this handbook is intended to be consistent with all applicable laws, Executive Orders, and Departmental regulations, including other Agency regulations. Nothing contained in this handbook should be construed to supersede, rescind, or otherwise amend such laws, Executive Orders, and regulations.

1.2 COMPANION MULTI-FAMILY HOUSING HANDBOOKS

This handbook is the second in a series of three handbooks that describe the requirements and procedures for the Multi-Family Housing direct loan and grant programs. The two companion handbooks are:

- **HB-1-3560: Loan Origination.** This handbook covers the requirements and procedures for processing loan and grant applications for Multi-Family Housing projects, selecting projects for Agency funding, and closing the loans and grants for these projects.

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- **HB-3-3560: Project Servicing.** This handbook addresses the requirements and procedures for servicing loan accounts, allowable servicing actions borrowers can request, project preservation, prepayment, and Agency actions in the event of compliance violations or project default.

1.3 USING THIS HANDBOOK

The handbook is organized to allow the reader to look up information on specific topics easily. Several graphic tools and conventions have been used to make information easier to find and understand.

A. Citations and Text Boxes

- **Regulatory citations.** The regulation for Multi-Family Housing programs is provided in 7 CFR Part 3560. The text of that regulation is included in **Appendix 1**. To help readers locate the regulatory authority for procedures described here, references to this regulation in paragraph headings appear in italicized brackets, for example: *[7 CFR 3560.51]*. Other regulations or RD Instructions are simply referenced.

- **Form references.** Agency forms and Agency guide, form, and system letters are shown in *italics.* All forms referenced in this handbook can be found in **Appendix 3** and all letters can be found in **Appendix 4**.

- **Examples and exhibits.** Text boxes labeled as examples provide a specific illustration of a concept described in the text. Exhibits illustrate key points and are numbered in sequence, using the chapter number and a sequence number; for example, Exhibit 3-1 is the first exhibit in Chapter 3.

B. Attachments and Appendices

- **Attachments.** Attachments at the end of each chapter contain technical information that is specific to the topics covered in the chapter. Attachments are referenced in sequence using the chapter number and a sequence letter; for example, **Attachment 4-A** is the first attachment in Chapter 4.

- **Appendices.** Appendices at the end of the handbook include forms and other reference materials that relate to multiple chapters.

C. Terminology

Because terminology may vary from state to state and may change over time, this handbook uses certain standard terminology to provide consistency.

- **Agency.** The term “Agency” is used throughout this handbook to refer to the Rural Housing Service (RHS) within the U.S. Department of Agriculture (USDA) that is responsible for the administration of the Multi-Family Housing programs.

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- **Approval Official.** This term is used whenever someone other than the Loan Servicer must approve an action.

- **Borrower.** The term "borrower" refers to one or more individuals who are receiving Agency assistance through a Multi-Family Housing program in the form of a loan or a grant.

- **Leadership Designee.** This term refers to the Agency staff person with delegated decision-making authority for a specific aspect of the program.

- **Management Agent.** A "management agent" is an entity that contracts with the borrower to perform the management functions necessary to effectively operate a multi-family housing project.

- **MFH Servicing Official.** This term refers to Agency staff with responsibility for ensuring that multi-family housing borrowers comply with program requirements and for servicing loan accounts.

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SECTION 2: OVERVIEW OF THE AGENCY'S MULTI-FAMILY HOUSING PROGRAMS

1.4 GOALS OF THE RHS MULTI-FAMILY HOUSING PROGRAMS

The purpose of the Multi-Family Housing programs is to provide adequate, affordable, decent, safe, and sanitary rental units for very low-, low-, and moderate-income households in rural areas. In providing this service, the Agency strives to meet several goals.

- **Customer service.** The Agency is committed to providing customer-friendly, streamlined service. The Agency will administer its programs fairly and in accordance with both the letter and the spirit of all equal opportunity and fair housing legislation and applicable Executive Orders.

- **Partnerships.** The Agency's ability to serve eligible households is enhanced by working with its partners, such as borrowers, property management agents, tenants, other lenders, nonprofit organizations, and state and local agencies.

- **Effective use of resources.** As publicly funded initiatives, the Agency's Multi-Family Housing programs must use tax dollars efficiently. The Agency aims to minimize administrative costs, underwrite loans responsibly, and leverage funding with private sources of credit to the extent possible.

1.5 SECTION 515 PROGRAM—OVERVIEW

The Section 515 direct loan program *[7 CFR Part 3560]* provides financing to support the development of rental units in rural areas that need housing affordable for very low-, low-, and moderate-income households, and where this housing is unlikely to be provided through other means.

Section 515 loans can be used to build, acquire and rehabilitate, or improve dwellings in rural areas. The term for loans is tied to the expected useful life of the property, and the standard term for an initial Section 515 loan is 30 years with a 50-year amortization period. However, the term for subsequent loans and loans for special types of properties, such as manufactured housing, may be made for a shorter term based on the project's expected useful life.

Each loan is made at a note rate established by the Agency as prescribed in RD Instruction 440.1. Borrowers approved for initial and/or subsequent loans receive interest credit that reduces the effective interest rate for the Agency's financing, thereby lowering the property's rents. In return for this below-market rate financing, the borrower agrees to lease the project's rental units to income-eligible households at rents approved by the Agency.

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1.6 SECTION 514/516 PROGRAMS—OVERVIEW

Section 514/516 direct loan and grant programs provide funds to support the development of adequate, affordable housing for farmworkers that is unlikely to be provided through other means.

A. Section 514 Loans and Section 516 Grants for Off-Farm Housing

Section 514 loans and Section 516 grants can be used for the same purposes as Section 515 loans to finance rental housing for farmworkers. Unlike Section 515 projects, Off-Farm Labor Housing projects may be built outside rural areas, as long as the project addresses a need for affordable housing for farmworkers. These projects are eligible for financing at terms comparable to Section 515 loans, a grant to cover a significant share of the development cost, or a loan/grant combination finance package. The maximum term for an Off-Farm Labor Housing loan is 33 years, and the effective interest rate is 1 percent. For Off-Farm Labor Housing grants, the grant period of performance is five (5) years, which starts on the date the agreement is executed by the Agency and the grantee and ends five (5) years from the date the grant agreement is executed by the Agency and the grantee. The grant agreement will remain in effect for as long as there is a need for the housing, as determined by the Agency. Tenants not only must be income eligible, but also receive priority based on the proportion of their income received from farm work.

B. Section 514 Loans for On-Farm Housing

Section 514 loans can also be used to finance the development of adequate housing for farmworkers involved in a specific farm operation—On-Farm Labor Housing projects. These projects are treated as part of the farming operation, and the occupants do not pay shelter cost (rent and utilities) unless the shelter cost is approved by the Agency.

Labor housing borrowers who are providing shelter for domestic farm housing that is restricted for use by eligible residents supporting the borrower's farming operation may choose to provide that housing to residents without imposing charges for rent or utilities or may choose to impose charges for rent, utilities, or rent and utilities subject to Agency approval.

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SECTION 3: GENERAL PROGRAM REQUIREMENTS

1.7 CIVIL RIGHTS *[7 CFR 3560.2]*

The Agency will administer its programs fairly and in accordance with both the letter and the spirit of all equal opportunity and fair housing legislation and applicable Executive Orders. Exhibit 1-1 lists the applicable Federal laws and Executive Orders and highlights key aspects of these requirements.

Exhibit 1-1

Major Civil Rights Laws Affecting the Multi-Family Housing Loan and Grant Programs

- **Equal Credit Opportunity Act (ECOA).** Prohibits discrimination in the extension of credit on the basis of race, color, religion, national origin, sex, marital status, age, income from public assistance, and exercise of rights under the Consumer Credit Protection Act.
- **Title VI of the Civil Rights Act of 1964 as amended.** Prohibits discrimination in a Federally-assisted program on the basis of race, color, and national origin.
- **Title VIII of the Civil Rights Act of 1968 as amended** (also known as the Fair Housing Act of 1988, as amended). Prohibits discrimination in the sale, rental, or financing of housing on the basis of race, color, religion, sex, national origin, familial status, or disability.
- **Section 504 of the Rehabilitation Act of 1973.** Prohibits discrimination in a Federally-assisted program on the basis of disability.
- **Age Discrimination Act of 1975.** Prohibits discrimination in a Federally-assisted program on the basis of age.
- **Executive Order 11063 as amended by Executive Order 12259.** Prohibits discrimination in housing or residential property financing to any Federally-assisted activity against individuals on the basis of race, color, religion, sex, or national origin.
- **Executive Order 11246 as amended.** Prohibits discrimination in employment by construction contractors (and subcontractors) receiving Federally-assisted construction contracts in excess of $10,000. Provides for equal employment opportunity without regard to race, color, religion, sex, and national origin.
- **Executive Order 12898**. Requires each federal agency to make achieving environmental justice a part of its mission by identifying and addressing disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations.
- **Executive Order 13166.** Improving Access to Services for Persons with Limited English Proficiency. Required recipients of Federal financial assistance to provide language resources for persons that are limited English proficient.

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A. Nondiscrimination

The various civil rights laws prohibit the denial of loans, grants, services, and benefits provided under the Section 515 and 514/516 programs to any person on the basis of race, color, national origin, sex, (including gender identity and sexual orientation), religion, marital status, familial status, age, physical or mental disability or source of income, or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act (15 U.S.C. 1601). Discrimination in employment practices is also prohibited. These same requirements also apply to program participants. Agency oversight of borrower compliance with civil rights laws is covered further in Chapters 3, 6, and 9. Complaints filed by tenants will be handled by the Agency in accordance with RD Instruction 2000-GGG and **Attachment 1-A**.

Key Civil Rights Issues for Asset Management

1. Access
2. Consistency and fairness of treatment
3. Disparate impacts—intended or unintended
4. Record keeping

Effective management and consistent procedures are good business practices that help ensure that all applicants are treated fairly. Poor program implementation, whether or not discrimination is intended, has possible civil rights consequences.

B. Reasonable Accommodations for Persons with Disabilities

In addition to avoiding discrimination, the Agency and loan and grant recipients must make reasonable accommodations to permit persons with disabilities to apply for and benefit from Agency programs. Reasonable accommodations may include providing modifications to the dwellings and facilities so that they are physically accessible. Reasonable accommodations may also include effective communication and outreach tools so that all applicants can obtain program information (e.g., a Telecommunications Device for the Deaf [TDD]).

C. Limited English Proficiency *[7 CFR 3560.2]*

Borrowers and grantees must take reasonable steps to ensure that Limited English Proficiency (LEP) persons receive the language assistance necessary to afford them meaningful access to USDA programs and activities, free of charge. Failure to ensure that LEP persons can effectively participate in or benefit from Federally-assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d. USDA has issued guidance to clarify the responsibilities of recipients and subrecipients who receive financial assistance from USDA and assist them in fulfilling their responsibilities to LEP persons under Title VI of the Civil Rights Act, as amended, and implementing regulations.

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D. Civil Rights Impact Analysis

Agency employees will conduct civil rights impact analyses in accordance with RD Instruction 2006-P, to determine whether proposed policy actions, if approved and implemented, will negatively and disproportionately affect employees, program beneficiaries, or applicants for employment or program benefits due to race, national origin, or other protected basis.

1.8 REVIEWS AND APPEALS *[7 CFR 3560.9]*

Decisions that are not made in favor of a program participant (applicant or borrower) are known as adverse decisions. Adverse decisions must be based upon regulations that are published in the Code of Federal Regulations (CFR). For the direct Multi-Family Housing programs, any adverse decisions must be based upon 7 CFR Part 3560 and not the administrative guidance contained in this handbook. Adverse decisions include: (1) administrative actions taken by Agency officials; and (2) the Agency's failure to take required actions within time frames specified in statutes or regulations or within a reasonable time if no deadline is specified. **Appendix 2** contains 7 CFR Part 11, which is the regulation of the National Appeals Division (NAD) and provides procedures that both Agency officials and program participants must follow when an appeal is made. *Handbook Letter 101 (3560), Standardized Adverse Decision Letter,* will be used for all adverse decisions unless another format is prescribed in this handbook.

A. Informing Program Participants of Their Rights

Whenever an Agency official makes a decision that will adversely affect a program participant, the official must inform the participant in writing that an informal review with the person who made the decision may be requested. If the decision is appealable, the participant will also be informed of their rights to seek mediation or Alternative Dispute Resolution (ADR) and to request a hearing with NAD; **Attachment 1-B** is used for this purpose. If the decision cannot be appealed, participants will be informed of their rights to have NAD review the accuracy of the Agency's finding that the decision cannot be appealed; **Attachment 1-C** is used for this purpose. Mediation or ADR rights are not provided on decisions that cannot be appealed.

Letters notifying participants of adverse decisions must contain the required information regarding an informal meeting, mediation or ADR, rights to NAD, and civil rights. RD Instruction 2000-GGG includes only the specific civil rights language that must be contained in any adverse decision letter. **Attachments 1-B** through **1-I** contain, as necessary, the civil rights language and include information on requesting an informal review, mediation or ADR, and rights to a NAD appeal. The attachments are all titled to assist Agency staff in selecting the correct Attachment for the decision being made. The Attachments do not need to be used when an RD Form, Handbook Letter, or other document already includes the appropriate participant rights.

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B. Adverse Decisions That Cannot Be Appealed

Certain decisions made by the Agency cannot be appealed. In these cases, the participant is still provided the opportunity for an informal review, however, appeal rights to an NAD and rights to mediation or ADR are not offered. Participants will be informed through the use of **Attachment 1-C** that they may request an informal review and write to NAD for a review of the accuracy of the Agency's determination that the case cannot be appealed. Decisions that cannot be appealed include:

Decisions made by parties outside the Agency, even when these decisions are used as a basis for Agency decisions (such as when an applicant disagrees with a private lender's decision not to provide credit for a leveraged loan);

Denials of credit due to lack of funds; and

Rural area designations.

When one or more of the reasons for an adverse decision are reasons that cannot be appealed, the adverse decision cannot be appealed. In these cases, the letter containing the adverse decision will include only the items that cannot be appealed as the reason why the decision cannot be appealed. If other reasons also exist for the adverse decision, they will be listed separately in the decision letter as other reasons the assistance could not be granted.

C. Informal Review

Participants who want to request an informal review with the person who made the decision must do so within 15 days of the date of the Agency's letter notifying the participant of the adverse decision. The participant must make a request for an informal review in writing, and the request will be retained in the participant's case file. The informal review can be conducted, at the discretion of the Agency by telephone or through a face-to-face meeting. The informal review can also be conducted by a representative of the person who made the decision. The purpose of the informal review is to further explain the Agency's reasons for the adverse decision, listen to why the participant feels the decision may be incorrect, and obtain any further information from the participant to support their request. The review must be completed within 45 days of the request, and the participant is notified in writing of the results. The Leadership Designee may require that the decision be reviewed by the next-level supervisor or other designated Rural Development staff before the participant is notified of the decision. **Attachment 1-D** will be used if the adverse decision is not reversed as a result of the informal review. If the decision is reversed, a letter will be sent to the participant notifying them of the decision and next steps.

Participants may skip an informal review and, if applicable, request mediation, ADR, or a NAD appeal. In doing so, participants automatically waive their rights to an informal review.

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D. Mediation or ADR

Adverse decisions that are appealable to NAD also require that the participant be given the opportunity to seek mediation or ADR prior to having a hearing with NAD. The purpose of mediation or ADR is to resolve disputes through the use of a neutral mediator.

Participants may skip mediation or ADR and request a NAD appeal. In doing so, they automatically waive their rights to mediation or ADR.

1. Requests for Mediation or ADR

After receiving **Attachment 1-B** or **1-D**, a program participant may request mediation or ADR services. Upon receipt of the program participant's request for mediation or ADR, **Attachment 1-E, 1-G, or 1-H** is sent to the participant to start the process. The Attachment used depends upon whether the state in which the action applies is covered by a USDA-sponsored mediation program. These Attachments are generally sent by the Leadership Designee since costs are involved; however, they can be sent directly by Agency staff at the discretion of the Leadership Designee.

2. Cost of Mediation or ADR

There are generally costs associated with participation in mediation or ADR. When there are costs, they will be shared equally between the Agency and the program participant, if Agency funds are available. Where Agency funds are not available, the Agency will participate in mediation or ADR if requested by the program participant; however, the program participant will be notified in advance of the portion of the cost that the Agency will pay (if any) and their estimated cost for this service. The Leadership Designee will ensure that all participants requesting mediation or ADR in their state are treated consistently and pay the same percentage of the cost toward this service. The Leadership Designee may also consent to pay a larger percentage (up to 100 percent) of the cost of mediation or ADR for participants with incomes below the poverty level. The Agency will notify the mediation or ADR sources of how the cost of such service will be paid. **Attachments 1-E, 1-F, 1-G**, and **1-H** include language to meet this requirement.

3. Mediation in States with a USDA-Sponsored Mediation Program

Many states have a USDA-sponsored mediation program. These programs are funded, in part, by USDA and were established primarily to mediate cases originating from the Farm Service Agency (FSA). If program participants are unsure if a USDA mediation program exists in their state, they should contact their Leadership Designee. In states with a USDA-sponsored mediation program, program participants who are provided appeal rights generally will be referred to the USDA-sponsored mediation program. ADR is not applicable in these states. **Attachment 1-E** may be sent to the program participant to acknowledge their request, and **Attachment 1-F** may be used to refer the case to the USDA-sponsored mediation program. In states where alternative mediation sources are readily available at a lower cost than the USDA-sponsored mediation program, the state will follow the guidance for states without a USDA-

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sponsored mediation program, and include the USDA sponsored mediation program on the list of acceptable providers.

4. Mediation or ADR in States without a USDA-Sponsored Mediation Program

In states without a USDA-sponsored mediation program, Agency officials are responsible for maintaining a list of mediators or ADR providers. The Agency will generally maintain this list as program participants are referred to the Leadership Designee to initiate mediation or ADR. FSA can generally provide a list of acceptable mediation or ADR sources in a state. Other contacts include the American Association of Arbitrators (AAA) or State bar association. When making contacts with these sources, the Agency must request the services of a mediator and not an arbitrator. (A mediator resolves disputes by negotiating a resolution through mutual agreement; an arbitrator resolves disputes through hearing both parties and then rendering a binding decision and should not be used.) The list of mediators will contain the approximate cost of each service provider, if known. States may handle the list of mediation and ADR sources as follows:

The Agency may select a mediator or ADR provider from the list, provided there is not a significant variation in the cost of service providers. The list will be maintained alphabetically and sources selected in sequential order. **Attachment 1-G** may be sent to the program participant to acknowledge their request for mediation or ADR, and **Attachment 1-F** may be used to refer the case to the provider. The Agency will need to maintain documentation to ensure that mediators and ADR providers receive an equal number of referrals. If there is a significant variation in cost among service providers, this option will not be used.

The Agency may provide the list of mediators or ADR providers to the participant and request the participant to select the source or provide the name of another acceptable source of mediation or ADR. The list will contain the approximate cost of each service provider, if known. **Attachment 1-H** is used for this purpose and provides the participant with 10 days to select a service provider. After selection, **Attachment 1-F** will be used to refer the case to the mediator or ADR provider. If the program participant does not provide the name of a mediator or ADR provider within 10 days, their request for mediation or ADR will be considered withdrawn. Withdrawal or cancellation of mediation or ADR does not extinguish the participant's right to an appeal with NAD.

5. Timing of mediation or ADR

Mediation or ADR must be completed within 45 days after the case is referred to the mediation or ADR source, unless the complexity of the case warrants a longer time frame and all parties agree to a specific time frame. A mediator or ADR provider will generally conduct a teleconference between the parties prior to accepting a case to determine if the

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case can be mediated. The Agency encourages the use of a pre-mediation conference since many adverse decisions in the Multi-Family Housing program may not lend themselves to mediation. Regardless, the Agency will not refuse to participate in mediation or ADR if requested to do so by the program participant.

Mediation or ADR occurs prior to having a hearing with NAD. Requests for mediation or ADR made prior to filing an appeal with NAD stop the clock on the 30-day period during which a participant may appeal to NAD. After mediation or ADR has concluded, any days that remain from the 30-day period are available to the participant to request an appeal to NAD. **Attachment 1-I** is used for this purpose. The person completing **Attachment 1-I** will need to determine the number of days the participant took to request mediation or ADR. Hearing dates for participants who request mediation or ADR after filing an appeal must be selected with 45 days of the conclusion of mediation or ADR. Participants may also request mediation or ADR after filing an appeal with NAD but prior to the hearing.

E. Appeal

Participants who wish to appeal an adverse decision must submit a written request to NAD within 30 days of receiving notice of an adverse decision. The request must be signed by the participant and include: (1) a copy of the adverse decision to be appealed; and (2) a brief statement describing why the participant believes the decision is wrong.

Upon receiving a notice from NAD that an appeal has been filed, the Agency will promptly provide NAD with a copy of the Agency record, specific references in 7 CFR Part 3560 to support the adverse decision, and any other pertinent information. A copy will also be provided to the program participant.

In accordance with NAD regulations, the program participant has the right to a face-to-face hearing in the participant's state of residence. The program participant also has the right to request that the hearing be handled by teleconference. An adverse decision made by the Agency may result in an appeal hearing and may require a face-to-face hearing. In these cases, the Leadership Designee will determine who will attend the hearing and represent the Agency. The Leadership Designee will provide sufficient documentation and phone resources to the person(s) selected to adequately represent the Agency in the case.

NAD will notify the participant and the Agency once it has made a final determination. If NAD reverses the Agency's decision, the next loan processing action that would have occurred had no adverse decision been made must be taken within 30 days after the effective date of the notice from NAD; unless the Agency requests a review of the case by the Director of NAD. See **Appendix 2** for more guidance on Director Reviews and other information regarding appeals.

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F. Tenants and the Tenant Grievance Process

The Agency has a formal process for resolving tenant grievances. Tenants and applicants for tenancy may file complaints and may be entitled to a hearing, depending on whether the grievance is legitimate and whether it can be resolved through informal means. Tenant grievance procedures are discussed in detail in Chapter 6, Section 8 of this handbook.

1.9 CONFLICT OF INTEREST *[7 CFR 3560.10]*

All Agency employees must strive to maintain the highest levels of honesty, integrity, and impartiality in conducting their activities on behalf of the Agency. The Agency's conflict of interest requirements are described in RD Instruction 1900-D. To reduce the potential for conflicts of interest, all processing, approval, servicing, or review activity must be conducted by Agency employees who:

- Are not the recipient (applicant or borrower), a recipient's family member, or a close known relative of the recipient;
- Do not have an immediate working relationship with the recipient, the Agency employee related to the recipient, or the Agency employee who would normally conduct the activity; and
- Do not have a business or close personal association with the recipient.

A. Applicant Disclosure

Applicants must disclose any known relationship or association with Agency employees when they apply.

B. Agency Employee Disclosure

Agency employees must disclose any known relationship or association with a recipient, regardless of whether the relationship is known to others. MFH Servicing Officials should notify a supervisor after the application is accepted but before any eligibility determination is made.

1.10 OTHER FEDERAL REQUIREMENTS

A. Environmental Requirements *[7 CFR 3560.3]*

The Agency considers environmental quality equally with economic, social, and other factors in its program development and decision making processes. Agency staff is responsible for effectively integrating Agency environmental policies and procedures with loan and grant origination and servicing activities. It is particularly important for MFH Servicing Officials to be aware of environmental requirements concerning sites, especially during the liquidation process, when the Agency needs to ensure that it will not

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acquire property with an environmental liability. The MFH Servicing Official should also be aware of mitigation measures contained in the Agency's environmental review. Where mitigation measures require an on-going effort of owner and management (such as maintaining the condition of a historic building or not building on portions of the site) these should be a part of servicing. Agency environmental policies and procedures and historic preservation requirements can be found in RD Instruction 1970. Agency-assisted properties must meet current Agency guidance on lead-based paint requirements.

B. Construction Standards

Sites and dwellings developed or rehabilitated with Section 515 or Section 514/516 funds must meet the construction standards described or referenced in RD Instructions 1924-A and 1924-C. Existing dwellings must be decent, safe, and sanitary and must meet all applicable state and local codes.

C. Lobbying Restrictions

RD Instruction 1940-Q prohibits applicants and recipients of Agency assistance from using appropriated funds for lobbying the Federal Government in connection with a specific award. This Instruction also requires that entities that request or receive loans or grants must disclose the expenditure of any funds, other than appropriated funds, for lobbying activities using Exhibit A-1 from RD Instruction 1940-Q.

D. Administrative Requirements

Agency employees must comply with Agency and departmental administrative requirements.

1. Procurement

Goods and services procured to support Agency activities such as appraisals, inspections, broker services, and property management services must conform with the policies and procedures of RD Instruction 2024-A.

2. File Management

Files and other Agency records must be maintained in accordance with RD Instruction 2033-A. Additional information is provided in Chapter 9.

3. Handling Funds

Project funds must be handled in accordance with RD Instruction 1902-A.

1.11 EXCEPTION AUTHORITY *[7 CFR 3560.8]*

Exceptions to any requirement of this handbook or 7 CFR Part 3560 may be approved in individual cases by the Administrator if application of the requirement or failure to take action

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would adversely affect the Government's interest or conflict with the objectives and spirit of the authorizing statute. Any exception must be consistent with the authorizing statute and other applicable laws.

Requests for exceptions are submitted to the RHS Administrator, through the Deputy Administrator, Multi-Family Housing.

The exception request must provide clear and convincing evidence of the need for the exception. At a minimum the request must include:

- A full explanation of the circumstances, including an explanation of the adverse effect on the Government's interest;
- A discussion of proposed alternatives considered; and
- A discussion of how the adverse effects will be eliminated or minimized if the exception is granted.

Requests to the Administrator for exceptions regarding architectural, environmental, or civil rights issues will include the review and comments of the appropriate Agency staff.

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ATTACHMENT 1-A

EQUAL CREDIT OPPORTUNITY ACT (ECOA)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); and because all or parts of the applicant's income is derived from any public assistance program; or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this assistance is the Federal Trade Commission. If a person believes he or she was denied assistance in violation of this law, they should contact the Federal Trade Commission, Washington, D.C. 20580.

The Fair Housing Act prohibits discrimination in real estate related transactions or in the terms of conditions of such a transaction, race, color, religion, sex, disability, familial status, or national origin. The Federal agency that is responsible for enforcing this law is the U. S. Department of Housing and Urban Development. If a person believes that they have been discriminated against in violation of this law, they should contact the U. S. Department of Housing and Urban Development, Washington, D.C. 20410 or call (800) 669-9777.

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ATTACHMENT 1-B

ATTACHMENT TO LETTER NOTIFYING CUSTOMERS OF AN ADVERSE DECISION THAT IS APPEALABLE

The decision described in the attached letter did not grant you the assistance you requested or will terminate or reduce the assistance you are currently receiving. If you believe this decision or the facts used in this case are in error, you may pursue any or all of the following three options.

Option 1 - Informal Review

If you have questions concerning this decision or the facts used to make it and desire further explanation, you may write this office to request an informal review. ***There is no cost for an informal review.*** This written request must be received no later than 15 calendar days from the date of the attached letter. You must present any new information, evidence, and possible alternatives along with your request. You may also have a representative or legal counsel participate in the process, at your cost. The informal review may be conducted by telephone or in person, at the discretion of the Agency. Please include a daytime phone number in your request to arrange for the review. You may skip this step in the informal process and select one of the following two options. If you do, you will automatically waive your right to an informal review.

Option 2 - Mediation or ADR

You have the right to request mediation or other forms of ADR for the issues that are available for mediation. ***You will have to pay for at least 50 percent of the cost of mediation or ADR.*** Rural Development will pay for the other 50 percent of the cost, provided the Agency has sufficient resources from its appropriated funds. If the Agency does not have sufficient resources, you will be advised how much, if any, the Agency can contribute to the cost of mediation or ADR. If you need the information to assist you in deciding whether to seek mediation or ADR, you may contact the Rural Development Leadership Designee listed below.

If you elect to seek mediation or ADR, your written request for this service must be sent to the Rural Development Leadership Designee listed below and must be postmarked no later than 30 days from the date of the attached letter. The Rural Development Leadership Designee will advise you of the estimated cost of mediation or ADR, the extent to which the Agency can contribute to the cost, and the process and procedures for this service. In states with a USDA-sponsored mediation program, you will generally be referred to such service. In states without a USDA-sponsored mediation program, you will be provided with the name or names of mediators. You will be advised directly by the mediation or ADR source if they can mediate your case. Once you request mediation or ADR, it stops the running of the 30-day period in which you may request an appeal (described in Option 3). If mediation or ADR does not result in resolution of these issues, you have the right to continue with a request for an appeal hearing as set forth in Option 3.

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When mediation or ADR is concluded, you will be notified of the result and the number of days remaining to request an appeal, if applicable. If you request mediation or ADR prior to filing for an appeal, the number of days you will have to request an appeal will be 30 days from the adverse decision minus the number of days you took to request mediation. Mediation or ADR does not take the place of, or limit your rights to, an appeal to the NAD; however, an NAD appeal hearing would take place after mediation or ADR. You may skip mediation or ADR and request an appeal hearing. However, in doing so, you will automatically waive your rights to an informal meeting, mediation, or ADR.

Rural Development Leadership Designee address:

Option 3 - Request an Appeal

You may request an appeal hearing by the NAD rather than an informal review, mediation, or ADR. ***There is no cost for an appeal.*** Your request for an appeal must be made no later than 30 days from the date you receive the attached letter. You must write the Assistant Director, NAD, for your region at the following address:

NAD Assistant Director address:

Your request for an NAD hearing must state the reasons why you believe the decision is wrong, be personally signed by you, and must include a copy of the attached letter. A copy of your request must also be sent to the Rural Development Leadership Designee at the address listed under Option 2.

You have the right to an appeal hearing within 45 days of the receipt of your request. You or your representative or counsel may contact this office anytime during regular office hours in the 10 days following the receipt of your request for a hearing to examine or copy relevant non-confidential material in your file. Photocopies will be provided to you. Your representative or counsel should have your written authorization to represent you and review your file.

The NAD Hearing Officer will contact you regarding a time and place for the hearing. You may also request a teleconference hearing in lieu of the face-to-face hearing. At any time before the scheduled hearing, you may also request that the Hearing Officer make a decision without a hearing. If you do, the Hearing Officer's decision will be based on the Rural Development file,

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any written statements or evidence you may provide and any additional information the Hearing Officer thinks necessary.

The Federal ECOA prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); and because all or part of the applicant's income derives from any public assistance program; or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is the Federal Trade Commission. If a person believes he or she was denied assistance in violation of this law, they should contact the Federal Trade Commission, Washington, D.C. 20580

The Fair Housing Act prohibits discrimination in real estate related transactions, or in the terms of conditions of such a transaction, because of race, color, religion, sex, disability, familial status, or national origin. The federal agency that is responsible for enforcing this law is the U. S. Department of Housing and Urban Development. If a person believes that they have been discriminated against in violation of this law, they should contact the U. S. Department of Housing and Urban Development, Washington, D.C. 20410 or call (800) 669-9777.

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ATTACHMENT 1-C

ATTACHMENT TO LETTER NOTIFYING CUSTOMERS OF AN ADVERSE DECISION THAT CANNOT BE APPEALED

The decision described in the attached letter did not grant you the assistance you requested or will terminate or reduce the assistance you are currently receiving.

If you have questions concerning this decision or the facts used in making it and desire further explanation, you may write this office to request an informal review. This written request must be received no later than 15 calendar days from the date of the attached letter. You must present any new information, evidence, and possible alternatives along with your request. You may also have a representative or legal counsel participate in the process, at your cost. The informal review may be conducted by telephone or in person, at the discretion of the Agency. Please include a daytime phone number in your request to arrange for the review.

Applicants and borrowers generally have a right to appeal adverse decisions, but decisions based on certain reasons cannot be appealed. We have determined that reasons for the decision cannot be appealed under our regulations. You may, however, write the Assistant Director with the NAD for a review of the accuracy of our finding that the decision cannot be appealed. Your request must be made no later than 30 days from the date you receive the attached letter.

NAD Assistant Director address:

The Federal ECOA prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); and because all or part of the applicant's income derives from any public assistance program; or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is the Federal Trade Commission. If a person believes he or she was denied assistance in violation of this law, they should contact the Federal Trade Commission, Washington, D.C. 20580.

The Fair Housing Act prohibits discrimination in real estate related transactions, or in the terms of conditions of such a transaction, race, color, religion, sex, disability, familial status, or national origin. The Federal agency that is responsible for enforcing this law is the U. S. Department of Housing and Urban Development. If a person believes that they have been discriminated against in violation of this law, they should contact the U. S. Department of Housing and Urban Development, Washington, D.C. 20410 or call (800) 669-9777.

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ATTACHMENT 1 - D

ATTACHMENT TO LETTER NOTIFYING CUSTOMERS OF UNFAVORABLE DECISION REACHED AS A RESULT OF AN INFORMAL REVIEW

We appreciated the opportunity to review the facts relative to your request for assistance. We regret that the decision in the attached letter did not grant the assistance you requested or will terminate or reduce the assistance you are currently receiving. If you believe that facts used in this case are in error, you may pursue any or all of the following two options.

Option 1 - Mediation or ADR

You have the right to request mediation or other forms of ADR for the issues that are available for mediation. ***You will have to pay for at least 50 percent of the cost of mediation or ADR.*** Rural Development will pay for the other 50 percent of the cost, provided the Agency has sufficient resources from its appropriated funds. If the Agency does not have sufficient resources, you will be advised how much, if any, the Agency can contribute to the cost of mediation or ADR. If you need information to assist you in deciding whether to seek mediation or ADR, you may contact the Rural Development Leadership Designee listed below.

If you elect to seek mediation or ADR, your written request for this service must be sent to the Rural Development Leadership Designee listed below and must be postmarked no later than 30 days from the date of the attached letter. The Rural Development Leadership Designee will advise you of the estimated cost of mediation or ADR, the extent to which the Agency can contribute to the cost, and the process and procedures for this service. In states with a USDA-sponsored mediation program, you will generally be referred to this service. In states without a USDA-sponsored mediation program, you will be provided with the name or names of mediators. You will be advised directly by the mediation or ADR source if they can mediate your case. Once you request mediation or ADR, it stops the running of the 30-day period in which you may request an appeal (described in Option 2). If mediation or ADR does not result in resolution of these issues, you have the right to continue with a request for an appeal hearing as set forth in Option 2.

When mediation or ADR is concluded, you will be notified of the result and the number of days remaining to request an appeal, if applicable. If you request mediation or ADR prior to filing for an appeal, the number of days you will have to request an appeal will be 30 days from the adverse decision minus the number of days you took to request mediation. Mediation or ADR does not take the place of, or limit your rights to, an appeal to the National Appeals Division (NAD); however, an NAD appeal hearing would take place after mediation or ADR. You may skip mediation or ADR and request an appeal hearing. However, in doing so, you will automatically waive your rights to an informal meeting, mediation, or ADR.

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Rural Development Leadership Designee address:

Option 2 - Request an Appeal

You may request an appeal hearing by the NAD rather than an informal review or mediation. ***There is no cost for an appeal.*** Your request for an appeal must be made no later than 30 days from the date you receive the attached letter. You must write the Assistant Director, NAD, for your region at the following address:

NAD Assistant Director address:

The request for an NAD hearing must state the reasons why you believe the decision is wrong, be personally signed by you, and must include a copy of the attached letter. A copy of your request must also be sent to the Rural Development Leadership Designee at the address listed under Option 1.

You have the right to an appeal hearing within 45 days of the receipt of your request. You or your representative or counsel may contact this office anytime during regular office hours in the 10 days following the receipt of your request for a hearing to examine or copy relevant non-confidential material in your file. Photocopies will be provided to you. Your representative or counsel should have your written authorization to represent you and review your file.

The NAD Hearing Officer will contact you regarding a time and place for the hearing. You may also request a teleconference hearing in lieu of the face-to-face hearing. At any time before the scheduled hearing, you may also request that the Hearing Officer make a decision without a hearing. If you do, the Hearing Officer's decision will be based on the Rural Development file, any written statements or evidence you may provide and any additional information the Hearing Officer thinks necessary.

The Federal ECOA prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); and because all or part of the applicant’s income derives from any public assistance program; or because the applicant has, in good faith,

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exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is the Federal Trade Commission. If a person believes he or she was denied assistance in violation of this law, they should contact the Federal Trade Commission, Washington, D.C. 20580

The Fair Housing Act prohibits discrimination in real estate related transactions, or in the terms of conditions of such a transaction, race, color, religion, sex, disability, familial status, or national origin. The Federal agency that is responsible for enforcing this law is the U. S. Department of Housing and Urban Development. If a person believes that they have been discriminated against in violation of this law, they should contact the U. S. Department of Housing and Urban Development, Washington, D.C. 20410 or call (800) 669-9777.

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ATTACHMENT 1-E

ATTACHMENT FOR NOTIFYING CUSTOMERS THAT REQUEST MEDIATION IN STATES WITH A USDA-SPONSORED MEDIATION PROGRAM

This replies to your request for mediation or alternative dispute resolution services. The state in which you requested assistance has an impartial USDA-sponsored mediation program available. Your request for mediation has been sent to:

You will be contacted directly by the USDA-sponsored mediation program to determine if they can mediate the issues in your case.

As indicated in our adverse decision letter, there may be a cost for mediation services. The cost estimated for this service is:

$ _____ You will be advised directly by the USDA-sponsored mediation program of the full cost of mediation. This is only an estimate and may vary depending on the issues and complexity of the case. If you decide not to pursue mediation, you must immediately contact this office and the USDA-sponsored program to cancel your request

Rural Development will:

_____ Contribute 50 percent towards the cost. The balance of the cast will have to be paid from your own resources.

_____ Cannot contribute towards the cost as the Agency does not have financial resources for these services. You must pay the full cost of mediation from your own personal resources.

_____ Contribute _____ towards the cost. The balance of the cost will have to be paid from your own personal resources.

When mediation is concluded, you will be notified of the results and the number of days remaining to request an appeal, if applicable. If you request mediation prior to filing for an appeal, the number of days you will have to request an appeal will be 30 days from the adverse decision minus the number of days you took to request mediation. Mediation does not take the

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place of, or limit your rights to, an appeal to the NAD; however, an NAD appeal hearing would take place after mediation.

Remember, if you decide not to pursue mediation, you must immediately contact this office and the USDA-sponsored mediation program to cancel your request. You will be responsible for any costs incurred by the mediation or ADR source up until the time of your cancellation. Canceling your request for mediation does not affect your rights to seek an appeal with the NAD as discussed in our original decision letter.

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ATTACHMENT 1-F

ATTACHMENT FOR REQUESTING MEDIATION OR ALTERNATIVE DISPUTE RESOLUTION (ADR) SERVICES

TO:

FROM:

SUBJECT: Request for Mediation or ADR Services

CUSTOMER:

The above-subject Rural Development customer has received an adverse decision from our Agency and has requested mediation or ADR services. Attached is a copy of the adverse decision letter and the customer's request for your service.

Informal Review:

___ The customer was provided with the opportunity for an informal review with the Agency; however, chose not to exercise this option.

___ An informal review was conducted; however, the Agency did not reverse its decision.

Payment for Service:

___ The customer and Agency will split the cost of this service 50/50.

___ The customer will pay the full cost of mediation or ADR.

___ The Agency will pay _____ towards mediation or ADR. The customer will pay the balance.

If the Agency is paying for any portion of the cost of this service, the bill for the Agency's portion should be submitted to this office. The customer is solely responsible for their portion of the cost of this service and should be bill directly.

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Jurisdiction of case:

The adverse decision in this case was made by ___[insert Leadership Designee]___. You may contact the Appeals Coordinator for further information on the case and to arrange for mediation or ADR:

USDA, Rural Development

Appeals Coordinator

ATTN: _____

_____, _____ _____

(___) ___-____, extension _____

Mediation or ADR must be completed within 45 days; unless the complexity of the case requires a longer time frame and all parties agree to a specific time frame. We also request a teleconference prior to your acceptance of this case to determine if the adverse decision lends itself to mediation or ADR.

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ATTACHMENT 1-G

ATTACHMENT FOR NOTIFYING CUSTOMERS THAT REQUEST MEDIATION OR ALTERNATIVE DISPUTE RESOLUTION (ADR) OF SERVICE PROVIDER

This replies to your request for mediation or alternative dispute resolution services. Your request has been sent to:

You will be contacted directly by the above to determine if they can mediate the issues in your case.

As indicated in our adverse decision letter, there may be a cost for these services. The estimated cost for this service is:

$ _____ You will be advised directly by the mediation or ADR source of the full cost of this service. This is only an estimate and may vary depending upon the issues and complexity of the case. If you decide not to pursue mediation or ADR, you must immediately contact this office and the above-mentioned mediation or ADR provider.

Rural Development will:

_____ Contribute 50 percent towards the cost. The balance of the cost will have to be paid from your own resources.

_____ Cannot contribute towards the cost as the Agency does not have the financial resources. You must pay the full cost from your own personal resources.

_____ Contribute _____ towards the cost. The balance of the cost will have to be paid from your own personal resources.

When mediation or ADR is concluded, you will be notified of the result and the number of days remaining to request an appeal, if applicable. If you request mediation or ADR prior to filing for an appeal, the number of days you will have to request an appeal will be 30 days from the date you received notice of the adverse decision minus the number of days you took to request mediation. Mediation or ADR does not take the place of, or limit your rights to, an appeal to the NAD; however, an NAD appeal hearing would take place after mediation or ADR.

Remember, if you decide not to pursue mediation or ADR, you must immediately contact this office and the mediation or ADR provider to cancel your request. You will be responsible for

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any costs incurred by the mediation or ADR source up until the time of your cancellation. Canceling your request for mediation does not affect your rights to seek an appeal with the NAD as discussed in our original decision letter.

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ATTACHMENT 1-H

ATTACHMENT FOR NOTIFYING CUSTOMERS THAT REQUEST MEDIATION OR ALTERNATIVE DISPUTE RESOLUTION (ADR) OF POTENTIAL SERVICE PROVIDERS

This replies to your request for mediation or ADR services. Attached you will find a list of mediation and ADR providers. You will need to select one of the sources from the list, or you may provide the name of another independent mediation or ADR source. You must provide this office, in writing, with the name of the provider within 10 days. Rural Development will then contact the source and provide photocopies of the adverse decision letter and any other relevant information. We will also request that the mediation or ADR provider conduct a teleconference between the parties.

If we do not receive your selection of a mediator or ADR provider within 10 days, we will consider such inaction to be your notice to cancel your request for mediation or ADR. You may continue to pursue an appeal to the NAD as outlined in our original adverse decision letter.

As indicated in our original adverse decision letter, there may be a cost for these services. The estimated cost for this service is:

$ _____ You will be advised directly by the mediation or ADR source of the full cost of this service. This is only an estimate and may vary depending upon the issues and complexity of the case. If you decide not to pursue mediation or ADR, you must immediately contact this office and the above-mentioned mediation or ADR provider.

Rural Development will:

_____ Contribute 50 percent towards the cost. The balance of the cost will have to be paid from your own resources.

_____ Cannot contribute towards the cost as the Agency does not have the financial resources. You must pay the full cost from your own personal resources.

_____ Contribute _____ towards the cost. The balance of the cost will have to be paid from your own personal resources.

When mediation or ADR is concluded, you will be notified of the result and the number of days remaining to request an appeal, if applicable. If you request mediation or ADR prior to filing for an appeal, the number of days you will have to request an appeal will be 30 days from the date you received notice of the adverse decision minus the number of days you took to request mediation. Mediation or ADR does not take the place of, or limit your rights to, an appeal to NAD; however, an NAD appeal hearing would take place after mediation or ADR.

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Remember, if you decide not to pursue mediation or ADR, you must immediately contact this office to cancel your request. Canceling your request for mediation does not affect your rights to seek an appeal with the NAD as discussed in our original decision letter.

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ATTACHMENT 1-I

ATTACHMENT FOR NOTIFYING CUSTOMERS THAT MEDIATION OR ALTERNATIVE DISPUTE RESOLUTION (ADR) DID NOT RESULT IN RESOLUTION OF ISSUES

We regret that we are unable to grant the assistance you requested or will terminate or reduce the assistance you requested. Mediation or ADR did not result in resolution of the issues.

If you believe the decision or facts used in the case are in error, you may pursue your right to an appeal by the NAD. ***There is no cost for an appeal.*** The number of days in which you have to request an appeal depends upon whether you previously requested an appeal to NAD prior to entering into mediation or ADR. ***Please follow the guidance in the paragraph indicated with an "X".***

___ You requested an appeal hearing to NAD prior to entering into mediation or ADR. You must write to the Assistant Director of NAD at the following address to schedule the appeal hearing:

NAD Assistant Director address:

___ You did not request an appeal hearing to NAD prior to entering into mediation or ADR. You must write to the Assistant Director of NAD at the following address. Your request must be postmarked within ____ days from receipt of this letter. This represents the difference between 30 days and the number of days you took after the adverse decision to request mediation or ADR. Use the NAD Assistant Director address is listed above.

Information regarding appeals

You have the right to an appeal hearing within 45 days of NAD's receipt of your request. You or your representative or counsel may contact this office anytime during regular office hours in the 10 days following the receipt of your request for a hearing to examine or copy relevant non-confidential material in your file. Photocopies will be provided to you. Your representative or counsel should have your written authorization to represent you and review your file.

The NAD Hearing Officer will contact you regarding a time and place for the hearing. You may also request a teleconference hearing in lieu of the face-to-face hearing. At any time before the scheduled hearing you may also request that the Hearing Officer make a decision without a hearing. If you do, the Hearing Officer's decision will be based on the Rural Development file,

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any written statements or evidence you may provide, and any additional information the Hearing Officer thinks necessary.

The Federal ECOA prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); and because all or part of the applicant's income derives from any public assistance program; or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is the Federal Trade Commission. If a person believes he or she was denied assistance in violation of this law, they should contact the Federal Trade Commission, Washington, D.C. 20580

The Fair Housing Act prohibits discrimination in real estate related transactions, or in the terms of conditions of such a transaction, race, color, religion, sex, disability, familial status, or national origin. The Federal agency that is responsible for enforcing this law is the U. S. Department of Housing and Urban Development. If a person believes that they have been discriminated against in violation of this law, they should contact the U. S. Department of Housing and Urban Development, Washington, D.C. 20410 or call (800) 669-9777.

cc: NAD Assistant Director

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CHAPTER 2: MULTI-FAMILY HOUSING PROGRAMS AND ASSET MANAGEMENT

2.1 INTRODUCTION

This chapter introduces key aspects of the Section 515 Multi-Family Housing and Section 514/516 Farm Labor Housing programs. Under these programs, the Agency provides direct loans and grants to support the development of affordable rental housing that serves rural areas. The Section 538 Multi-Family Housing Guarantee program—the Agency's third Multi-Family Housing Program that guarantees loans made by private lenders—is covered in a separate regulation, *[7 CFR Part 3565]* and handbook *(HB-1-3565)*.

This chapter also presents the asset management framework that the Agency uses to oversee borrower performance in meeting their responsibilities under the program. The framework provides MFH Servicing Officials with a consistent basis for ensuring that borrowers' operation of projects meets the objectives of the program and complies with applicable program requirements.

Section 1 introduces the types of loans and other forms of assistance available through the Section 515 program and the Agency's objectives in providing this assistance. Section 2 describes the loans, grants, and other assistance available to increase the supply of affordable housing specifically targeted toward farm labor. The chapter concludes with Section 3, which outlines the Agency's asset management framework, as well as the key parties involved.

SECTION 1: SECTION 515 PROGRAM

2.2 OVERVIEW

The Section 515 program offers direct loans to eligible borrowers to provide economically designed and constructed housing and related facilities for very low-, low-, and moderate-income households; elderly households; and persons with disabilities living in rural areas. This section of the chapter describes:

The types of projects allowed;

- The types of loans available;
- Rental assistance available from the Agency; and
- The Agency's preference for leveraged projects.

2.3 TYPES OF PROJECTS

There are five types of rental projects that can be developed using Section 515 loans:

- Family projects;

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- Elderly projects;
- Congregate projects;
- Group homes; and
- Rural cooperative housing.

The Agency also services existing mixed projects that contain both family and elderly units.

The housing must be economical and must not include elaborate features but must be adequate to meet tenants' needs. The project should be of average quality and cost. With the exception of Off-Farm Labor Housing, all projects developed must be located in designated places as described in Chapter 3.

A. Family Projects

A family housing project is a rental property developed for occupancy by eligible very low-, low-, and moderate-income households. Nonelderly and elderly households may occupy the housing. Household income is the only tenant characteristic, except under extraordinary circumstances such as tenant displacement, which is given preference in selecting among eligible applicants for occupancy. Priority is also given to those needing features of an accessible unit if one becomes available. Occupancy may not be restricted to particular groups of eligible households and may include elderly households.

B. Elderly Projects

An elderly project is a rental property that is developed for occupancy solely by eligible elderly households, which include a tenant or cotenant who is disabled or age 62 years or older. Persons with disabilities and their families are permitted to live in elderly housing.

C. Congregate Projects

Congregate projects are rental properties developed for occupancy by eligible very low-, low-, or moderate-income elderly households, individuals with disabilities and families who require some supervision and central services but are otherwise able to care for themselves. Congregate projects consist of private apartments and central dining facilities in which a number of allowable preestablished services are provided to tenants. These projects are not designed to be nursing homes and, therefore, are not allowed to pay for the cost of medical- or healthcare-related services. When leasing units, priority may be given to eligible elderly households who qualify for the services provided by the facility.

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D. Group Homes

A group home is housing that is occupied by eligible very low-, low-, and moderate-income elderly persons or individuals with disabilities who share living space within a rental unit and in which a resident assistant may be required.

E. Rural Cooperative Housing

Section 515 loans may be used to finance rural cooperative housing projects operated by nonprofit consumer cooperatives for the benefit of eligible very low-, low-, and moderate-income members, who will own and manage the project.

F. Mixed Projects

Mixed projects are properties developed with a portion of the units designated as family units and the remainder of the units established as elderly units. At the time the project is developed, the borrower must designate the units that will be operated as family units and those that will be operated as elderly units. NOTE: Rural Development no longer finances mixed projects.

2.4 TYPES OF LOANS

The rules governing the origination of Section 515 loans differ slightly, depending upon the type of loan being made. The types of loans available under Section 515 include:

- Initial loans;
- Subsequent loans; and
- Assumed loans.

Loans are only made to projects that further the program's objectives and comply with applicable Agency requirements.

A. Initial Loans

Initial loans are made to projects with no existing Agency loan. Most initial loans are made to build new properties. However, the Agency does make initial loans for rehabilitation of existing properties when it is in the Agency's best interest.

The interest rate for these loans is set at the note rate established in RD Instruction 440.1. The Agency then provides interest credit assistance, which reduces the effective interest rate to 1 percent[1]. Interest credit is only provided for units occupied by eligible

[1] Some existing projects do not receive interest credit, while others receive interest credit that reduces the interest rate to three percent. However, all initial loans made by the Agency following the publication of this handbook will receive interest credit as described here.

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tenants paying at least 30 percent of their income for rent. The administration of interest credit is covered in Chapter 7 and also in HB-3-3560.

The Agency establishes the term of these loans to correspond to the expected useful life of the property. The maximum term is 30 years with a 50-year amortization period. .

B. Subsequent Loans

Subsequent loans can be issued during the term of an Agency loan to help an existing borrower pay for repairs or improvements to the property or in conjunction with the transfer of a property where the purchaser is assuming the initial Agency loan. The key differences between processing requirements for subsequent and initial Section 515 loans are discussed in Chapter 11 of HB-1-3560. Guidance regarding the requirements and procedures for processing project transfers is covered in the HB-3-3560. Subsequent loans may also be used to finance equity to avert prepayment of the project.

C. Assumed Loans

Section 515 loans may be assumed in conjunction with the transfer of ownership of the property. The terms and conditions of the assumption depend upon the needs of the project at the time of the transfer.

1. New Rates and Terms Assumption

Most assumptions of Section 515 loans are new rates and terms assumptions—that is, the purchaser assumes responsibility for all or a portion of the remaining debt. To conserve the Agency's budgetary resources, the transaction does not involve paying off the old loan and issuing a new initial loan. Instead, the purchaser assumes the outstanding debt, which is reamortized at new rates and terms. New rates and terms assumptions are used when the purchaser will experience financial difficulties under the terms of the initial loan or when a change in rates and terms is necessary to facilitate the transfer. Purchasers may apply for subsequent loans to make up the difference between the amount of debt assumed and the purchase price or to address physical needs at the project.

2. Same Rates and Terms Assumption

Transfers may also take place in conjunction with a same rates and terms assumption. Under this type of assumption, the existing note terms, including the interest rate and the remaining repayment period, do not change.

2.5 PREFERENCE FOR PROJECTS THAT LEVERAGE OTHER FUNDS

To maximize the number of units produced with Section 515 loan funds, the Agency gives preference to project applications for new loans that leverage other funds, thereby reducing the amount of Section 515 loan funds needed to develop the project. The greater the leveraging proposed in a project application, the greater the preference for funding. Examples of funds that

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count as leveraged funds include borrower resources beyond the minimum required amount, equity generated by the sale of low-income housing tax credits (LIHTCs), a second loan from another lender, or a grant from a state or local public agency or other source.

SECTION 2: Section 514/516 Program

2.6 TYPES OF PROJECTS

The Section 514/516 Farm Labor Housing program provides funds to support the development of housing for farm labor. Section 514/516 assistance differs from the Section 515 loans in the following ways:

- The objective of the program is to provide housing for farmworkers;
- There are no rural restrictions; and
- Agency grants are available to support the development of these projects.

Section 514/516 assistance may be used for Off-Farm Labor Housing projects. On-Farm Labor Housing projects may receive only 514 assistance. They are not eligible for grants (Section 516). Section 514 assistance may be used in conjunction with Federal LIHTCs.

A. Off-Farm Labor Housing

The Agency is authorized to make loans and grants for financing off-farm labor housing to broad-based nonprofit organizations; nonprofit organizations of farmworkers; Federally-recognized Indian tribes, agencies or political subdivisions of state or local government; and public agencies (such as local housing authorities). Section 514 loans can be made to limited partnerships in which the general partner is a nonprofit entity.

B. On-Farm Labor Housing

On-farm labor housing is designed to provide adequate housing for farmworkers involved in a specific farming operation. Individual farmers, family farm corporations or partnerships, or associations of farmers may develop these projects but must operate them on a nonprofit basis. To qualify for occupancy, an individual or a household must simply be employed as part of the farming operation. There is no income restriction governing occupancy. However, immediate family members of individuals with an ownership interest in the farm are prohibited from living in this housing on the property.

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2.7 LOANS AND GRANTS

A. Farm Labor Housing Loans

Section 514 loans for Farm Labor Housing projects are very similar to Section 515 loans. However, they differ in two important ways:

- These loans carry a 1 percent effective interest rate (i.e., there is no interest credit); and
- The maximum term for these loans is 33 years.

These loans can be used to finance either Off-Farm or On-Farm Labor Housing projects.

At one time, loans for both types of projects were processed on a first-come, first-served basis. Today, lending decisions regarding loans for Off-Farm Labor Housing projects are handled through a competitive NOFA process, while loans for On-Farm Labor Housing projects are still processed in the order that they are received. Chapter 12 of HB-1-3560 provides more detailed information about the origination process for Farm Labor Housing loans.

B. Farm Labor Housing Grants

Section 516 grants may only be used to support the development of Off-Farm Labor Housing projects. These grants may be used for the same purposes as Section 514 loans when there is reasonable doubt that the housing would not be provided without the grant. Chapter 12 of HB-1-3560 provides more information about the origination process for these grants.

2.8 PREFERENCE FOR PROJECTS THAT LEVERAGE OTHER FUNDS

Like the Section 515 program, the Agency gives preference to applications for Off-Farm Labor Housing projects that leverage other sources of funds. There is no leveraging preference for On-Farm Labor Housing applications.

SECTION 3: SECTION 521 PROGRAM

2.9 OVERVIEW

The Section 521 Rental Assistance program provides assistance to individual residents of Agency financed multi-family projects. Rent subsidies under the Rental Assistance Program ensure that elderly, disabled, and low-income residents of multi-family housing projects financed by RHS are able to afford rent payments. With the help of the Rental Assistance Program, a qualified applicant/tenant pays no more than 30 percent of his or her income for housing.

Residents of multi-family housing projects built under both the Rural Rental Housing Program (Section 515) and the Farm Labor Housing Program (Section 514) are eligible to apply

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for the Rental Assistance Program. Not all residents of RHS-financed housing developments receive rental assistance.

The Agency and the project owner execute a contract in which the Agency commits payments on behalf of tenants in a designated number of the units. Both the Agency and the project owner agree to be bound by all applicable Agency regulations. The contract becomes effective on the first day of the month in which it is executed (additional units may be covered if funds are available and an additional contract is executed). The agreement may be renewed as many times as funds are made available. Leadership Designees may transfer unused and unneeded contracts or portions of contracts to other projects.

2.10 SECTION 515 & 514/516 PROGRAM

A. Section 515

Owners of Section 515 projects located in areas where prospective applicants are likely to be overburdened by rent or where existing tenants are already overburdened can apply for rental assistance administered by the Agency.

B. Section 514/516

Off-Farm Labor Housing projects may also apply for rental assistance administered by the Agency. The requirements for obtaining rental assistance are the same as for Section 515 projects. Operating assistance may be used in lieu of tenant-specific rental assistance in off-farm labor housing projects financed under Section 514 or Section 516 that serve migrant farm workers. On-Farm Labor Housing projects are not eligible for rental assistance.

SECTION 4: ASSET MANAGEMENT FRAMEWORK

2.11 ASSET MANAGEMENT

The goal of the Agency's asset management procedures is to ensure that projects receiving Agency financing operate in a manner consistent with the program's objectives and comply with applicable requirements. Accordingly, this handbook covers the following aspects of project operation and oversight:

- Project Management;
- Financial Management;
- Physical Condition of the Project;
- Project Occupancy;
- Project Rents; and
- Rental Subsidies.

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It presents the program requirements in each of these areas and describes the Agency's procedures for monitoring properties to ensure that borrowers, their agents, and tenants are fulfilling their responsibilities.

In addressing each topic area, the handbook first presents the requirements and procedures for Section 515 rental projects and then discusses differences or additional requirements for other types of projects (e.g., congregate housing, Farm Labor housing, cooperatives).

2.12 KEY ASSET MANAGEMENT ACTIVITIES AND DOCUMENTS

A. Key Agency Activities

The Agency uses the same basic procedures to oversee the performance of all types of multi-family housing projects that it directly finances. While the Agency's oversight activities are essentially the same for all types of projects, the aspects of borrower performance examined during these activities will vary by type of project due to differences in requirements.

Agency oversight activities fall into three major categories:

- Oversight of new projects or borrowers;
- Annual oversight activities; and
- Periodic oversight activities.

The specific activities in each category are summarized in Exhibit 2-1.

Asset Management

Asset management refers to Agency oversight of project performance to ensure that operation of the property furthers the program's objectives and complies with applicable Agency requirements.

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Exhibit 2-1

Key Asset Management Activities

Agency Actions for New Projects:

- Conduct pre-occupancy meeting;
- Conduct post occupancy review;
- Review project worksheets; and
- Review of quarterly/monthly reports.

Annual Agency Actions:

- Review project worksheets;
- Review of project annual financial report;
- Annual review of project reserve account (new);
- Annual physical review;
- Review and approval of project budget for the coming year;
- Respond to evidence of potential compliance concerns (e.g., substantiated tenant complaints, reports by other Agency staff or offices, information provided by public or other agency); and
- Respond to servicing requests from borrowers.

Periodic Agency Actions:

- Perform physical inspection of project;
- Perform occupancy review of project;
- Perform supervisory visit; and
- Conduct compliance reviews.

All of the above require follow-up to address deficiencies.

B. Key Documents

Borrowers' responsibilities under the program and evidence that they are complying with program requirements are established through program loan and grant documents. The key program documents used in Agency asset management activities are listed in Exhibit 2-2.

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Exhibit 2-2

Key Program Documents

- Mortgage or deed of trust;
- Promissory Note;
- Loan agreement/resolution;
- Grant agreement;
- Interest credit and rental assistance agreement;
- Rental assistance agreement;
- Management plan;
- Management certification;
- Management agreement;
- Affirmative Fair Housing Marketing Plan;
- Project worksheet;
- Utility allowance documentation;
- Tenant certification;
- Dwelling lease;
- Project budget;
- Annual financial report for project; and
- Agency Monitoring Forms.

2.13 ASSET MANAGEMENT PROCEDURES FOR MULTI-FAMILY HOUSING PROJECTS

Chapters 3 through 9 describe the program requirements for Section 515 and 514/516 projects.

A. Property Management (Chapter 3)

Borrowers must comply with a number of program requirements regarding general project management functions. The borrower's plans for project management are

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documented in management documents (the management plan and management entity profile). The Agency must also approve the project's management agent and review management fees for reasonableness.

B. Financial Management (Chapter 4)

Borrowers must establish project financial management systems and procedures that reflect the complexity of project operations and provide adequate supervision to ensure that program objectives are met. The Agency has specific requirements regarding project accounting, budgeting, financial reporting, and project annual financial reports. The borrower's accounting system identified in the management plan must comply with the Agency's chart of accounts. The Agency will monitor project accounts through project reports and monitoring visits to the site. The Agency approves the budget on an annual basis and reviews financial reports on an ongoing basis.

C. Project Physical Conditions (Chapter 5)

Borrowers are responsible for maintaining their projects' physical conditions to meet program standards for decent, safe, and sanitary housing. MFH Servicing Officials will monitor the quality of the housing through regular physical inspections of the property as well as through the budget process. The Agency will review the borrower's capital budget planning and approve reserve withdrawals for capital improvements. In the event that a borrower fails to meet program standards, MFH Servicing Officials are responsible for ensuring that the borrower takes appropriate actions to correct physical deficiencies.

D. Project Occupancy (Chapter 6)

MFH Servicing Officials will monitor borrowers' compliance with program occupancy rules, ensuring that tenant eligibility requirements are observed and occupancy policies are consistently followed. The borrower must market the project to all eligible applicants and process applications, select tenants, and assign units in a fair and consistent manner. Borrower must also observe Agency rules regarding dwelling leases, tenant recertification, termination of occupancy, and tenant grievance procedures. MFH Servicing Officials will check compliance with these requirements through regular reports and monitoring visits to the site.

E. Rents, Shelter Cost, and Utility Allowances (Chapter 7)

MFH Servicing Officials will review projects to ensure that the borrower establishes appropriate rents, occupancy charges, and utility allowances for individual units and, on an annual basis, review budgets to approve or deny requests for rent changes. MFH Servicing Officials will also ensure that the borrower meets all requirements in handling the following:

- Tenant rent payments during evictions;
- Tenant security deposits; and

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- Cases of tenant fraud.

F. Rental Subsidies (Chapter 8)

A multi-family housing project may have one or more types of rental subsidy including Agency rental assistance (RA), HUD Section 8, or other local forms of rental subsidy. MFH Servicing Officials must ensure that borrowers comply with requirements to use RA appropriately. Only eligible projects, units, and tenants may receive rental subsidies. The borrower must enter into a rental subsidy agreement with the appropriate agency. Agency staff has administrative responsibilities for RA including suspending or transferring RA, replacing expiring RA agreements, and processing borrower requests for additional RA, modifying RA agreements and agency oversight of borrower performance.

G. Agency Monitoring (Chapter 9)

MFH Servicing Officials must perform regular reviews of multi-family housing projects to monitor project performance and ensure compliance with program regulations and civil rights laws. MFH Servicing Officials will make efforts to plan and prioritize monitoring activities to focus on the projects that need the most Agency attention. Borrowers will submit reports on an ongoing basis (either monthly or quarterly, as needed) to provide the Agency with much of the information needed to monitor project performance. However, Agency staff may also perform site visits as part of annual reviews, physical inspections, and supervisory visit.

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CHAPTER 3: PROPERTY MANAGEMENT

3.1 INTRODUCTION

This chapter provides an overview of the essential responsibilities for property management. In general, the borrower is responsible for providing management acceptable to the Agency both in terms of staff qualifications and management practices. The borrower must ensure that property operations comply with the terms of all loan or grant documents; Agency requirements; and applicable local, State, and Federal laws and ordinances. For many project management responsibilities, the Agency must approve or concur in the management decisions and policies of the borrower. This chapter is designed to identify those actions that require Agency reaction to the borrower's decision.

Section 1 of this chapter deals specifically with property management, including Agency approval of the proposed management agent and management certification. It also describes the Agency's requirements regarding items that must be addressed in the borrower's management plan; and civil rights and accessibility requirements, self-evaluations, and transition plans.

Section 2 discusses the requirements for acceptable management entities and the Agency's procedures for reviewing and approving new management entities. It also outlines the Agency's procedures for removing unacceptable management entities.

Section 3 describes the program requirements regarding allowable management fees to be paid out of project income and Agency procedures for assessing the reasonableness of the fees.

Section 4 addresses the required insurance coverage and real estate taxes for projects.

Section 5 discusses the project management requirements and procedures that differ for Farm Labor Housing projects.

SECTION 1: PROJECT MANAGEMENT *[7 CFR 3560.102]*

3.2 OVERVIEW OF PROJECT MANAGEMENT RESPONSIBILITIES

Borrowers must provide management acceptable to the Agency as a condition of loan or grant approval. The borrower requirements listed in this chapter may be complied with by the borrower or a person designated in writing by the borrower. Acceptable management will be documented in the management plan and management certification.

3.3 THE MANAGEMENT PLAN *[7 CFR 3560.102(b)]*

For each multi-family housing project, borrowers must develop and maintain a management plan that establishes the systems and procedures that will be employed at the project to ensure that project operations comply with Agency requirements. This plan is used

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by the Agency to guide its oversight of project operations and its monitoring of project compliance. The management plan should provide the Agency with information regarding site operations only, not about management agent central office functions.

A management plan is initially submitted as part of the borrower's application for funding. It remains in effect until such time as the Agency requires modification of the plan, the plan needs to be updated to reflect changes occurring in project operations, or the project is transferred from one borrower to another.

A. New Projects

•

1. Requirements for Submitting a Management Plan

For new projects, borrowers must submit a management plan that addresses the required items identified in Attachment 3-A in sufficient detail to enable the Agency to effectively monitor project performance.

If the Agency determines that a proposed management plan does not adequately address the required items, the MFH Servicing Official will provide written notice to the borrower indicating the deficiencies and specifying a time period for submission of an acceptable plan.

No Agency loan will be closed, construction started, or transfer approved before the Agency has an acceptable management plan from the borrower.

2. Contents of a Management Plan

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At a minimum, management plans for multi-family housing projects must address the items presented in Attachment 3-A.

3. Agency Review of a Proposed Management Plan

In reviewing a proposed management plan, the Agency must ensure that it does not contain policies that violate Agency regulations and that it provides adequate details regarding the items in Attachment 3-A for the Agency to effectively monitor project compliance with program requirements.

B. Existing Projects

1. General Requirements for Maintaining and Modifying a Management Plan

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In accordance with the requirements of this chapter, the borrower must develop and maintain a management plan acceptable to the Agency. A borrower's failure to maintain an acceptable plan is grounds for Agency termination of the management agent. This management plan will remain the

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guiding management document, as long as it accurately reflects project operations, and the borrower remains in compliance with Agency rules and regulations.

Borrowers must submit an updated management plan to the Agency if project operations change and are no longer consistent with the current management plan on file with the Agency. The Agency should expect to see a modified management plan when:

- Project operations change to meet the needs of a changing tenant population; or
- Program requirements change; or
- Changes in subsidy levels or types occur (e.g., HUD Section 8 is converted to Rental Assistance and/or units are reduced) or the property is converted to another allowable use (e.g., changed from an elderly property to a family property).

When a housing project is transferred from one borrower to another, the transferee must submit a new management plan that addresses the items listed in Attachment 3-A.

2. Agency Request for and Review of a Modified Management Plan

If the Agency determines that project operations are in compliance with Agency requirements; loan or grant agreements; or applicable local, State, and Federal laws but are not consistent with the management plan, the Agency will notify the borrower of the discrepancy in writing and indicate that the existing plan is no longer acceptable. Upon receiving notice that project operations are not consistent with the current management plan, borrowers must take one of the following actions within 60 days from the date of the Agency's letter:

- Revise the management plan to accurately reflect housing operations;
- Take actions to ensure that the management plan is followed; or
- Advise the Agency in writing of the action taken.

If the borrower submits a modified management plan, the Agency will review the plan for the necessary changes and ensure that the plan adequately addresses the requirements of the discrepancy. The Agency may visit the project or management agent's office to ensure that documented changes have occurred.

C. Three-Year Borrower Certification of Adequacy of Plan

When there have been no changes in a project's operations, borrowers must submit a certification to the Agency every 3 years stating that the project operations are consistent with the current management plan and that the plan is adequate to ensure project compliance with the loan documents and the applicable requirements of this part (see **Attachment 3-B**).

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D. Projects with Compliance Violations

1. Agency Notification to the Borrower

If the Agency determines that there are compliance violations at a project, the borrower must respond to the Agency notification and update the management plan in accordance with the requirements below. If the borrower does not fulfill the requirements of this section, the Agency will deem the management plan for the project unacceptable, and the borrower/agent may be subject to termination of their management agreement.

2. Borrower Response to Agency Notification

Upon receiving notice of compliance violations at a project, borrowers must address the violations in accordance with 7 CFR 3560.102(d) and update the management plan as follows:

- Borrowers must submit to the Agency, within 60 days, revisions to the management plan that establish the changes in project operation that will restore project compliance; and

- If the borrower determines that changes to the management plan are not needed because the compliance violations were due to a failure to follow the current management plan, the borrower must certify to the Agency that the management plan is adequate to ensure project compliance with the applicable requirements of this part. Borrowers must submit a written description of the actions that will be taken, including timeframes for restoring compliance with the current management plan and Agency rules and regulations.

E. Continued Management Discrepancies

If the Agency discovers continued discrepancies between a project's management plan and project operations, the Agency retains the authority to terminate the current management agreement and require the borrower to install a new management entity acceptable to the Agency.

3.4 THE MANAGEMENT CERTIFICATION

As a condition of Agency approval of the management agent, including borrowers who self-manage, the borrower and the management agent must execute a Form RD 3560-13, "*Management Certification*", and submit this to the Agency each time the borrower proposes a new management agent and/or a management agreement is executed or renewed. The borrower and the management agent must jointly submit the certification to the Agency to attest that:

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- The borrower and management agent agree to operate the housing project in accordance with the management plan;

- The borrower and management agent will comply with Agency requirements, loan or grant agreements, applicable local, State, Tribal, and Federal laws and ordinances, and contract obligations, will certify that no payments have been made to anyone in return for awarding the management contract to the management agent, and will agree that such payments will not be made in the future;

- The borrower and the management agent will comply with Agency notices or other policy directives that relate to the management of the housing project;

- The management agreement between the borrower and the management agent complies with the requirements described in this chapter;

- Allowable management fees are assessed and paid out of the housing projects' general operating account. Borrowers and management agents will comply with Agency requirements regarding management fees and allocation of management costs between the management fee and the housing project financial accounts;

- The borrower and the management agent will not purchase goods and services from entities that have identity-of-interest (IOI) relationships with the borrower or the management agent until the IOI relationship has been disclosed to the Agency, not denied by the Agency, it has been determined that the costs are as low as or lower than open-market purchases, and there are no personal factors that influence the price and decision-making; and

- The borrower and the management agent agree that all records related to the housing project are the property of the housing project and that the Agency, OIG, or GAO may inspect the housing records and the records of the borrower, management agent, and suppliers of goods and services having an IOI with the borrower or with a management agent acting as an agent of the borrower upon demand.

The management certification requires that the borrower and the management agent identify any and all IOI relationships that would involve project funds.

For management agents proposing IOI firms to provide goods and services to Agency properties, a fee schedule of these goods and services must be attached to Form RD 3560-31, "*Identity of Interest Disclosure/Qualification Certificate*". The Agency must approve the borrower's use of such firms prior to the borrower entering into any contractual relationships that involve Agency funds with such entities.

After the borrower or management agent discloses an IOI relationship in *Form RD 3560-31*, the Agency will:

- Require the borrower, management entity, and supplier of goods and services to provide documentation proving that use of IOI firms is in the best interest of the housing project;

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- Require that all suppliers of goods and services agree to certify in writing to the Agency that the individual or organization proposed is qualified and licensed, if appropriate;

- Require the borrower, management entity, and supplier of goods and services to agree in writing to make available all records relating to the housing project to the Agency or the Agency's representative; and

- Deny the use of an IOI firm when the Agency determines that using the firm is not in the best interest of the Federal Government or the tenants.

A. The Role of the Management Agreement

While the management certification replaces the need for the Agency to approve the management agreement, it does not eliminate the need for the borrower and the management agent to execute a management agreement. By executing the management certification, the borrower and the agent are assuring Agency staff that an acceptable agreement has been executed. Agency staff may review this agreement during the supervisory visit.
Borrowers operating owner-managed projects are not required to execute a management agreement.

B. Agency Approval of the Management Certification

A certification must be submitted for Agency approval prior to the initial approval of the management agent. Subsequent certifications must be submitted for Agency approval when any of the following occurs:

- An increase in the management fee is requested, if the increased management fee is not in accordance with Attachment 3-F;

- A new management agent is proposed; or

- A management agreement expires, and a new agreement is executed or renewed.

The borrower must submit a new certification to the Agency for approval at least 45 days prior to the date of the proposed change. The Agency will return the approved or denied certification within 60 days of receipt.

3.5 SELF-EVALUATIONS AND TRANSITION PLANS

On June 11, 1982, USDA issued 7 CFR 15b, which required all borrowers to conduct self-evaluations of their facilities, policies and procedures for compliance with Section 504 of the Rehabilitation Act of 1973 and the Uniform Federal Accessibility Standards (UFAS), within one year of the USDA regulation. Information related to these compliance issues as they affect Section 514, Section 515, Section 516, and Section 521 housing may be found in answers to frequently asked questions in **Appendix 5**. In the event that structural changes were necessary, recipients were required to develop transition plans that set forth the steps necessary to complete such changes.

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Borrowers may become liable for fines and penalties imposed by enforcement agencies, loss of tax credits, or legal actions if found in non-compliance with civil rights laws. The Agency does not impose these fines and penalties, but will follow regulatory, supervisory, servicing procedures and loan eligibility requirements when non-compliance is found.

A. Borrowers Required to Conduct Self-Evaluations and Develop Transition Plans

The following borrowers must conduct self-evaluations and develop transition plans:

- Borrowers of projects ready for occupancy on or before June 10, 1982.
- Borrowers of projects ready for occupancy after June 10, 1982, who have been found in non-compliance with Civil Rights law (as a remedial action).
- Borrowers who have had complaints filed against them, when the Agency determines it necessary.
- Borrowers transferring ownership.
- Borrowers of projects receiving rehabilitation or equity loans, when the Agency determines it necessary.
- Borrowers receiving loans for new construction after August 20, 2002. The Agency will review the self-evaluation and any transition plan during the preoccupancy conference.
- All State and local Government borrower entities. The Department of Justice issued a regulation on July 26, 1991, which requires all State and local governments to conduct self-evaluations, unless they had already done so to meet the requirements of Section 504.
- Borrowers receiving loans after January 1, 2001, if a self-evaluation has not been conducted within the last 3 years.

B. Standards Borrowers Must Meet

Regardless of when a project was ready for occupancy, all borrowers are required to have policies and practices that do not discriminate against persons with disabilities. The architectural accessibility standards borrowers must meet will depend on when the project was ready for occupancy and what modifications are planned. In addition, many State and local governments have their own accessibility standards that must be met. The Agency does not have the authority to waive any accessibility requirements.

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C. Self-Evaluation and Transition Plan Requirements

1. Self-Evaluations

In accordance with 7 CFR 15b, self-evaluations must:

- With the assistance of interested persons, including persons with disabilities or organizations representing disabled persons, evaluate their current policies and practices and the effects thereof;

- After consultation with interested persons, including disabled persons or organizations representing disabled persons, modify any policies and practices that do not meet the requirements of this part;

- After consultation with interested persons, including disabled persons or organizations representing disabled persons, take appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices that do not meet the requirements of this part; and

- Maintain a record of the self-evaluation for at least three years. The record must be made available for public inspection and be provided to the Agency upon request. The self- evaluation record must contain:

  ◊ A list of the interested persons consulted;

  ◊ A description of areas examined, and any problems identified; and

  ◊ A description of any modifications made, and any remedial steps taken.

2. Transition Plans

At a minimum, transition plans must:

- Identify physical obstacles in the borrower's facilities that limit the accessibility of their property to disabled persons;

- Describe in detail the methods that would be used to make the facilities accessible;

- Specify the schedule for taking the steps necessary to achieve full program accessibility and if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

- Identify the person responsible for implementation of the plan.

When structural changes are necessary, such changes must be made as expeditiously as possible within three years.

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SECTION 2: APPROVING, REMOVING, AND REVIEWING THE MANAGEMENT AGENT *[7 CFR 3560.102]*

3.6 THE MANAGEMENT AGENT

A. Acceptable Types of Management Entities

Exhibit 3-1 shows the three types of management entities.

Exhibit 3-1

Three Types of Management Entities

A. Borrower/manager
B. IOI management agent
C. Independent fee management agent

In this Handbook, the term "management agent" applies to all three forms of management entities, unless a specific distinction is made because of policy or procedural differences.

1. Borrower/Manager

In the borrower/manager relationship, the borrower and the management agent are the same business entity. This is often referred to as "self-management or owner-managed". A project is not self-managed if some or all of the same individuals are involved in both the borrower entity and the management agent, but the organizations are legally different business entities.

For example, if the borrower is a limited partnership and the general partner of the borrower entity serves as the management agent, the management agent is not a borrower/manager because the management agent and the borrower are different business entities. Instead, the management agent is an identity-of-interest management agent.

2. Identity-of-Interest Management Agent

An IOI relationship exists when an individual, including the spouse, parent, child, grandchild, or sibling, or other relation by blood or marriage, or entity that provides goods, management, or other services to the project has a relationship with the project borrower that is such that selection of the management agent and determination of the management fee will not be determined through an arms-length transaction. Exhibit 3-2 further describes this relationship.

Failure to disclose such IOI relationships may subject the borrower, the management agent, and other firms or employees among whom the IOI relationship exists to suspension, debarment, or other remedies available to the Agency.

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Exhibit 3-2

Identity-of-Interest Relationships

An IOI relationship exists when:

- The borrower entity, any principal of, or a general partner of the borrower entity; or
- Any officer or director of the borrower entity; or
- Any person who directly or indirectly controls 10 percent or more of the voting rights, or owns 10 percent or more of the borrower entity

is also

- A borrower, general partner, officer, or director of the management agent company or its subcontractor; or
- A person who directly or indirectly controls 10 percent or more of the voting rights or owns 10 percent or more of the management company or its subcontractor.

As used above, "person" refers to any individual (spouse, parent, child, grandchild, sibling, or other relation by blood or marriage), partnership, corporation, or other business entity. Any ownership, control, or interest held or possessed by a person's spouse, parent, child, grandchild, or sibling or other relation by blood or marriage is attributed to that person for this determination.

As used above, "subcontractor" refers to any individual or company that contracts with the management agent to provide management services to the project.

3. Independent Fee Management Agent

An independent fee management agent is a management company or individual that has no IOI relationship with the borrower and no financial interest or involvement in the project, other than earning a fee for providing management services.

B. Approval of the Proposed Management Entity

A management entity will be deemed acceptable by the Agency provided that the agent or staff member has a minimum of two years of experience and satisfactory performance in directing and overseeing the management of similar Federally assisted multi-family housing. Management services are a lower-tier transaction and subject to debarment and suspension check by the Agency in accordance with 7 CFR 3017 and RD Instruction 1940-M. Management entities found to have been disbarred are not eligible for approval by the Agency.

In addition, the Agency may issue approval to a management agent if the agent's *Form HUD 2530* shows that a small percentage of the properties it has managed are either in default or have a mortgage delinquency and either one of the following can be documented:

- The default or delinquency was due to circumstances beyond its control; or

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- The agent is making satisfactory progress toward improving the problem property's operations.

The Agency reserves the right to deny approval of any proposed management entity that does not meet such requirements. The Agency may issue a denial of a proposed management agent if:

- The agent and/or its staff does not have two years of experience successfully managing Section 514, Section 515, or Section 516 properties as relevant or other assisted housing;

- If the agent's *Form HUD 2530,* "Previous Participation Certification", shows that a substantial percentage of the properties it has managed are either in default or have a mortgage delinquency; or

- If the agent's *Form HUD 2530*, shows that a small percentage of the properties it has managed are either in default or have a mortgage delinquency and the management agent is not addressing the property's or properties' deficiencies.

To request approval of the management entity, the borrower/agent must submit the following information to the Agency at least 45 days before the date the borrower wishes the new agent to assume responsibility. In the case of emergency replacements of management agents, the borrower/agent must submit the information needed for the Agency to review and approve the new management agent as soon as the new agent is identified. Borrowers must submit the following documents when requesting Agency approval of an agent:

- **Management Plan.** The management plan establishes the systems and procedures that will be employed to ensure that project operations comply with Agency requirements. *Form HUD 2530 Previous Participation Certification* must be included as an attachment to the management plan.

- **Management Certification.** Using *Form RD-3560-13*, the borrower and management agent together certify that they will comply with Agency requirements and contract obligations and will execute an acceptable management agent agreement, and that no payments have been made to the borrower in return for awarding the management contract to the agent nor will such payments be made in the future.

- **RD Forms 3560-30 Certification of No Identity of Interest or 3560-31 Disclosure and Qualification of Identity of Interest, as applicable**.

- **Additional information required by the Agency.** Agency staff may require borrowers to submit additional information to clarify materials already submitted. Materials requested may address:

  ◊ Determining the management agent's acceptability;

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◊ Monitoring the agent's compliance with Agency requirements;

◊ Resolving project operating problems; and

◊ Justification of contractual relationship with IOI or third-party contractors. The Agency must review all items listed above within 30 days of receipt. The review will consist of the following:

- **Review of Previous Participation Certification.** If the management agent is new to the Agency and manages properties assisted by HUD, local public housing agencies, and State housing finance agencies, the servicing jurisdiction must obtain references from the appropriate jurisdiction on the management agent's past performance. For instance, if the management agent has managed HUD properties, then the Agency is required to contact the appropriate HUD Field Office and obtain a reference or request that HUD provide a copy of the most recent *Form HUD 2530*.

- **Review of the proposed management plan.** This review ensures compliance with the Agency's submission requirements and determines if the proposed systems and procedures:

  ◊ Are in compliance with Agency requirements;

  ◊ Can reasonably be implemented at the project; and

  ◊ Are reasonably tailored to the particulars of the project.

Within 30 days of receipt of information from the borrower/management agent, the Agency will inform the borrower of its decision in writing.

If the Agency grants approval, the borrower may enter into a contract with the management agent to begin no sooner than 45 days from the date of submission of the approval package.

If the Agency issues a denial, the borrower will be provided with appeal rights. The borrower may not enter into a formal agreement with the management agent being reviewed by the Agency. If a borrower enters into an agreement with a management agent or begins to self-manage prior to receiving Agency approval, the Agency will place the borrower in non-monetary default status. The Agency will ask the borrower, if not in a self-management arrangement, to immediately terminate the contract with the management entity. Under emergency circumstances, with Agency consent, the borrower may enter into a temporary agreement with a different management entity for 30 days.

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C. Use of Management Entities without Agency Approval

If a borrower enters into an agreement or contract with a management entity that has not been approved by the Agency, the Agency is authorized to immediately terminate the borrower's agreement or contract with that entity. This action is not appealable.

3.7 REMOVAL OF A MANAGEMENT AGENT

As permitted in the management certification, the Agency reserves the right to remove the management agent for lack of performance or deliberate fraud against the project or the Government. Some specific reasons for requiring removal of a management agent are listed in Exhibit 3-3. Other reasons also may apply.

Exhibit 3-3
Specific Reasons for Requiring Removal of a Management Agent

A. Lack of performance:

- Failure to adhere to the provisions of the management certification;
- Repeated failure to adhere to the management plan; and
- Non-compliance with applicable State and local laws.

B. Fraud against the project and/or Government:

- Misappropriation of project funds;
- Paying kickbacks to contractors, subcontractors, or service providers; and
- Deliberately requesting more Rental Assistance than that to which the project is entitled.

If the Agency determines that the management agent is in violation of the management certification, the Agency will:

- Send a servicing letter, *Handbook Letter 301 (3560), Servicing Letter #1*, notifying the borrower of the violation;

- State that the management agent must prove that there was no violation or that there were mitigating circumstances, and the borrower must respond to the Agency within 30 days of the receipt of the servicing letter;

- If the borrower does not respond satisfactory within the prescribed time period with either (1) documentation that the violation did not take place, or (2) a plan to address the violation within a certain period of time that is acceptable to the Agency, the Agency will send the borrower a second servicing letter, *Handbook Letter 302 (3560), Servicing Letter #2*; and

- If the borrower does not respond within the prescribed time period in the second servicing letter, the Agency will send a third servicing letter, *Handbook Letter 303 (3560), Servicing Letter #3* indicating that the management certification will be

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- terminated by a certain date. As of that date, no management fees may be paid to the agent from project funds. If the information reveals that management fees were paid to the agent subsequent to termination of the management certification, the borrower will be required to reimburse the funds to the project operating account.

If the borrower is required by the Agency to remove the management agent, they must do so under the timeframe required by the Agency or file an official appeal, as described in Chapter 1, stating why they believe the agent should not be removed. Failure on the part of the borrower to comply with Agency demands to remove the agent may result in acceleration of the loan and debarment from further participation in Agency programs.

SECTION 3: SETTING THE MANAGEMENT FEE *[7 CFR 3560.102]*

3.8 THE MANAGEMENT FEE

A. The Purpose of the Management Fee

The purpose of the management fee, which is an allowable expense paid from the housing project's general operating account, is to compensate the management agent for services provided to the project when the fee is approved by the Agency as a reasonable cost to the housing project and documented on the management certification. These services are described in **Attachment 3-D**.

B. Types of Management Fees

There are two major types of fees that, when added together, make up the overall management fee for a project:

- Base fee per occupied revenue producing unit; and
- Add-on fees.

The base fee per occupied revenue producing unit is the largest component of the management fee. It must be quoted and calculated as a per-unit, per-month (PUPM) fee for revenue producing units occupied during a given month. This requirement gives the agent an incentive to maximize occupancy.

Add-on fees are quoted as dollar-per-unit amounts because they relate to project conditions that are not a function of project occupancy.

1. Occupied Unit Fee

Periodically, the Agency will review the base per occupied revenue unit fee. Surveys may be conducted to collect management fee data from other assisted housing sources such as local Housing and Urban Development field offices, State Housing

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Finance Agencies, Housing Authorities, local housing organizations, and non-profits. Each Region provides information about the organizations within its states, documents contacts and provides a description of the fee structure used by the source organizations. The description should include the amount of the management fee, how the management fee was established, and a 'bundle of services' comparability synopsis.

To provide consistency, the states are divided into Regions. The Regions are identified as follows:

MIDWEST: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska North Dakota, Ohio, South Dakota, Wisconsin;
NORTHEAST: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia;
SOUTH: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, Virgin Islands;
WEST: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico Oregon, Utah, Washington, Wyoming.

2. Add-On Fees

Add-on fees are a flat PUPM fee paid to agents managing projects with long-term project characteristics and conditions that require additional management effort beyond the activities covered by the base fee portion of the management fee. The add-on fee is applicable to all revenue producing units regardless of occupancy status. See Exhibit 3-4 for types of add-on fees.

- The Agency has established a standard list of add-on fees that is applicable to all states.

- Exhibit 3-4 project characteristics or conditions that warrant the use of add-on fees.

Add-on fees should not cover project characteristics or conditions that are already covered in the base fee. Agents may not take add-on fees for management of properties with workout agreements except under limited circumstances, and solely at the Agency's discretion. If it is demonstrated that conditions at the property are beyond the management agent's control, the Agency may agree to allow the management agent to take add-ons fees for the circumstances listed in Exhibit 3-4.

Exhibit 3-4 Agency Approved Add-On Fees	
Type of Add-on Fees	PUPM
Management of properties with 15 units or less	$5
One project that has buildings located on different non-contiguous parcels of land (i.e. across town or in another town)	$5
Management of properties in a *remote location	$5
Troubled or critical properties with workout plans and new management only	$5
**Properties with Multiple Subsidies with annual reporting requirements	$5

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*Effective with FY2023 proposed budgets, "Remote Location" is defined as properties located within the USDA Economic Research Service (ERS) Level 4 Frontier & Remote (FAR) Area codes. https://www.ers.usda.gov/data-products/frontier-and-remote-area-codes/. The following states/territories do not have areas that meet the Level 4 FAR definition: Connecticut, Delaware, Indiana, Massachusetts, New Jersey, Ohio, Puerto Rico, Rhode Island, South Carolina, and the Virgin Islands. Properties in Alaska or Hawaii that are authorized to take the "off-road" management fee are not eligible to claim an additional add-on fee for remote location. **If the property does not suffer from difficulty retaining staff, obtaining services, or if management offices are located near the Level 4 FAR property, management should refrain from claiming this add-on fee.** If a property is not located in a Level 4 FAR area, and management can justify a remote location add-on fee, they may request an exception. Reasonable justification must be submitted to the MFH servicing specialist for review. Justifications could include extensive travel time, difficulty obtaining services or retaining staff, or required unique means of travel (4-wheel drive, ferry, etc.). If there is a question as to whether the justification is reasonable, the servicing specialist should consult with their team lead.

**Multiple Subsidies – properties with additional subsidy that have reporting requirements in addition to and separate from those of Rural Development such as Low-Income Housing Tax Credits or project-based Section-8. This does not include Section 538 loans. Regardless of the number of layered subsidies, the total add-on fee for this category is $5.

The Occupied Unit Per Month State Maximum Management Fee available on Attachment 3-F must be reflected on the proposed budgets and are effective January 1, for the specified fiscal year.

The Agency's decision regarding the amount of management fees set by the region and the state is unappealable.

C. Services Paid from the Management Fee

The purpose of the management fee is to compensate the Agent for providing oversight to the project including:

- Overseeing compliance with national, State, and local laws and regulations;
- Establishing strong project management policies and procedures; and
- Overseeing the implementation laws, regulations, policies, and procedures through the supervision of onsite staff.

Charges covered by the management fee must be listed in the project's Management Plan. A breakdown of items that are to be paid from the management fee can be found in

- **Attachment 3-D.**

D. Services Paid from Project Income

In general, project income is used to pay for project-related items. Examples include the salary, benefits, and office expenses of onsite office staff and maintenance expenses for the property and costs for processing project-specific transactions (e.g., tenant certifications). A specific breakdown of items that are to be paid from project income as opposed to the management fee can be found in **Attachment 3-E**.

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The borrower and management agent must obtain materials, supplies, utilities, and services at a reasonable cost and seek the most advantageous terms for the project. Generally, expenses charged to project operations, whether for management agent services or other expenses, must be reasonable, typical, necessary and show a clear benefit to the residents of the property. Services and expenses charged to the property must show value added and be for authorized purposes. If such value is not apparent, the service or expense should be examined.

Administrative expenses for project operations exceeding 23 percent, or those typical for the area, of gross potential basic rents and revenues (i.e., referred to as gross potential rents in industry publications) highlight a need for closer review for unnecessary expenditures. Budget approval is required, and project resources may not always permit an otherwise allowable expense to be incurred if it is not fiscally prudent in the market.

Excessive administrative expenses can result in inadequate funds to meet other essential project needs, including expenditures for repair and maintenance needed to keep the project in sound physical condition. Actions that are improper or not fiscally prudent may warrant budget denial and/or a demand for recovery action.

The borrower or management agent must credit any rebates, fees, proceeds, or commissions generated by transactions using project funds to the project.

SECTION 4: INSURANCE, BONDING, AND TAXES *[7 CFR 3560.105]*

3.9 OVERVIEW

Insurance protects the asset against loss or damage. Borrowers without adequate insurance coverage are financially responsible for:

- Property damage;
- Losses due to employee dishonesty or error; and
- Personal injuries that occur on the property.

Borrowers are responsible for acquiring and maintaining insurance on all dwellings and buildings that are necessary for the operation of the project in accordance with their loan or grant documents. Insurance must be in place at loan closing and must remain in place until the loan is paid in full. Reevaluation of insurance coverage is necessary when new buildings are constructed, or values increase or decrease materially. Any refund or rebate from the insurance company must be credited to the project's account.

The Agency is responsible for counseling the borrower regarding the Agency's insurance requirements. Through the Multi-Family Information System (MFIS), MFH Servicing Officials will monitor insurance policy expiration and ensure borrower compliance. The Agency will obtain insurance for the secured property if the borrower is unable or unwilling to do so. If a

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borrower refuses to pay the insurance premium with their own funds or fails to arrange with the agent for subsequent payment by premium note or otherwise, the Agency will pay the amount of the insurance premium and charge the premium payment amount and all costs associated with procurement of the required insurance to the borrower's Agency account. The Agency considers a borrower's failure to maintain adequate insurance coverage or to pay taxes as non-monetary default. Borrowers who fail to furnish property and hazard insurance coverage of any kind are responsible for the debt in the event of loss.

3.10 PROPERTY INSURANCE

Property or "all-risk" insurance protects the physical asset against loss due to damage. Types of property insurance are described below.

A. Hazard Insurance

1. Loss or Damage Covered

Hazard insurance protects the property against fire and weather-related damage, as well as damage from civil commotion, aircraft, or other vehicles. These policies may also be known as fire and extended coverage, homeowners, all physical loss, or broad form policies.

2. Coverage Requirements

The minimum property insurance coverage per building is 100 percent of the insurable value as reflected in the appraisal report, as referenced in Chapter 7 of HB-1-3560. If no appraisal report is required, the Agency will perform the necessary evaluations and determine and document the minimum insurance coverage requirements in the file.

3. Deductible

If a property's insurance policy has a deductible, the deductible must be accounted for in the reserve account, unless the deductible does not exceed:

- $1,000 on any project with an insurable value under $200,000; or
- One-half of 1 percent of the insurable value, up to $10,000 on a project with an insurable value over $200,000.

Borrowers who wish to increase the deductible amount must deposit an additional amount to the reserve account equal to the difference between the Agency's maximum deductible and the requested new deductible. The Borrower will be required to maintain this additional amount so long as the higher deductible is in force. This is commonly referred to as GAP insurance.

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B. Flood Insurance

1. Loss or Damage Covered

Flood insurance protects the property against flooding caused by natural disasters such as hurricanes. This coverage is required only for those properties located in areas identified as flood hazard areas.

2. Coverage Requirements

Flood insurance is required for any property located in a Special Flood Hazard Area (SFHA), as identified by the Federal Emergency Management Agency (FEMA). *FEMA Form 81-93, Standard Flood Hazard Determination* is used to determine if a property is in a SFHA and whether flood insurance is available under FEMA's National Flood Insurance Program. If the property is in a SFHA, the Agency will notify the borrower using *Form RD 3550-6, Notice of Special Flood Hazards, Flood Insurance Purchase Requirements, and Availability of Federal Disaster Relief Assistance*. The borrower must sign and return *Form RD 3550-6* prior to loan closing. If the borrower cannot secure flood insurance through FEMA's National Flood Insurance Program in a SFHA, the property is not eligible for Federal financial assistance.

3. Deductible

The Agency allows a maximum deductible of $5,000 per building.

C. Earthquake Insurance

1. Loss or Damage Covered

Earthquake insurance covers property losses in the event of an earthquake. Earthquake coverage is recommended in areas where earthquakes are prevalent; however, it is very expensive and generally has a high deductible.

2. Coverage Requirements

Although the Agency does not specifically require a project to be covered by earthquake insurance, it recommends a Probable Maximum Loss (PML) seismic study for all projects located in certain regions of the country where earthquakes are prevalent. The coverage amount should be for 100 percent of the replacement cost of the project.

3. Deductible

In the event that the borrower obtains earthquake coverage, the Agency is to be named as a loss payee. The deductible should be no more than 10 percent of the coverage amount.

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D. Windstorm Insurance

1. Required Coverage

The windstorm policy should include extended coverage for rental loss for at least 12 months, except for coverage provided by State insurance programs.

2. Deductible

When windstorm coverage is excluded from the "all risk" policy, the deductible must not exceed 5 percent of the total insured value.

E. Builder's Risk Insurance

Builder's risk insurance protects the property against loss or damage during construction or reconstruction after an insured loss.

F. Elevator, Boiler, and Machinery Insurance

1. Loss or Damage Covered

Elevator, boiler, and machinery coverage is required for any property that operates elevators, steam boilers, turbines, engines, or other pressure vessels.

2. Coverage Requirements

The Agency requires boiler and machinery insurance in any property that has centralized heating, ventilating, and air-conditioning (HVAC) equipment in operation.

G. Sinkhole Insurance or Mine Subsidence Insurance

1. Loss or Damage Covered

Sinkhole insurance or mine subsidence insurance is recommended for projects located in areas prone to these geological phenomena.

2. Coverage Requirements

The amount of coverage that the Agency recommends for properties located in areas prone to these geological phenomena is 100 percent of the replacement cost of the structure affected.

3. Deductible

The deductible for sinkhole insurance or mine subsidence insurance should be similar to what would be required for earthquake insurance.

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H. Business Income or Rent Loss Insurance

1. Loss or Damage Covered

Business income or rent loss coverage provides coverage for the loss of rental income incurred due to a property loss during a 12-month period.

2. Coverage Requirements

The Agency does not require but recommends that the project be insured against loss of business income or rent in the event of a property loss that causes one or more units to be uninhabitable for a period of time. Business income coverage may be obtained in one of two forms:

- Actual loss sustained; or
- A fixed amount equal to the annualized amount of monthly gross potential rents.

I. Acceptable Exclusions

Acceptable exclusions from "all risk" insurance policies include:

- War or military action;
- Nuclear hazard;
- Volcanic eruptions;
- Fraudulent or dishonest acts committed by the insured;
- Dispersal, release, or escape of contaminants or pollution (biological or chemical agents); and
- Terrorism.

J. Property Insurance Exemptions

Property insurance is not required if:

- The building is in such a state of disrepair that the cost of insurance would be prohibitive;

- The building has a depreciated replacement value of $2,500 or less

K. Property Insurance Policy Requirements

The project's property insurance policy must include the following:

- **Name and location.** The policy should contain the names of the borrowers who are owners of the property being insured. The exact location of the property should be described in the policy.

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- **Loss or damage covered.** The policy must indicate that the buildings are insured against loss or damage by fire, smoke, lightning, windstorms, hail, earthquake, explosion, riot, civil commotion, aircraft, and vehicles.

- **Effective date of insurance.** If there are insurable buildings located on the property, the policy's effective date will be on or before loan closing or assumption, or before the credit sale is closed, so that the policy will properly insure the borrower and the mortgagees. When new buildings are erected or major improvements made to existing buildings, such insurance will be made effective as of the date materials are delivered to the property. The Agency will not advance loan funds for labor or materials until the borrower has furnished adequate insurance to protect the interest of the Agency.

- **Term.** The borrower must furnish insurance for a term of at least 1 year, with evidence that a full year's premium is paid. If the policy is the type that imposes an assessment only after a loss has occurred, the borrower must provide documentation from the insurance company that no assessment is owed. If the insurance policy is automatically renewable, the renewal clause must meet Agency requirements.

- **Loss payee.** The Agency must be named loss co-payee on all properties where it holds first lien position, which means if there is a damage or loss, the insurance draft will be made payable to the Agency. Further, the Agency must be named as an additional insured if its lien position is other than first.

- **Mortgage clause.** The standard mortgage clause adopted by the State or the Agency Form RD 426-2, "*Property Insurance Mortgage Clause (Without Contribution)*" must be attached to or printed in the insurance policy. Whenever a new mortgage clause highlighting the Agency's interest is issued after the policy has been in force, the new mortgage clause must be signed by an authorized agent or officer of the company that issued the policy.

  The mortgage clause is not required if:

  ◊ An authorized official of an insurance company provides a statement that all insurance policies the company issues in the State, and in which Rural Development has a mortgage interest, incorporate all of the provisions of *Form RD 426-2*. This statement may be accepted in lieu of attaching the form to each policy. If such a blanket letter is used, Rural Development must be named in the loss payable clause after prior approval is obtained from the Agency.

  ◊ For all hazard and flood insurance policies the Agency will be named as co-payee.
  ◊ For builder's risk policies the borrower must be named as the insured party, and the policy must convert to full coverage when the project is completed.

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3.11 FIDELITY COVERAGE

A. Loss or Damage Covered

Fidelity insurance protects the property against loss due to employee dishonesty. The policy will provide coverage on all persons with access to project assets. Fidelity coverage may also be known as Blanket Crime Coverage or Fidelity Bond.

B. Coverage Requirements

The fidelity insurance policy, at a minimum, must include an insuring agreement that covers employee dishonesty. The minimum amount of fidelity coverage will be the amount calculated by multiplying an exposure index by a coverage factor. When the calculated amount is less than $10,000, minimum coverage of $10,000 must be provided. This calculation is made as follows:

- Determine exposure index: Exposure index = 25 percent of the SUM of annual cash receipts (rents, cash subsidy, security deposits and interest, etc.) and cash (cash carryover, reserves, CDs, tax and insurance escrows, etc.). Round to next higher $1,000.

- Determine coverage: Coverage = exposure index X coverage factor taken from the coverage chart shown in Exhibit 3-5. Round to next higher $1,000.

Exhibit 3-5
Fidelity Coverage

Exposure Index	Coverage Factor
$100,000 or less	0.30
$100,000 to $200,000	0.28
$200,000 to $300,000	0.26
$300,000 to $400,000	0.24
$400,000 to $500,000	0.22
$500,000 to $600,000	0.20
$600,000 to $700,000	0.18
$700,000 to $800,000	0.16
$800,000 to $900,000	0.14
$900,000 to $1,000,000	0.12
$1,000,000 or more	0.10

C. Deductible

A deductible is designed to allow flexibility in balancing what the project can prudently pay from its own assets, at a time of loss, against the economy of annual premiums in its annual budget. The deductible levels shown in Exhibit 3-6 will meet Agency requirements. Each year borrowers must review and adjust, if necessary, their fidelity coverage.

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Exhibit 3-6 Fidelity Coverage Deductible Levels	
Fidelity Coverage	**Deductible Level**
Under $50,000	$1,000
Up to and including $100,000	$2,500
Up to and including $250,000	$5,000
Up to and including $500,000	$10,000
Up to and including $1,000,000	$15,000

- **D. Exemptions**

Fidelity insurance is not required under the following circumstances:

- When a loan is made to an individual or a general partnership, and that individual or general partner will be responsible for the project's financial activities. Individuals cannot bond against their own actions. For land trusts where the beneficiary is responsible for project management, the beneficiary is treated as an individual.

- For the general partners of a limited partnership, unless one or more of its general partners perform financial acts coming within the scope of the usual duties.

E. Policy Requirements

Fidelity coverage must be documented on a bond form acceptable to the Agency. Fidelity coverage policies must state that the insurance company will provide protection to the insured against the loss of money, securities, and property through any criminal or dishonest acts by any employee acting alone or in collusion with others. The amount of indemnity will not exceed the amount stated in the declaration of coverage.

The portion of the insurance premium to cover project site employees and general partners is an eligible project expense. The premium paid by the management agent is part of the agent's management expense and cannot be claimed as a project expense. When a project site employee is covered under the management agent's fidelity policy, the pro rata portion of the premium covering the employee should be reflected in the management plan.

3.12 ERRORS AND OMISSIONS INSURANCE

Errors and omissions (E&O) coverage protects the borrower against loss resulting from negligence, errors, or omissions committed by those persons covered under the borrower's fidelity insurance policy. Obtaining E&O insurance does not diminish or limit the borrower's documentary obligations and responsibilities.

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3.13 LIABILITY INSURANCE

A. Loss or Damage Covered

This coverage insures against any personal injury that might occur in or on the project's common areas, common elements, commercial space, and public areas.

B. Coverage Requirements

The coverage must meet the requirements established below.

1. Commercial General Liability

The insurer's limit of liability per occurrence for personal injury, bodily injury, or property damage under the terms of coverage must be at least $1,000,000. Coverage may also include borrower exposure to risks such as E&O and environmental damage, or protection against discrimination claims.

2. Umbrella Liability Insurance

The Agency recommends, but does not require, the borrower to obtain umbrella liability insurance to provide coverage over and above the $1,000,000 provided for in the commercial general liability policy. The Agency recommends that umbrella liability insurance policies provide coverage as follows:

- For projects with buildings of 1 to 3 stories, $1,000,000;
- For projects with buildings of 4 to 10 stories, $5,000,000; and
- For projects with buildings of 11 to 20 stories, $10,000,000.

3. Commercial Automobile Liability Insurance

The Agency recommends that the borrower purchase commercial automobile liability insurance to cover all automobiles used for business purposes related to the project. The recommended amount of coverage is $1,000,000 per occurrence.

C. Deductible

The Agency allows a deductible not to exceed $5,000 per occurrence.

3.14 WORKERS' COMPENSATION

This insurance coverage, which is also known as employer's liability coverage, is required by the Agency.

3.15 POLICY RENEWALS

When renewing insurance policies, if the best policy the borrower can obtain contains a deductible clause with amounts greater than those stated above, the borrower must submit to the MFH Servicing Official:

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- The insurance policy; and

- An explanation and documentation of the reasons why more adequate insurance coverage was not available.

3.16 BLANKET POLICIES

Blanket insurance policies for several buildings or properties located on non-contiguous sites are acceptable if the insurer provides proof that the secured property is as fully protected as if a separate policy were issued.

Blanket crime insurance coverage or fidelity bonds are acceptable types of fidelity coverage. At a minimum, a borrower must provide the Agency with an endorsement listing all Agency properties and their locations covered under the policy or bond as evidence of required fidelity insurance. The policy or bond may also include properties or operations other than Agency-financed properties on separate endorsement listings.

Individuals or organizational borrowers must have fidelity coverage when they have employees with access to Multi-Family Housing complex assets. A borrower who uses a management agent with exclusive access to housing assets must require the agent to have fidelity coverage on all principals and employees with access to the project. If project management reverts to the borrower, the borrower must immediately obtain fidelity coverage.

3.17 AUTHORIZED INSURANCE PROVIDERS

Borrowers are responsible for selecting an insurance provider that meets Agency requirements. The insurance provider must be licensed or authorized to do business in the State or jurisdiction where the project is located. In making the determination that an insurance company is reputable and financially sound, the Agency uses all relevant available information, including financial statements, Best's Insurance Reports, and information from State insurance authorities.

The borrower and management agent are required to disclose any IOI relationships with the insurance company.

3.18 BORROWER FAILURE TO MEET INSURANCE REQUIREMENTS

The MFH Servicing Official is responsible for taking all actions in connection with insurance that are necessary to protect the security interest of the Agency. Any unusual situation that may arise with respect to borrower procuring or maintaining insurance should be referred to the Leadership Designee. The Leadership Designee may refer questions to the Office of General Counsel (OGC).

A. Unacceptable Insurance Policy

When the borrower submits a policy or binder that does not meet Agency requirements, Agency staff will return the policy/binder to the borrower with a letter

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that provides the reasons for the policy's unacceptability and requires an acceptable policy within 30 days of the date of the letter.

If acceptable coverage still is not obtained from an authorized provider and the determination has been made to continue with the borrower, the MFH Servicing Official will temporarily accept from the borrower the available insurance policy the Agency determines most nearly conforms to established requirements. Whenever adequate insurance becomes available, the Leadership Designee will require the borrower to deliver to the Agency an acceptable insurance policy.

B. Expired Policies

When an expired insurance policy is not renewed, the MFH Servicing Official will require the borrower to provide a new policy. The Agency will be shown in the loss payable clause and in the mortgage clause in the proper order of priority. Insurance coverage on each building usually will be the same as shown on the expired policy if it meets or exceeds Agency requirements. If the coverage shown on the expired policy does not meet Agency requirements, the borrower will obtain the proper coverage. If the insurance agency or broker who issued the expired policy refuses to issue a new policy, the MFH Servicing Official will have the borrower designate in writing another insurance agency or broker from whom the insurance can be obtained.

C. Force-Placed Insurance

If the borrower does not furnish acceptable insurance within the required timeframe the MFH Servicing Official will begin the process of procuring the required insurance. The costs of procuring the insurance and the premium amount will be added to the borrower’s Agency account.

3.19 PROPERTY DAMAGE OR LOSS

Borrowers must notify the Agency and their insurance company agents of any loss or damage to the insured property.

A. When Loss or Damage is Discovered

Upon being notified of loss or damage, the MFH Servicing Official will:

- If the Agency is listed as mortgagee in the insurance policy, collect the amount of the loss and may also consent to the borrower using the funds to repair or replace damaged or destroyed property or to apply the loss proceeds to their loan account or to any prior liens that might exist in the order of their priority.

- If the Agency is not listed as mortgagee in the insurance policy, contact the borrower to determine whether they have received the loss proceeds. If the borrower has received the loss proceeds but has not yet paid for improvements to repair or replace the property, or has not received the loss proceeds, the MFH Servicing Official will:

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◊ Inform the borrower of their responsibility for repairing or replacing the damaged or destroyed property or for authorized disposition of the loss proceeds; and

◊ Notify the insurance company in writing of the Agency's interest in the security property and request that the loss proceeds be made payable jointly to the Agency and the borrower.

- In discussion with the borrower, determine if any units are uninhabitable. If units are uninhabitable, the affected tenants may request a Letter of Priority Entitlement (LOPE) from the Agency. Uninhabitable units must be reflected in MFIS.

- Request the borrower to provide a copy of the Insurance Adjuster's worksheet reflecting damages and estimated loss amounts to the Agency. For significant losses, the scope of work/plans/specs should be submitted to the Program Support Staff (PSS)/Architect for review. Transition plan items should be reviewed by PSS/Architect before the work takes place to ensure it meets the applicable accessibility standards.

- Insurance funds need to be tracked in MFIS Tracked Accounts.

B. Loss Drafts

A loss draft is payment from the insurance provider for property loss or damage. Loss drafts for loans secured by a first mortgage, which in the opinion of the Agency represents a satisfactory adjustment of the loss will be endorsed immediately without recourse and deposited in a supervised bank account to be used in repairing or replacing the damaged building, except when:

- The amount of the loss is $5,000 or less and the borrower will use the funds for repairing or replacing an essential building. The loss draft may be endorsed without recourse and given to the borrower upon satisfactory proof that the repairs or replacements have been made.
- The essential buildings are not to be repaired or replaced and other suitable buildings are not to be erected.

- A balance remains after all repairs, replacements, and other authorized disbursements have been made, insurance funds can be applied as follows:

◊ To prior liens;

◊ As an extra payment to the borrower's loan account; or

◊ To the borrower's reserve account.

◊ Make other capital improvements to the property as approved by the MFH Servicing Official.

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- The indebtedness secured by the insured property has been paid in full or the draft is in payment for loss of property on which the Agency has no claim. A loss draft that includes the Agency as a joint payee may be endorsed without recourse and delivered to the borrower.

Loss drafts for a loan that is not secured by an Agency first mortgage will be released by the Agency only if the primary mortgagee agrees to the provisions set forth in the previous part.

3.20 REAL ESTATE TAXES

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Borrowers are responsible for paying real estate taxes each year. The annual financial statements must include a certification that the property's real estate taxes have been paid. Failure to pay taxes and assessments by the due date will be considered a non-monetary default.

When the Agency discovers that a borrower has failed to pay property taxes or local assessments, the MFH Servicing Official will notify the borrower in writing to pay the property's taxes and that paying taxes are the borrower's responsibility. The notification letter will request proof of payment of taxes within 30 days. If the borrower fails to submit proof of payment, the MFH Servicing Official will:

- Determine if taxes have been paid;
- Pay delinquent taxes and any penalties;
- Charge the cost of bringing the taxes current to the borrower's Agency account; and
- Require the borrower to establish an account to ensure that funds are available for payment of taxes.

The MFH Servicing Official will begin servicing actions.

• SECTION 5: PROJECT MANAGEMENT FOR LABOR HOUSING

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3.21 PROJECT MANAGEMENT AND FEES

A. Off-Farm Labor Housing

Project management for off-farm labor housing will be in accordance with the procedures established in this chapter for the Section 515 program. Borrowers are required to submit a management plan and a management certification, and to receive Agency approval on the proposed management agent and the management fee prior to paying a management fee from project income. For off-farm labor housing operated on a seasonal basis, the management plan must establish specific opening and closing dates.

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B. On-Farm Labor Housing

Project management for On-Farm Labor Housing projects should follow the same basic procedures as outlined in this chapter for the Section 515 program with the following exceptions:

- On-Farm Labor Housing borrowers are expected to manage their own properties and should not need to charge a fee for this service; and

- On-Farm Labor Housing borrowers are required to maintain a lease or employment contract with each tenant specifying employment with the borrower as a condition for continued occupancy.

3.22 INSURANCE REQUIREMENTS

A. Off-Farm Labor Housing

Off-farm labor housing must comply with the same insurance requirements as specified for the Section 515 program in this chapter.

B. On-Farm Labor Housing

On-Farm Labor Housing borrowers must ensure that they provide hazard insurance adequate to cover replacement of the property in case of loss. On-Farm Labor Housing borrowers must comply with the same flood insurance requirements as specified earlier in this chapter.

3.23 SPECIAL SERVICING REQUIREMENTS FOR SECTION 514 ON-FARM LABOR HOUSING

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A. Background.

Prior to January 17, 1993, owners of on-farm type LH were not allowed to charge rent or utilities to eligible tenants residing in the housing if the requirement that the owner execute a loan agreement had been waived. If there had been no waiver of the loan agreement requirement, owners of on-farm type LH were allowed to charge rent and utilities for the unit.

Effective January 17, 1993, regulations required all owners of Section 514 on-farm type LH to sign a loan agreement. By signing this agreement, the owners of on-farm LH reaffirmed their obligation not to charge rent or utilities to eligible tenants. Owners who sign the agreement must obtain the Government's prior approval for charging rent, utilities, refundable deposit charges or cleaning fees. Charges must be reasonable and approved in accordance with the procedure. Borrowers not meeting these requirements will be requested to comply with these requirements. Borrowers unwilling or unable to do so may be subject to the RHS initiating appropriate servicing action to seek compliance.

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B. Policy.

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Agency staff are to ensure that owners of on-farm type LH financed under Section 514 are not charging for rent, utilities, refundable damage deposit charges, or cleaning fees to residents, unless the rent, charges, and fees are approved by authorized officials.

Where violations are evident, the owner will be asked, in writing, to come into compliance. Tenants must receive proper notification and an opportunity to comment on proposed rent changes. Borrowers should arrange to request rent changes during periods when migrant residents can be readily contacted. Making requests during the off-farm season when tenants are not occupying the units does not excuse the borrower from the responsibility to make effective notification to tenants. Tenants must also receive notice of any approved charges authorized by the Agency prior to imposing charges. Borrowers imposing unauthorized charges must be notified, in writing by the Agency, that they must roll back rates retroactively to the last authorized level. The borrower must give tenants a rebate or credit for the unauthorized charges.

Borrowers with known violations must be brought into compliance or subjected to servicing actions which may include, but not be limited to, added Agency supervisory visits, inspections, and reviews; acceleration; suspension; debarment; and referral to local, State, or Federal officials for investigation and prosecution of violations of civil or criminal law.

C. Definition of Rent.

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For administering the section 514 on-farm program, the term "rent" means any charge made by a landlord to an eligible tenant household for the use and occupancy of the housing and includes utilities (i.e., electricity, heat, water, waste disposal, etc.) or the requirement that the tenant pay the utilities directly to the utility provider.

The term "rent" is also clarified to include any deductions or off-sets made to a tenant's wages for the use of a LH dwelling. Rent does not include bona-fide wage changes or reductions unrelated to retaining rent-free housing benefits. Agency officials should seek to obtain and document the following:

- A meeting with the tenants residing in the labor housing should be convened, preferably without the borrower being in attendance in order to ensure objectivity. Solicit the information set out in the Supervisory Visit On-Farm form in MFIS. Letters to tenants in advance of the visit may also be used to solicit this information.

- If the borrower is unable to provide utility bills, contacting the utility company to determine in whose name the utilities are registered. Compare the information solicited by tenant interviews on utilities paid with the utility company data, where possible.

- A review of the borrower's farm and home plan and other financial records to determine whether the borrower is deriving any income from the farm labor housing units. Compare the information solicited by tenant interviews on rent and utility payments with that disclosed by the borrower.

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D. Servicing Actions.

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Normal servicing letter and initial follow-up: If the borrower is not complying with Agency regulations (including improperly charging rent, permitting unlicensed occupancy or occupancy during a period for which the housing was not designed) the borrower should be sent the first servicing letter identifying the compliance deficiencies. The letter should normally be sent within 15 days of identification of the compliance deficiencies. Borrowers should normally be requested to issue a response within 15 days of the date of such a letter. When rent change violations are identified, the extent of the violations should be documented, including an estimate of the amount of the improper charges involved and the documentation relied upon to derive these estimates. Borrowers in violation should be requested to show evidence of any reimbursement or crediting of improper charges to those residents affected. This includes documentation of attempts to contact and reimburse former tenants for unauthorized charges. Where documentation shows former tenants cannot be reached for reimbursement of unauthorized charges, the borrower may remit the unauthorized charges to the Government for processing as a miscellaneous payment for crediting to the Rural Housing Insurance Fund.

Within 30 days of sending any letter to the borrower citing unapproved rent charges, officials should verify whether the borrower has stopped unapproved charging for the use and occupancy of the housing, and if the borrower has refunded tenants any improper charges previously collected. This may be accomplished by a follow-up visit, written communication to tenants, or other effective means. During any follow- up visit, RHS staff should attempt to meet with the tenants to determine if a borrower's improper practice of charging for the use of the housing has ceased. The meeting between RHS staff and the tenants should not be in the presence of the borrower.

Workout plan to achieve compliance: When a workout plan is being considered to bring a borrower into compliance with Agency regulations. Borrowers that are not in compliance may be eligible for a supplementary payment agreement calling for less than a full loan installment for use in refunding improper charges to residents or former residents. Upon the end of such workout arrangements, including deferred or reduced debt service payments, reamortization of the account should be considered.

Upon compliance with the rent change approval by Agency servicing officials, the borrower may consider waiving the authorized collections and credit residents for payment of the approved charges until such time as the improperly assessed charges are fully offset. Such arrangements should normally not exceed two years. Borrowers may not reduce resident wages to finance any reductions in shelter cost charges.

If the housing is not suitable for year-round occupancy, a rent charge approved by RHS may only be assessed for the period of occupancy for which the housing is suitable. The housing may not be occupied, and no rent may be charged for the period for which the housing is not suitable for occupancy. If the borrower wishes to make the housing suitable for year-round occupancy, RHS may approve any rent change request for the entire year only after the borrower makes the necessary modifications and obtains all necessary permits and licenses to operate the housing on a year-round basis.

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Secondary request letters: borrowers failing to respond to letters requesting compliance with Agency regulations or failing to arrange a meeting to resolve compliance concerns, or failing to arrange to develop an acceptable workout plan, must be notified of the Agency's continued concerns and requested to comply. Borrowers will be advised that the servicing options available to resolve compliance concerns.

Last notice to avoid more serious servicing actions: borrowers who continue to be in non-compliance will be requested to comply with Agency regulations and requirements or face the prospects of adverse servicing actions. The timeframe for reply to such a letter should normally be within 15 days of the date of such letter. The MFH Servicing Official will forward a problem case report for borrowers in violation of Agency requirements to the Leadership Designee along with recommended servicing actions. The time frame for this action should normally be within 30 days of concluding that efforts to achieve compliance have been unsuccessful.

Processing problem case reports: the Leadership Designee should take appropriate action on problem case reports and request any needed guidance or action from other Governmental officials when warranted. This may include seeking to initiate foreclosure, seeking appointment of a receiver, or to initiate other appropriate legal remedies to enforce compliance. This may also include initiating a request for an audit or investigation from the Office of Inspector General (OIG) in accordance with the provisions of 7 CFR 2012, subpart A or 2012, subpart B.

E. Documentation accompanying problem case reports and required action.

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If the borrower has not complied with the requirements set out in earlier servicing attempts, a complete report of the initial visit and follow-up action should accompany any problem case report forwarded to the Leadership Designee for further action.

If, after sending appropriate servicing notices, the borrower does not stop charging unauthorized rents and does not provide refunds or credits of any improperly charged rent to tenants, a problem case report is to be prepared and forwarded to the Leadership Designee. Leadership Designees, with the assistance of the Office of the General Counsel, should take appropriate actions to enforce the owner's agreement not to charge rent and to refund or credit any improperly charged rent. Borrowers, who are not able or willing to comply, or enter into an acceptable workout plan to achieve compliance, should:

- Consider initiating acceleration of the account.

- Be considered for a suspension or debarment in accordance with the provisions of 7 CFR 3560, Subpart M.

F. Compliance concerns warranting attention and corrective action.

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Shelter cost changes: if shelter cost changes warrant correction, such as the reimbursement of inappropriate charges to residents through rebates or credits. Borrowers must make efforts to contact and rebate unauthorized charges to former residents. Should the borrower be unable to rebate or credit improper shelter cost charges to affected residents because they cannot be located, the improper charges should be forwarded for processing as a

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miscellaneous payment for crediting to the revolving fund. Borrowers should not receive indirect benefit from such improper actions such as having any improper collections "credited" to the Government for application as a voluntary additional payment on loans owed the Government. Alteration of *Form 3560-8*, to reflect that rents are being charged, does not constitute appropriate evidence of rent change approval.

Tenant Notification: if tenant notifications are not supported, a rent change violation is apparent. Corrective action such as reimbursement or credits should be taken.

Utility allowance documentation: corrective action should include gathering the required information prior to any approval actions.

Loan agreement: corrective action should include a written demand to execute the agreement. Failure to comply with such request warrants forwarding a problem case report to the Leadership Designee. This type of non-compliance may require more aggressive servicing actions including additional supervisory visits. Failure to execute the loan agreement may be a sign that other compliance deficiencies exist. Scheduling a supervisory visit as soon as possible but usually not later than three months after the failure is warranted to verify whether other compliance deficiencies exist.

Record keeping and reports: borrowers are expected to keep appropriate records and reports. This includes the following:

- Financial records. When residents are not charged for residing in the housing unit, *Form 3560-7A* should be provided for the annual reporting requirements. When residents are charged for residing in the housing unit, adequate financial disclosure is required. Budget reviews should be evaluated to ensure the labor housing is operated in a non-profit manner (i.e., cash LH expenses for operations, loan installments, taxes, insurance, and upkeep are less than or equal to cash receipts from LH revenue from authorized rents, utilities, security deposits and fees).
- Documents needed to verify eligibility to reside in labor housing dwelling units. Where rent is being charged, a copy of Form RD 3560-8, "*Tenant Certification*" is appropriate. This documentation should show that a substantial portion of income is derived from farm labor or is considered so earned if the housing was initially provided on a non-rental basis as part of employment compensation for farm labor.
- Documents showing compliance that tenants are being charged for rent, utilities, refundable security deposits, or cleaning fees. This includes evidence of tenant notification and reporting disclosure requirements, and current utility allowance documentation if residents are being charged for utilities.

- Evidence that taxes and insurance are paid.
- Evidence that the property is decent, safe, sanitary, and free from health and safety hazards.
- Evidence of a management plan, when appropriate.

G. LH Compliance Concerns Detected After Promissory Notes are Paid in Full.

Compliance concerns uncovered after payment in full may warrant servicing letters to

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borrowers. This is especially appropriate under circumstances where unapproved shelter cost

charges are detected. However, when such evidence is over six years from the date the borrower's account matured, no notification is required. Where a serious violation is discovered, the Agency may consider taking appropriate actions even though the account matured. The guidance of OGC may be sought in determining what corrective measures can be brought to bear under such circumstances. Such actions may include referral to OIG recommending initiation of an audit or investigation and suspension or debarment from participation in Federal programs under the provisions of 7 CFR 3560, Subpart M.

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ATTACHMENT 3-A

MANAGEMENT PLAN REQUIREMENTS

1. The role and responsibility of the owner and the relationship and delegations of authority to the management agent. A management agreement must be provided where a management agent is to be used. If there is no management agent, the management plan should supply the equivalent information concerning the management staff assigned to day-to-day operation of the project even when the owner provides direct management.

   a) Describe and fully justify any identity of interest as described in 7 CFR 3560.

   b) Identify the supervisory relationships, and to whom the incumbent of the position responsible for the day-to-day operation of the project is accountable.

   c) Describe the conditions when the management agent must consult the owner before taking any action.

   d) Identify the person or position in the owner's organization that is the key contact for the management agent.

   e) Describe the type of decisions to be made by this contact person.

   f) Describe the fundamental responsibilities and duties of the owner and the managing agent. Identify any areas of overlap and describe how the overlap will be handled.

   g) Describe any pro rata divisions of singularly incurred operating expense that is common to the management agent and the owner (project) (i.e., fidelity coverage that may be divided between both).

2. Personnel policy and staffing arrangements.

   a) Describe hiring practices of management and their conformance with equal employment opportunity requirements.

   b) Include a staffing plan for the project.

   c) Describe the lines of authority, responsibility, and accountability (internal controls) within the management entity.

   d) Describe the standards and plans for training and familiarizing employees with their job-related responsibilities and applicable Rural Development program requirements. Describe how such training will generally be achieved.

   e) Describe how the Tenant Service Coordinator will assist with resourcing free tenant services or available funding sources for tenants (i.e., assessing tenant needs, educating tenants on availability of supportive services and resources, and linking tenants to appropriate services), if applicable.

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3. Plans and procedures for marketing units, achieving and maintaining full occupancy. Properties that have five or more rental units must meet *HUD Form 935.2*, "*Affirmative Fair Housing Marketing Plan*" requirements.

a) Describe how affirmative marketing practices will be used. Describe the outreach and marketing efforts that will be used to reach those low-income and minority persons who are least likely to apply for such housing without special outreach efforts.

b) Describe the methods that will be used to achieve and maintain the highest possible level of occupancy. When applicable, indicate any additional compensation or incentives that may be allowed management agents for early initial rent-up. (If this area is not covered in the management plan, it will not be allowed at a later date.)

c) Describe how the units will be advertised. Indicate minimum levels planned regardless of occupancy levels.

d) Describe the appropriate communication system, auxiliary aids, or other assistance that will be used to ensure effective communication with applicants, tenants or members, and members of the public that have sight or hearing impairments.

e) Describe the kinds of reasonable accommodation the project can readily provide such as changing water faucets, kitchen equipment, doorknobs, assigning handicap parking spaces, etc.

f) Describe the process management will follow in reviewing and determining whether structural modification of an apartment unit is practical and feasible to reasonably accommodate a tenant or household member who has a disability.

g) Provide a sample waiting list.

h) Describe procedures used to purge waiting list. Must be based on the length of the waiting list or the extent of time an applicant will be expected to wait for housing.

i) Attach copies of sample forms that will be used to record unit condition and indicate who will receive copies of the inspection forms.

j) Describe any orientation services to be provided tenants or members to acquaint them with the project and care of the units. Indicate what printed project information will be given to applicants.

k) Identify the person or staff position responsible for determining tenant or member eligibility and their location on the waiting list.

l) In projects receiving tax credits, explain if special waiting lists will be required when eligible tenants with incomes higher than tax credit limits will be considered for occupancy and how this waiting list will be maintained.

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4. Procedures for determining eligibility and for certifying and recertifying incomes.

   a) Describe how applications and other records relevant to this function will be kept. If application fees are used, describe them.

   b) Describe the level of knowledge, skill, and ability that management official(s) will be expected to possess BEFORE assuming rental related duties such as application processing, eligibility determination, selection, unit assignment, certification, recertification, rent or occupancy charge collection, and record keeping. This discussion should mention training and testing to be provided or obtained to achieve and maintain the level expected.

5. Leasing and occupancy policies.

   a) Describe the occupancy standards for the project. (This could be shown as an annex to the management plan.)

   b) Describe the project admissions and leasing/occupancy policies and procedures, and criteria for selecting tenants/members for occupancy. (This could be shown as an annex to the management plan.) If project has full RA or project-based subsidy, describe if other subsidies (for example, a HUD Voucher) are accepted and/or if the RA/project-based subsidy takes priority.

   c) Describe the level of knowledge, skill, and ability that management official(s) will be expected to understand and apply regarding project lease provisions and prohibitions, occupancy standards, and admissions policies.

   d) Describe special procedures that will be used where the marketing area includes non-English speaking or reading persons to assure that such persons will understand leases or occupancy agreements and established rules.

6. Rent and occupancy charge collection policies and procedures.

   a) Describe the project rent/occupancy charge collection policy and procedure, covering such matters as where the collection point is, which staff position handles the collection, provisions for collection after normal office hours, recording, and safeguarding of collections.

   b) Describe the project security deposit/ membership fee policy and procedure covering matters similar to the preceding item. Include discussion on handling of any interest earned on such deposits.

7. Procedures for requesting and implementing a rent or occupancy charge change.

   a) Describe the process to be followed for preparation and request of a change of rents/occupancy charges and/or utility allowances, and to notify tenants of such change, to meet Rural Development requirements.

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b) Identify which staff position or person will process change requests.

c) Describe when such change requests will normally be made in terms of economic need and timing within a fiscal year of operation.

8. Plans and procedures for carrying out an effective maintenance, repair, and replacement program.

a) Describe the project objective and general plan for preventive maintenance.

b) Describe where the project's as-built plans and specifications will be located and identify the staff position responsible for updating it as modifications occur.

c) Describe the general maintenance procedures and schedules or cycles to: (this list could be attached as an addendum)

(1) Check and service appliances and mechanical equipment.

(2) Perform safety checks of smoke/fire alarms, fire extinguishers, outside lighting, and ice removal, etc.

(3) Inspect and perform maintenance and redecoration incident to tenant/member move-out and move-in.

(4) Perform major interior and exterior painting and redecorating.

(5) Perform major repairs and grounds maintenance.

(6) Remove garbage and trash.

(7) Perform common areas clean up (parking lot, entryways, hallways, community room, etc.)

d) Describe the project policy and procedure for tenants/members to prepare and submit maintenance requests.

e) Describe the general timing for handling purchase orders and payments.

f) Describe the project policy for budgeting for and/or requesting use of reserve funds for funding major maintenance or replacement items.

g) In migrant or seasonally occupied labor housing (LH), describe the above items in terms of season opening and closing dates.

9. Plans and procedures for providing supplemental services.

a) Describe the types of supplemental services such as laundry and vending machines that will be provided to benefit occupants.

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b) Explain whether this equipment will be owned and operated by the owner or a consignee (vendor).

c) Describe the safekeeping and recording practices (internal control) of any cash collections from use of the equipment.

d) Describe who will be responsible for maintaining the equipment and stocking any vending machines.

e) When a consignee will operate the equipment, describe the general terms of the consignment contract.

f) Describe Tenant Services Coordinator responsibilities, programs, and equipment in use (i.e., language and computer learning classes).

10. Plans for accounting, record keeping, and meeting Rural Development reporting requirements.

a) Briefly describe the type of project accounting methods (i.e., cash or accrual) and records that will be used, how will they be maintained, and which staff position will prepare and maintain them.

b) Describe how interest earned on project reserve funds will be prorated and accounted "separately" if such funds are deposited jointly with funds of another project owned by the same borrower.

c) Describe whether the project bookkeeping chart of accounts and bank accounts is compatible with *Form RD 3560-7, "Multiple Family Housing Project Budget,"* requirements, and if not, what adjustments will be made when reporting actuals on the form.

d) Identify which staff member or position will be responsible for the preparation and submission of the quarterly and annual reports required by Rural Development.

e) Provide assurance or explanation that the person or firm who will perform and prepare the annual audit, or verification of review, is not associated with the project, other than to perform the audit or review.

f) Discuss the proposed tenant or member record maintenance system including retention of records and identify which person/position will handle and maintain the records.

g) Identify where records subject to Rural Development review will be kept and which person/position Rural Development will contact to review the records.

h) Identify by using a task list which administrative costs and services are included in the management fee, which are included in project operations, and which are pro-rated along with the methodology used in pro-rating between management agent fees and project operations. Some property responsibilities are completed at the

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property and some offsite. Agent responsibilities may be performed at the property, the management office, or at some other location.

11. Energy conservation measures and practices.

a) Describe the plan to inform and encourage tenants/members in use of energy conservation practices they can use in their unit to save utility expense (and thus minimize utility allowances and conserve rental assistance).

b) Describe the plan to utilize energy conservation practices in the common areas of the project (to conserve operating expense and help minimize rent/occupancy charge levels).

c) Describe the project objective in implementing energy conservation measures.

12. Plans for tenant participation in rural rental housing (RRH) project operations and tenant's relationship with management.

a) Describe any plans for a tenant organization and how management and staff will work with the organization.

b) Describe where the Tenant Grievance and Appeals Procedure will be posted in the project and otherwise made available to tenants. Identify which person or staff position will be responsible for responses to and consideration of a tenant/member grievance.

13. Plans for member participation in rural cooperative housing (RCH) project operations.

a) Describe who will explain to the members the types of committees the cooperative will be using.

b) Describe what the cooperative will do to attract member participation on committees.

c) Describe how the board members will participate with the committee.

d) Describe where the cooperative will post, and otherwise make available to members, the Tenant Grievance and Appeals Procedure. Identify which person or staff position will be responsible for response to and consideration of a member grievance.

14. Plan for carrying out management training programs.

a) Describe the standards of training and proficiency that management or board members will be expected to attain and maintain to perform their duties and responsibilities in carrying out project objectives, including compliance with applicable Federal, State, and local laws.

b) Describe the plan to conduct internal training and to otherwise use external training sources to maintain levels of attained proficiency.

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c) For RCH, describe the actions the board will take if a board member(s) does not participate in training.

d) For RCH, describe the role the board will assume in making sure the RCH membership as a whole understands its role and functions in the cooperative.

15. Termination of leases or occupancy agreements and eviction.

a) Identify which person or staff position is responsible for knowing and administering State and local laws and Rural Development's requirements regarding termination of leases or occupancy agreements and evictions.

b) Identify which person or staff position is responsible for knowing and administering State and local laws and Rural Development's requirements regarding the notification that must be given to a tenant or member when termination of lease or occupancy agreement is proposed and subsequent eviction procedures through the State or local judicial process.

16. Insurance.

a) Identify which person or staff position is responsible for knowing and complying with Rural Development requirements for fidelity coverage and acquiring such coverage.

b) Identify which person or staff position is responsible for knowing and complying with Rural Development's insurance coverage requirements and acquiring such coverage.

17. Management agreement. Attach a copy of the management agreement, when applicable. (If an initial loan, attach a copy of the proposed management agreement, when applicable.)

18. RCH board of director/adviser relationship. Discuss the relationship of the adviser and its effect on decisions made by the board.

19. Management compensation.

a) If management is provided directly by the owner, describe the amount of management fee, how it will be determined, and how it will be paid.

b) In the case of a cooperative, describe the amount of compensation to be paid to the adviser by the board.

20. On-site management.

a) Describe who (owner, site manager, caretaker, board) will perform on-site management duties and responsibilities.

b) Describe the duties and responsibilities of the on-site management staff.

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c) Identify whether the site manager will live in the project in a rent-free unit, pay rent, or live off-site.

d) Describe established office hours and indicate where they will be posted.

21. Validity of the management plan. The plan must provide space at the end for the date, title, and signature of borrower or borrower's authorized representative.

22. Compliance with the requirements of VAWA 2013. Describe the policies and procedures covering VAWA rights and protections that support and assist actual and imminent victims of domestic violence, dating violence, sexual assault or stalking, as well as children and members of the household, from being denied housing or from losing their housing as a consequence of domestic violence, dating violence, sexual assault or stalking. Identify a person or position who is the key contact for the property regarding VAWA. See Section K of Attachment 6-K. (This could be shown as an annex to the management plan.)

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ATTACHMENT 3-B
BORROWER CERTIFICATION THAT NO CHANGES ARE REQUIRED TO THE MANAGEMENT PLAN

PROPERTY NAME:_____

(To be submitted once every 3 years if no changes are needed to the management plan during that period)

I,_____, certify that there have been no changes in the project's operations during the last 3 years, that the project operations are consistent with the current management plan, and that the plan is adequate to ensure project compliance with the loan documents and the applicable Agency requirements.

_____ _____

(Date) (Borrower)

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ATTACHMENT 3-C FREQUENTLY ASKED QUESTIONS (FAQ) NON-DISCRIMINATION POLICIES AND PRACTICES BORROWERS MUST ADDRESS

- How will applicants and tenants be made aware that the owner will provide reasonable accommodations?

- How will requests for reasonable accommodations be handled and who is authorized to approve or deny any such requests?

- Does the project have a Telecommunication Device for the Deaf (TDD) or an *equally effective communication system*? (**Note**: If the complex has Section 8 assistance from HUD, the complex is required to have a TDD)

- If the project has a TDD, is the public made aware that there is a TDD? For example, is the TDD telephone number given each time the project's telephone number is given?

- If the project relies on a relay service as an *equally effective communication system* (rather than having a TDD), who operates the relay service? Is the relay service available 24 hours a day and without any added cost to the disabled person?

- Have procedures been established to accommodate hearing- and sight-impaired applicants and tenants? Examples of methods the borrower might use include readers, sign language interpreters, Braille, etc.

- Does management give priority for fully accessible units to persons who are in need of the special design features of an accessible unit? Is priority given first to those living in the complex and then to persons on the waiting list?

- Before accessible units are temporarily rented to people who do not need the special design features, have there been diligent marketing efforts to market the units as accessible units? Have those efforts been documented? Are lease clauses used? Do marketing efforts continue after renting the unit to someone who does not need the special design features?

- Is management's policy for verifying a person's disability limited to only that which is needed to establish eligibility and is verification required only after a tenant or applicant has asked that their disability be considered by management?

- Does management provide their employees with civil rights training?

- When marketing an elderly project, has there been an effort to reach all eligible people? Persons with disabilities (of any age) are every bit as eligible as persons who are 62 or older. Marketing efforts should be designed to reach both population groups.

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- Does the borrower/management agent notify the public that they do not discriminate on the basis of disability? Do materials published by the borrower contain such a notice? Use of the Equal Housing Opportunity logo is one means of doing so (the logo is the house with the equal sign and the words Equal Housing Opportunity underneath the house).

- Does management have a policy that permits persons with disabilities to have service and/or companion animals?

- Does management give persons with disabilities the same choices other applicants are given? For example, the choice to pick either first or second floor apartments.

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ATTACHMENT 3-D

COSTS AND SERVICES TO BE PAID FROM THE MANAGEMENT FEE

The following items and services are provided in return for the management fee, as long as the management fee is approved by the Agency as a reasonable cost to the housing project and documented on the management certification:

A. Supervision by the management agent and management agent staff (time, knowledge, and expertise) of overall operations and capital improvements of the site.

B. Hiring, supervision, and termination of onsite staff.

C. General maintenance of project books and records (general ledger, accounts payable and receivable, payroll, etc.). Preparation and distribution of payroll for all onsite employees, including the costs of preparing and submitting all appropriate tax reports and deposits, unemployment and Workers' Compensation reports, and other IRS or State required reports.

D. In-house training provided to on-site staff by the management company.

E. Preparation and submission of proposed annual budgets and negotiations for approval with the Agency.

F. Preparation and distribution of the Agency forms and routine financial reports to borrowers.

G. Preparation and distribution of required year-end reports to the Agency.

H. Preparation of requests for reserve withdrawals, rent increases, or other required adjustments.

I. Arranging for preparation by outside contractors of Utility Allowance analysis.

J. Preparation and implementation of Affirmative Fair Housing Marketing Plans (AFHMPs) as well as general marketing plans and efforts.

K. Review of tenant certifications and submission of monthly Rental Assistance requests, and overage. Submission of payments where required.

L. Preparation, approval, and distribution of operating disbursements and oversight of project receipts and reconciliation of deposits.

M. Overhead of management agent including:

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- Establishment, maintenance, and control of an accounting system adequate to carry out accounting supervision responsibilities.

- Maintenance of agent office arrangements, staff, equipment, furniture, and services necessary to communicate effectively with the properties, to include consultation and support to site-staff, the Agency and with the borrowers.

- Postage expenses unrelated to site operation.

- Expense of telephone and facsimile communication unrelated to site operations.

- Direct costs of insurance (fidelity bonds covering central office staff, computer and data coverage, general liability, employment practices liability insurance, abuse & molestation coverage, etc.), directly related to protection of the funds and records of the borrower. Insurance coverage for agent's office and operations (Property, Auto, Liability, Errors and Omissions (E&O), Casualty, Workers' Compensation, etc.).

- Central office staff training and ongoing certifications.

- Maintenance of all required professional and business licenses and permits. (This does not include site office permits or licenses.)

- Travel of management agent staff to the properties for onsite inspection, training, or supervision activities.

- Agent bookkeeping for their own business.

N. Attendance at meetings (including travel) with tenants, borrowers, investors, and/or RHS, HUD, HFA, or other governmental agency.

O. Development, preparation, and revision of management plans and/or agreements, and management certifications

P. Direct the investment of project funds into required accounts.

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Q. Maintenance of bank accounts and monthly reconciliations.

R. Preparation, request for, and disbursement of borrower's initial operating capital (for new projects), as well as administration of annual owner's return on investment.

S. Account maintenance, settlement, and disbursement of security deposits.

T. Work with auditors for initial Agency annual financial reports.

U. Storage of records, including electronic records, and adherence to records retention requirements.

V. Assistance to onsite staff with tenant relations and problems.

W. Assistance in severe actions (eviction, death, insurance loss, etc.).

X. Oversight of general and preventive maintenance procedures and policies.

Y. Development and oversight of asset replacement plans.

Z. Oversight of preparation of Section 504 reviews, development of plans, and implementation of improvements necessary to comply with plans and Section 504 requirements.

AA. Reporting to general and limited partners and State Agencies for LIHTC compliance purposes.

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ATTACHMENT 3-E

COSTS AND SERVICES TO BE PAID FROM PROJECT INCOME

There are some generally accepted project expenses that may be paid out of the project operating account. These expenses are listed below.

A. Actual costs for direct personnel costs of permanent and part-time staff assigned directly to the project site. These will include managers, maintenance staff, tenant service coordinators, and temporary help and can include the following specific items:

- Gross salary;
- Employer Federal Insurance Contributions Act (FICA) contribution;
- Federal unemployment tax;
- State unemployment tax;
- Workers' compensation insurance;
- Health insurance premiums;
- Cost of fidelity or comparable insurance;
- Leasing, performance incentive, or annual bonuses that are clearly provided for by the site manager salary contract and identified in the management plan;
- Direct costs of travel to offsite locations by onsite staff for property business or training; and/or
- Retirement benefits.

B. Legal fees directly related to the operation and management of the property including tenant lease enforcement actions, property tax appeals and suits, and the preparation of all legal documents.

C. All outside account and auditing fees, if required by the Agency, directly related to the preparation of the annual audit, partnership tax returns, and Schedule K-1, as well as other outside reports and year-end reports to the Agency, or other governmental agency.

D. All repair and maintenance costs for the project, including:

- Maintenance staffing costs and related expenses;
- Maintenance supplies;
- Contract repairs to the projects (heating and air conditioning, painting, roofing, etc.);

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- Make-ready expenses, including painting and repairs, flooring replacement, and appliance replacement, as well as drapery/mini-blind replacement (turnover maintenance);
- Preventive maintenance expenses, including occupied units repairs and maintenance, as well as common area systems repairs and maintenance;
- Costs of snow removal;
- Costs of elevator repairs and maintenance contracts;
- Costs of Section 504 and other Fair Housing compliance modifications and maintenance;
- Costs of landscaping maintenance, replacements, and seasonal plantings;
- Costs of pest control services; and
- Other related maintenance expenses.

E. Specific costs that may be charged to the project include:

- The costs of obtaining and receiving credit reports, police reports, and other checks related to tenant selection criteria for prospective residents.
- Photocopying or printing expense related to actual production of project brochures, marketing pieces, forms, reports, notices, and newsletters are allowable project expenses no matter what location or point of origin the work is performed including outsourcing the work to a professional printer. All bank charges related to the property including purchases of supplies (checks, deposit slips, returned check fees, service fees, etc.).
- Costs of site-based telephone, including initial installation, basic services, directory listings, and long distances charges.
- All advertising costs related specifically to the operations of that project. These can include advertising for applicants or employees in newspapers, newsletters, social media, radio, cable TV, and telephone books.
- Postage expense to mail out rental applications, third-party (asset income and adjustments to income) verifications, application processing correspondence (acceptance or denial letters), mailing project invoice payments, required correspondence, report submittals to various regulatory authorities for the managed property are allowable project expenses no matter what location or point of origin the mail is generated.
- State taxes and other mandated Tribal, State, or local fees as well as other relevant expenses required for operation of the property by a third-party governmental unit. Costs of continuation financing statements and site license and permit costs.
- Expenses related to site utilities.
- Site office furniture and equipment including site-based computer and copiers. Service agreements and warranties for copiers, telephone systems, and computers are also included (if approved by the Agency).

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- Real estate taxes (personal/tangible property and real property taxes) and expenses related to controlling or reducing taxes.
- All costs of insurance, including property liability and casualty, as well as fidelity or crime and dishonesty coverage for onsite employees and the owners.
- All bookkeeping supplies and recordkeeping items related to costs of collecting rents on-site. All office supplies and copies related to costs of preparing and maintaining tenant files and processing tenant certifications to include electronic storage.
- Public relations expenses related to maintaining positive relationships between the local community and the tenants with the management staff and the borrowers. For example, Chamber of Commerce duties, contributions to local charity events, sponsorship of tenant activities, etc.
- Tax Credit Compliance Monitoring Fees imposed by Housing Finance Authorities (HFAs).
- All insurance deductibles, as well as adjuster expenses.
- Professional service contracts (audits, owner-certified submissions, tax returns, energy audits, utility allowances, architectural, construction, rehabilitation, and inspection contracts, capital needs assessments (CNA), etc.).
- Association dues to be paid by the project should be related to training for site managers or management agents. To the extent that association dues can document training for site managers or management agents related to project activities by actual cost or pro-ration, a reasonable expense may be billed to the project.
- Legal fees if found not guilty of civil lawsuits, commercially reasonable legal expenses and costs for defending or settling lawsuits.

F. With prior Agency approval, cooperatives and nonprofit organizations may use housing project funds to reimburse actual and typical asset management expenses directly attributable to ownership responsibilities. Such expenses may include:
   - Errors and omissions insurance policy for the Board of Directors. The cost must be prorated if the policy covers multiple Agency housing properties.
   - Board of Directors review and approval of proposed Agency's annual operating budgets, including proposed repair and replacement outlays and accruals. The cost must be prorated if the policy covers multiple Agency housing properties.
   - Board of Directors review and approval of capital expenditures, financial statements, and consideration of any management comments noted. The cost must be prorated if the policy covers multiple Agency housing properties.
   - The cost must be prorated if the policy covers multiple Agency housing properties.

G. Agency approved third party debt service for the project.

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Fiscal Year 2027
Per Occupied Unit Per Month State Maximum Management Fee

STATE	FY2025 Fee (Rounded up to the Nearest Dollar)	HUD FY2026 OCAF (%)	FY2027 Fee (Rounded up to the Nearest Dollar)
Alabama	$ 86.00	5.9	$92.00
Alaska	$ 85.00	5.0	$90.00
Alaska -offroad	$ 99.00	5.0	$104.00
Arizona	$ 85.00	4.4	$89.00
Arkansas	$ 89.00	6.0	$95.00
California	$ 95.00	4.9	$100.00
Colorado	$ 87.00	4.5	$91.00
Connecticut	$ 98.00	4.3	$103.00
Delaware	$ 87.00	4.4	$91.00
Florida	$ 86.00	8.2	$94.00
Georgia	$ 85.00	5.4	$90.00
Hawaii	$ 101.00	4.6	$106.00
Hawaii -offroad	$ 113.00	4.6	$119.00
Idaho	$ 85.00	4.6	$89.00
Illinois	$ 86.00	5.1	$91.00
Indiana	$ 85.00	5.0	$90.00
Iowa	$ 85.00	4.6	$89.00
Kansas	$ 86.00	5.2	$91.00
Kentucky	$ 85.00	5.1	$90.00
Louisiana	$ 88.00	9.8	$97.00
Maine	$ 99.00	3.3	$103.00
Maryland	$ 89.00	4.8	$94.00
Massachusetts	$ 101.00	4.8	$106.00
Michigan	$ 86.00	4.4	$90.00
Minnesota	$ 86.00	4.9	$91.00
Mississippi	$ 86.00	6.4	$92.00
Missouri	$ 86.00	5.1	$91.00
Montana	$ 88.00	4.0	$92.00

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STATE	FY2025 Fee (Rounded up to the Nearest Dollar)	HUD FY2026 OCAF (%)	FY2027 Fee (Rounded up to the Nearest Dollar)
Nebraska	$ 85.00	4.9	$90.00
Nevada	$ 86.00	3.8	$90.00
New Hampshire	$ 95.00	3.6	$99.00
New Jersey	$ 87.00	4.9	$92.00
New Mexico	$ 85.00	6.3	$91.00
New York	$ 86.00	4.7	$91.00
North Carolina	$ 86.00	4.6	$90.00
North Dakota	$ 85.00	4.5	$89.00
Ohio	$ 86.00	4.9	$91.00
Oklahoma	$ 87.00	6.4	$93.00
Oregon	$ 86.00	4.8	$91.00
Pennsylvania	$ 87.00	4.7	$92.00
Puerto Rico	$ 85.00	6.1	$91.00
Rhode Island	$ 96.00	3.8	$100.00
South Carolina	$ 85.00	6.2	$91.00
South Dakota	$ 86.00	4.4	$90.00
Tennessee	$ 85.00	4.9	$90.00
Texas	$ 90.00	6.4	$96.00
Utah	$ 85.00	4.1	$89.00
Vermont	$ 90.00	4.6	$95.00
Virgin Islands	$ 86.00	12.3	$97.00
Virginia	$ 88.00	4.9	$93.00
Washington	$ 87.00	5.2	$92.00
West Virginia	$ 86.00	5.8	$91.00
Western Pacific Islands	$ 101.00	4.6	$106.00
Wisconsin	$ 86.00	4.4	$90.00
Wyoming	$ 85.00	4.4	$89.00
Average	$ 89.00	5.2	$94.00

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CHAPTER 4: FINANCIAL MANAGEMENT

4.1 *INTRODUCTION*

Successful projects require sound financial management procedures to track funds, prepare realistic budgets, manage project funds effectively, and report financial progress. This chapter covers the borrower's financial management responsibilities and provides guidance to MFH Servicing Officials on monitoring a borrower's financial management performance.

The chapter is divided into five sections:

Section 1: Project Accounting System describes program requirements and Agency monitoring responsibilities for the project accounting system.

Section 2: Project Accounts discusses the contribution, use, and monitoring of project accounts.

Section 3: Reserve Accounts outlines the requirements for and monitoring of reserve accounts.

Section 4: Project Budgets explains project proposed budget requirements and the budget approval process.

Section 5: Reporting and Financial Examination describes project actual reporting and financial examinations and Agency review of these reports.

SECTION 1: PROJECT ACCOUNTING SYSTEM

4.2 *OVERVIEW OF ACCOUNTING SYSTEM REQUIREMENTS [7 CFR 3560.302]*

Borrowers must establish accounting systems that support safe and sound project financial management. The accounting system must allow borrowers to maintain records in a manner suitable for an audit; track the use of funds, report accurate operational results to the Agency, and otherwise comply with the terms of their loan agreement. The following requirements apply to the borrower's accounting system:

- Agency approval. The accounting system must be approved by the Agency as part of the management plan (as discussed in Chapter 3). The borrower must notify the Agency of any changes in the method or system of accounting through a revision to the project management plan.

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- Method of accounting. The borrower is required to use the accrual method of accounting throughout the year for bookkeeping and budget preparations. Annual reporting must be convertible to the standards identified in §3560.308.

- When the accrual method of accounting is used, the accrual-to-cash adjustment must equal the difference between Beginning Cash Balance and Ending Cash Balance to ensure these balances match their respective Balance Sheet figures. The sole purpose of this adjustment is to reconcile a company's internal ledger, kept on an accrual basis, to the IRS forms which are on a cash basis.

- Recordkeeping. Borrowers must retain all financial records and supporting material for at least 3 years after the issuance of annual financial reports and financial statements or until the next Agency monitoring visit whichever is longer. These records must be maintained in a manner that can be audited by the Agency or a third party. Records may need to be retained longer for RD litigation holds, IRS retention rules or Tax Credit Guidelines. Borrower accounts and records will be made available in a location with reasonable access for review at the request of the Agency.

If an account is a problem case or an investigation or audit is in process, do not destroy material until the problem is resolved or the investigation audit is closed.

- **Account requirements.** The following general requirements apply to the borrower's accounts:

  ◊ Accounts must be held in domestic institutions;

  ◊ Accounts must be held only in financial institution accounts insured by an agency of the Federal Government, or held in securities meeting the requirements of 7 CFR part 3560, subpart G;

  ◊ Funds maintained in an institution may not exceed the limit established for Federal deposit insurance. Funds exceeding the Federally insured limit under a Tax ID number must be moved to a different qualified banking institution that will ensure the funds unless the current financial institution provides additional surety, such as a collateral pledge that may already be in place; and

  ◊ Borrowers must maintain at least one demand deposit or checking account so that funds are always readily available to pay necessary operating expenses. Borrowers must be able to account for housing project funds with accounting methods or practices that maintain the proprietary identity of the funds for each project.

- **Use of funds.** Funds, other than those in the security deposit/membership fee or patron capital accounts, are considered assets of the property and must be held in trust by the borrower until used. The accounts serve as security, through

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transfers or assumptions for the Agency loan or grant, until all outstanding balances are satisfied.

◊ In no case may project funds be pledged as collateral for non-project debts;

◊ Funds must be used only for authorized purposes as described in 7 CFR part 3560, subpart G and in the project loan agreement or resolution; and

◊ Priority Order of planned and actual project expenditures are discussed in 7 CFR, part 3560, subpart G.

- **Separate accountability.** The accounting system must establish separate accountability for different projects. Funds for housing projects managed by the same management company must not be co-mingled.

  The borrower may combine funds from different projects owned by the same borrower with the same tax identification number or Social Security Number in the same bank account, as long as the accounting system segregates and tracks each project's funds separately. A statement issued by a Certified Public Accountant (CPA) stating that the accounting system is structured to meet the principle of separate accountability will be provided.

  If revenue or expenses are prorated among more than one project, then the management plan must document how revenue and expenses are prorated across projects. For example, the plan must document how costs for a computer system that serves several projects are allocated across the projects. The accounting system must track these prorated costs.

4.3 *OVERVIEW OF ACCOUNTS*

The borrowers must establish and maintain the accounts required by their loan agreement or resolution. At a minimum, these include the following accounts:

- General operating account;
- Real estate tax and insurance account (if not part of the general operating account or unless escrowed by the Agency);
- Reserve account (unless escrowed by the Agency in accordance with §3560.65);
- Tenant security deposit account
- Membership fee account (if applicable); and
- For cooperative projects, a patron capital account.

Each account serves a different purpose, as described in Section 2 and the project loan agreement or resolution.

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SECTION 2: PROJECT ACCOUNTS

4.4 *GENERAL OPERATING ACCOUNT*

The borrower must establish a general operating account to handle all revenues and expenses associated with project operations. Authorized expenses payable from this account include expenses that are directly attributable to project operations and are necessary to carry out successful project operations. Attachment 4-C addresses eligible and ineligible operating expenses.

A. Initial Operating Capital and Other Advances [7 CFR 3560.304].

The period between initial occupancy and full rent-up in a project can be risky because rental income may not be sufficient to cover all operating costs, make payments on the Agency loan, and make required contributions to the reserve fund. To assist projects through this phase, the Agency requires the establishment of a fund for Initial Operating Capital by the borrower for each project. Approval of subsequent loans, transfer of ownership or other servicing actions may require additional deposits to the Operating Account and will be described in the loan, transfer or servicing approval.

This Initial Operating Capital is to be used for initial operating expenses, such as advertising, insurance, fidelity coverage, and initial lease-up expenses. The funds may also be used to meet project obligations, such as debt payments and reserve deposits, until cash flow is sufficient to fund these accounts. In addition to these regular operating expenses, there are some special expenses associated with this period, such as purchasing furniture or equipment for public spaces or advertising and marketing. Borrowers are to provide the Agency with a list of proposed uses for Initial Operating Capital during loan origination.

Other Advances include any advances made by the borrower, borrower entity, or designee to cover ordinary project operating expenses.

- Funding of Initial Operating Capital

  All borrowers must provide Initial Operating Capital equal to at least 2 percent of the total development costs to support initial operation of the project. Borrowers must put this amount down at the loan closing or construction start, whichever comes first. The Agency may loan the required 2 percent to not-for-profit borrowers. (For details on this process, see Chapter 5 of HB-1-3560.)

- Accounting for Initial Operating Capital
  When the project accounts are established, Initial Operating Capital is blended with other revenue and used for operating expenses. The borrower may leave an amount of money equal to the initial capitalization of the fund in the operating account. This money should not be treated as surplus funds in the operating

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account nor should it be transferred to reserves. Its presence in the operating account should not be used as justification for the MFH Servicing Official to deny a rent increase.

- Duration of Initial Occupancy

  The initial occupancy phase lasts until the project has attained a stable occupancy rate and the operating budget can reliably be supported by rental income. Projects vary as to when they achieve this stability; the Agency anticipates it occurs sometime between the end of the second and seventh year of occupancy. When project stability is reached before the end of the seventh year, a for-profit borrower whose cash contribution created the Initial Operating Capital may request that the contribution be repaid.

- Repayment

  ◊ **Agency Policy**

  The borrower may, with the consent of the Agency, withdraw its original contribution to the Initial Operating Capital in multiple annual installments or a single installment after the second year of the housing project operations and prior to the seventh full year of project operation, provided the borrower can satisfy Agency criteria for approving repayment. Repayment can only be made once the project has been operating for 2 years, and the project's operations and finances have stabilized. Repayment may be requested in one to five annual installments, until the borrower's contribution to Initial Operating Capital has been fully repaid and prior to the close of year seven. The borrower must be able to demonstrate that the project is financially stable, that repayment will not require a rent increase, and that the project is in compliance with Agency requirements. The financial condition of the project may preclude full repayment of Initial Operating Capital.

  ◊ Borrower Submissions

  The borrower may submit a request for repayment of Initial Operating Capital when the annual financial report is submitted. The borrower's request is submitted in writing and addressed to the MFH Servicing Official.

  The submission should specify the amount of the repayment the borrower is requesting in the current year and, if applicable, the borrower's plan for withdrawing the balance of the repayment in ensuing years. The submission includes documentation demonstrating how the project meets Agency criteria for repayment:

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- **Occupancy.** The occupancy rate for the project over the most recent 12 months has averaged at least 90 percent.

- **Contributions to Reserves.** Contributions to reserves are on schedule, less any authorized withdrawals.

- **Sufficient Income.** The project's financial position is stable. All accounts payables are less than 30 days old. When the amount of the repayment is subtracted from the general operating account, the ending cash balance still includes an amount equal to 20 percent of projected annual operating costs and required escrows for real estate taxes and insurance.

- Impact on Rents:

  - Repayment is acceptable if no rent increases are projected in the year the repayment is made.

  - A rent increase will not affect repayment if rents are increasing to cover increases in costs, such as wages, taxes, or insurance.

  - Repayment is denied if it creates a shortfall in operating income that must be made up by a rent increase and/or funded by the owner.

- **Physical Maintenance.** There are no outstanding deficiencies in management's physical maintenance of the housing project in accordance with 7 CFR 3560.354**.**

- **Compliance.** There are no outstanding compliance violations, and the project is not under a workout agreement.

◊ Agency Processing

Agency staff will examine the submission for eligibility, completeness, and compliance with the criteria the Agency has established that a project must meet for a repayment to be made. If staff finds that the project can support the repayment, the repayment amount will be calculated.

- Amount of Repayment

The borrower may receive a lump sum amount equal to the original contribution of Initial Operating Capital, or smaller amounts in installments if the operating budget cannot support repayment in a single lump sum amount (see example below)

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Example – Initial Operating Capital			
	Case One	**Case Two**	**Case Three**
Year-end cash balance	$57,000	$40,000	$27,000
20% O&M requirement plus taxes & insurance	27,000	27,000	27,000
Surplus	30,000	13,000	0
Initial Operating Capital	30,000	30,000	30,000
Repayment Amount	30,000	13,000	0
Initial Operating Capital unpaid balance	0	17,000	30,000

- The borrower in Case One can be repaid in a single installment.
- The borrower in Case Two will require 3 installments assuming little change in the project's financial condition.

The borrower in Case Three could not receive any repayment this year.

- The Decision Process

  - The MFH Servicing Official has 60 calendar days to review the annual financial statement, including any request for repayment of Initial Operating Capital.

  - The MFH Servicing Official may decide to:

    - Permit repayment in the amount requested by the borrower;

    - Permit repayments, but in an amount less than that requested by the borrower; or

    - Deny repayment because the project does not meet the criteria for repayment.

  - The decision of the MFH Servicing Official is provided to the borrower in a letter. In addition to the amount of any authorized repayment or the reasons for denying repayment, the letter states the amount of any remaining unpaid balance of the original contribution to Initial Operating Capital. If repayment is denied appeal rights will be sent.

  - The MFH Servicing Official updates Multi-Family Information System (MFIS) Tracked Accounts and Servicing Efforts to show the amount of the authorized repayment and the unpaid balance of Initial Operating Capital.

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- Other Borrower Advances

  Prior written approval by the MFH Servicing Official is required for any advances made by the borrower, borrower entity, or designee to cover ordinary project operating expenses. Such advances may be authorized when justified by unusual short-term conditions. When conditions are not short term in nature, a servicing plan may be developed, and advances may be approved if justified by the following:

  - A review of the documented circumstances and the project operating budget before any funds are advanced. The financial position of the project must not be jeopardized.

  - Funds are not immediately available from any of the following sources:

    - Reserve funds;
    - Initial operating capital; or
    - An imminent rent increase.

  The borrower may charge or be paid interest on the loan using project income; however, interest must be reasonable. The proposed loan may be denied if Agency financing can be provided to resolve the problem in a more cost-effective manner.

  No lien in connection with the loan will be filed against the property securing the Agency's loan or against project income. The advance may be shown as an unsecured project liability on financial statements prepared for year-end reports until such time as it is authorized to be repaid.

- Repayment of Advanced Loan Funds

  The repayment of the advance may be permitted by the MFH Servicing Official, provided the terms and conditions were mutually agreed to by the borrower and the Agency at the time of the advance, and the financial position of the project will not be jeopardized. Repayment should only be permitted on the advance when the Agency debt is current, and the reserve requirements are being maintained in accordance with Section 3 of this chapter.

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B. Return on Investment/Return to Owner [7 CFR 3560.305]

The borrower's Return on Investment (ROI) is the annual amount of profit an owner operating on a limited or full-profit basis may receive from a project, as established in the loan agreement. When a property has a transfer of ownership, ROI is referred to as a Return to Owner (RTO) and is based upon the transfer underwriting analysis and approval conditions. The amount is calculated as a percentage of the owner's investment in the project.

The borrower may take the earned ROI/RTO (Return) before withdrawing the original contribution to Initial Operating Capital. A full or partial Return may be taken in a given year. If only a partial is taken, the remainder may be taken the following year if allowed. The borrower may receive a Return in accordance with the terms of its loan agreement, and if the following conditions exist:

1. The borrower may take the Return after the project's fiscal year ends if there is a positive net cash flow (see line 30 on *Form RD 3560-7, Multiple Family Housing Project Budget/Utility Allowance*), and the balance of the reserve account is equal to or greater than required deposits minus authorized withdrawals.

   When determining positive net cash flow, the Agency will consider such items as accounts payable and reserve withdrawals to cover operating expenses. For example, the borrower may not circumvent the order for funding accounts by using reserve funds or creating an accounts payable for budgeted operating expenses to make it appear as though the budget has a positive cash flow at year end. If the annual financial reports indicate that the borrower should not have taken a Return, the Agency will require the borrower to repay the unauthorized Return to the project.

2. If the project's operations show a negative cash flow (see Form RD 3560-7, line 30) as in the Example, Case 1 below, the Agency may authorize the borrower to take the Return only after the Agency has reviewed the project's annual financial report and determines:

   ◊ There is surplus cash in either the general operating account or surplus operating cash in the reserve account and;

   ◊ The housing project has sufficient funds to address identified capital or operational needs. Needs of the property may be identified by inspections and/or capital needs proposed.

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The Agency considers surplus cash to be the portion of the ending cash balance on *Form RD 3560-7* that after all payables, exceeds 20 percent of projected annual operating and maintenance expenses, the taxes and insurance escrow, and initial operating capital, if applicable. To determine surplus cash, refer to Attachment 4-D, *PROPOSED BUDGET AND YEAR END ANALYSIS PROCESS*.

An earned, but unpaid Return for the previous year may only be requested if, at the end of a project's current fiscal year, surplus project funds are more than sufficient to pay Return for the year just ended. The borrower may request that the additional surplus project funds be used to pay any portion of the prior year's Return that could not be paid previously. See Example Payment of Return, Case

3. The borrower will indicate the year the Return being withdrawn represents on Form RD 3560-7, Part I, line 23 under "Comments".

4. The borrower may request the Return from surplus operating cash in the reserve account if the conditions set out in the loan agreement are met and the account balance is greater than the required deposits minus authorized withdrawals. If a property has a GAP account for the insurance deductible, this must be considered when reviewing the required reserve account balance. After the disbursement the reserve account actual balance must be equal to or greater than the required balance. The disbursement does not reduce the required balance.

C. Surplus Funds [7 CFR 3560.306]

If the general operating account has surplus funds at the end of the housing project's fiscal year, the Agency will require the borrower to use the surplus funds to address capital needs, make a deposit into the housing project's reserve account, reduce the debt service on the borrower's loan, or reduce rents in the following year.

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Example- Payment of Return

Consider a project that has been operational for 8 years, has a $1,000 Return specified in the loan agreement, and needs $10,000 cash to cover 20 percent of annual operating and maintenance expenses, and taxes and insurance escrow.

Case 1: If the project had a negative cash flow after payment of operating and maintenance expenses, reserves, and debt service expenses during the fiscal year (FY) 20X7 but had $20,000 available in the general operating account, the Agency would approve a Return from funds available at the end of FY 20X7. In this example, "FY 20X7 RTO" would be noted in the comments section of *Form 3560-7*. This Return would be taken immediately after the end of the fiscal year, preferably January 20X8.

After the $1,000 RTO was paid, if all or a portion of the previous year (20X6) RTO is unpaid - it may be paid from the remaining surplus cash. Any remaining previous years unpaid RTO will then be written off.

Case 2: If the project had a negative cash flow during FY 20X7 but had only $5,000 available in the general operating account, the Agency would not approve a Return from funds available at the end of FY 20X7. This FY 20X7 RTO could be requested the following year if there is surplus cash to cover it, the 20X8 RTO is paid first and it does not cause a rent increase. The Return would be taken immediately after the end of the fiscal year, preferably January 20X9.

Case 3: Consider the same project as described above. During FY 20X7, the borrower believed that there would not be adequate cash to pay taxes at year end, so the borrower requested $2,000 from the reserve account for operating purposes; however, the project ended the year with $3,000 positive cash flow. In this case, the borrower can take the $1,000 without Agency permission, as they used a reserve withdrawal request to cover operating expenses. However, if the net cash amount was less than $2,000, the borrower can only take Return from surplus cash.

	Case One	Case Two	Case Three
Form RD 3560-7 Part I Line 30	$ (2,000)	$ (2,000)	$ 3,000
Form RD 3560-7 Part I Line 33	$ 20,000	$ 5,000	
Tax & Ins escrow	$ (5,000)	$ (5,000)	
Accounts Payable	$ (2,500)	$ (2,500)	
Cash Available	$ 12,500	$ 0	
Cash Required (20% proposed O&M - Tax & Insurance)	$(10,000)	$(10,000)	
Surplus Cash	$ 2,500	$ 0	

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4.5 *TAX AND INSURANCE ACCOUNT*

The borrower must deposit money on a monthly basis to pay required taxes and insurance. Generally, these funds can be kept in the general operating account as long as they are tracked separately from other general operating funds to ensure that funds are available to pay taxes and insurance. In some cases, however, the Agency may require an escrow account for taxes and insurance to ensure the availability of these funds. See Chapter 3 for a discussion of insurance requirements and taxes. Also, see Attachment 4-D Budget and Year End Analysis for evaluation of escrow amounts.

4.6 *RESERVE ACCOUNT*

The reserve account is used primarily to pay for large, planned expenses for maintenance and improvements of capital items. It is funded through contributions from project operating funds. The reserves are not to be used as an alternative operating budget. The project's reserves must be held in a supervised bank account. The Agency must approve all withdrawals from the reserve account. Agency countersignature is not required if there is a Form RD 402-1A, "Sample Deposit Agreement", or a "Deposit Account Control Agreement" (DACA) executed by all parties after September 28, 2018.

The Agency may request an escrow account be established for the collection and disbursement of reserve account funds.

The administration of project reserves is covered in detail in Section 3 of this chapter.

4.7 *SECURITY DEPOSIT OR MEMBERSHIP FEE ACCOUNT*

The security deposit or membership fee account holds funds provided by residents as security deposits and membership fees. See Chapter 7 for a full discussion of security deposits and membership fees.

- **Uses of Funds.** Funds deposited in the security deposit/membership fee account must be used for purposes outlined in the management plan:

  ◊ The borrower may only use security deposits to cover costs of fixing damage to units beyond ordinary wear and tear by the tenant who provided the deposit. The funds must be returned to the tenant if not used in accordance with the State Law. If the borrower cannot locate the tenant to return the deposit, these funds must be deposited in the general operating account or handled in accordance with applicable state laws. In cooperatives, the return of membership fees depends upon the legal instruments governing the project.

  ◊ Funds retained by the borrower as a result of a lease or occupancy violation must be transferred to the general operating account and treated as project income

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◊ **Interest.** The interest on security deposit/membership fee accounts is handled in accordance with state law. If no state law governs the use of interest, it must be deposited in the general operating account, at least annually, and used for general operating expenses. In no case may interest accrue to the benefit of the borrower or management agent.

4.8 *PATRON CAPITAL ACCOUNT*

In cooperative projects, borrowers must establish a patron capital account to hold surplus operating funds in trust for cooperative shareholders.

- Any funds in excess of 3 months of average operating expenses remaining in the general operating account at the end of the fiscal year must be deposited in the patron capital account. This account must be interest bearing and must be administered according to state laws governing patronage capital.

- Each shareholder of the cooperative association must be assigned an equal portion of the funds in this account. These funds are held in trust for the shareholders of the association until they terminate their membership in the cooperative. Shareholders may receive their portion of the funds only if they have paid all association charges and costs due the cooperative association.

SECTION 3: RESERVE ACCOUNT *[7 CFR 3560.306]*

4.9 *PURPOSE OF RESERVES*

The Agency has a financial interest in a project over the life of its loan. During this period, which can be as long as 50 years, major replacements and capital expenditures will have to be made to the building, such as replacing the roof, rewiring, replacing windows, doing major exterior work, or adding new kitchen and bathroom fixtures. The reserve account is primarily used to meet the major capital expense needs of a project. If these expenditures are not made, the property loses value, becomes less attractive to tenants, and begins to deteriorate. The Agency's financial interest in the project is then at risk.

Adequate replacement reserves are a critical component of a successful project. The reserves are not to be used as an alternative operating budget. Rents should reflect and cover the reasonable and customary costs of annual operating expenses of the property in the market. Annual reserve deposit for projects with Agency approved Capital Needs Assessments (CNA) will be adjusted as authorized in the loan, transfer or servicing approval.

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4.10 *RESERVE ACCOUNT REQUIREMENTS*

The reserve account is a required account subject to the requirements set out in this paragraph, and subject to the Supervised Bank Account requirements of 7 CFR part 1902, subpart A, unless otherwise approved by the Agency. The borrower will initiate deposits in this project account, starting in the same month the first loan payment is due the Agency. As projects age, the required reserve account level may be adjusted to meet anticipated life-cycle needs, such as equipment and facility replacement costs, by amending the loan agreement/resolution. Refer to Attachment 4-B for guidance on the amendment.

Requirements for the reserve account include the following:

All Rural Rental Housing, Rural Cooperative Housing, and Farm Labor Housing borrowers are required to establish and maintain a reserve account. This requirement excludes On-Farm Labor Housing borrowers with fewer than12 units.

- Reserve accounts must be deposited in interest-bearing accounts or securities with rates greater than or equal to savings or checking accounts.

- Reserve funds are required to be placed in a supervised account. The Agency is no longer required to countersign approved withdrawals from reserve accounts as provided by 7 CFR 3560.306(e)(2) and 7 CFR 1902.4(a)(1) if there is a Form RD 402-1A, “Sample Deposit Agreement”, or a “Deposit Account Control Agreement” executed by all parties after September 28, 2018.

- Agency approval must be obtained prior to the withdrawal of any reserve account funds per 7 CFR 3560.306 and MFH Handbook (HB)-2-3560 Chapter 4, Section 3. If the Agency finds any unauthorized Reserve account usage, the Agency will take the appropriate servicing actions.

- Any amount in the reserve account that exceeds the total sum specified in the loan agreement or resolution may be transferred to the general operating account for authorized purposes only when it is agreed, between the borrower and the Agency, to be in excess of the requirement and there is a specific need for the excess funds. However, the MFH Servicing Official may direct the excess sum to be retained in the reserve account or applied as an extra payment on the loan. If a property has a GAP account for the insurance deductible, this must be considered when reviewing the required reserve account balance.

- Section 515 properties leveraged with 538 Guarantee Rural Rental Housing (GRRH) program funding are not subject to countersignature requirements. Direct Section 515 loan borrowers, exempted from the counter-signature requirements,

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- must comply with the Section 538 GRRH program regulatory requirements. In all cases, the Section 538 lender must get prior written approval from the Agency before reserve account funds involving a direct MFH loan project can be disbursed to the borrower.

4.11 *RESERVE INSTALLMENTS*

Required reserve installments will be transferred to the reserve account at least at the rate stipulated by the borrower's loan agreement or resolution, starting with the date the first loan payment is due to the Agency. Transfers of funds to the reserve account will continue until the account reaches the total amount specified in the loan agreement or resolution. Transfers will be resumed the period following withdrawals that decrease the reserve account balance below its fully funded level until it is restored to the specified total minimum sum.

The Agency may approve a change in the borrower/projects reserve account annual deposit amount based on the findings of an approved Capital Needs Assessment (CNA). The approval to change the annual deposit amount to the reserve account will take into consideration the housing project's approved budget and its ability to support a change to reserve account deposits without causing basic rents to exceed conventional rents for comparable units in the area. If the borrower requests a change in the project's annual reserve account deposits, the borrower must have a capital needs assessment prepared and submitted to the Agency to reflect the project's anticipated needs for replacement of capital equipment and systems. The cost for preparation of a CNA will be approved by the Agency as an eligible project expense for existing owners, provided that the cost of the assessment is reasonable and meets Agency requirements. (Note: CNAs required by transferees for ownership changes are not eligible for payment from the reserve account unless the transferee is also a non-profit entity and no additional third party is providing funds for acquisition or rehab.)

The Agency may approve a change in the borrower/projects reserve account annual deposit amount based on Operating Cost Adjustment Factor (OCAF) as published by The U.S. Department of Housing and Urban Development (HUD) annually for the state the project is located. This will require a modification to the Loan Agreement/Resolution (see Attachment 4-B-1) and the increase must be documented annually with the proposed budget submissions. The annual reserve account deposit will increase each year based on the most recent OCAF adjustment published by HUD. A CNA is not required for the implementation of the OCAF increase to the annual reserve account deposits.

The Agency may approve a borrower's request to increase the fully funded level of the reserve account to ensure sufficient funds are available to address the capital requirements of a Transition Plan or future capital improvements to the property. A CNA is not required to solely request an increase in the fully funded level of the reserve account.

The following definitions are displayed on the MFIS Tracked Accounts page, and are used to further explain the reserve account:

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- **Required Balance.** The amount that the reserve account is required to contain as of the date displayed. This amount is calculated by adding deposits as required by the loan agreement/resolution and subtracting authorized withdrawals.

- **Fully Funded.** The amount set in the borrower's loan agreement/resolution for funds to be set aside during the life of the project.

  - **Annual Deposit.** The amount of funds that must be deposited annually to the reserve account according to the borrower's loan agreement/resolution.

  - **Account Balance.** The account balance as of the date displayed. This would correspond to the reserve section actual balance on financial reports.

  - **Account Status.** This shows whether the reserve account is current or delinquent according to the required balance less the account balance.

  - **GAP Account**. Difference between the Agency maximum deductible limit and the borrower's policy deductible.

4.12 *RESERVE ACCOUNT PRINCIPLES*

Reserve account funds are governed by the following principles:

A. Investment Vehicles and Institutions

Reserve account funds not immediately needed to pay for expenses or authorized purposes may be held as set out in this paragraph. Reserve account funds may be held in the form of:

◊ A checking, savings, negotiable order of withdrawal, or similar account at a federally-insured domestic institution, such as a bank, savings and loan, or credit union.

◊ Readily marketable obligations of the U.S. Treasury Department (e.g., U.S. Treasury bonds, U.S. Savings bonds, zero coupon bonds, etc.) at a federally-insured domestic institution or at an insured domestic institution authorized to sell securities.

◊ An account established at an insured domestic institution authorized to sell securities, provided that the accounts meet the remaining conditions set out in this paragraph and are not used in a speculative manner. The account may be a tax-exempt account or a taxable account, and the institution may or may not charge brokerage fees.

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B. Limitations on Investments in Securities

Any securities must be:

◊ Backed by the U.S. Government or an Agency of the U.S. Government;

◊ Triple A-rated Government National Mortgage Association (GNMA)-collateralized tax-exempt bonds; or

◊ Triple A-rated pre-refunded bonds.
Pre-refunded bonds are bonds that originally may have been issued as general obligation or revenue bonds but are now secured, until the call date or maturity, by an escrow fund consisting entirely of direct Government obligations that are sufficient for paying the bondholders.

C. Reporting Actual Costs of Securities

To ensure that required amounts have been paid into the reserve account, the actual costs of securities (which in many cases may not be the face value) must be shown on the project books. In addition, details of these transactions should be disclosed in footnotes to financial information provided to the Agency.

1. *Security Sales*

When the Agency approves withdrawals from the reserve account and the funds are invested in securities, borrowers must, to the extent that securities are available, assure that securities are sold in an amount that results in proceeds sufficient to cover the disbursement.

2. *Forecasting Security Sales*

Since the sale or redemption of any securities may result in cash proceeds of less than the amount invested, borrowers should take steps to minimize the risk of loss from converting securities to cash. Needed reserve account withdrawals should be planned in advance to permit Agency approval of anticipated needs such that security sales can be arranged to be sold in favorable market conditions. When sales of securities take place, the proceeds will normally be held in a reserve fund at a domestic bank, savings and loan, credit union, or similar institution insured by an Agency of the Federal Government until such time as withdrawals are needed for the purposes authorized. Should unusual circumstances require the sale of securities in unfavorable market conditions, the borrower will not be required to reimburse the project for any losses incurred.

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3. *Knowledge Required of Securities Investors*

Those investing in securities must be knowledgeable of common industry practices prior to investing in securities. Knowledge of the various fees that may be associated with the purchase and sale of securities and the maintenance of security accounts must be considered when making security investments. Examples of these fees are front-end loads of fees, back-end loads of fees, and maintenance fees. These fees may be paid using general operating account or reserve account funds. However, the Agency must give its prior consent before reserve account funds may be used.

4. *Financial Advisor Limitations*

Project proceeds may not be permitted to be used to pay for the services of a financial advisor to assist in the selection of securities for investment, since the securities permitted are relatively limited and must meet the requirements set out in this chapter. However, normal brokerage fees may be paid to secure and sell securities. It is recognized that financial advice may also be provided as part of the normal brokerage fee.

4.13 *USE OF THE RESERVE ACCOUNT*

A. Planned Use of Reserve Funds

The borrower will request approval for use of the reserve funds using *Form RD 3560-12, Request for Authorization to Withdraw Reserve Funds,* before funds are needed if items were not included on the approved capital budget. The borrower will request withdrawal from the reserve fund using Form RD 3560-12. Annual budgets are to include realistic routine income and expense levels to avoid the need to use reserve funds for routine expenses (operating shortfalls) not caused by emergencies or very unusual servicing situations. The Agency expects borrowers to anticipate and plan for major capital expenditures at least annually, including a careful review of any approved CNA. The MFH Servicing Official will monitor planned capital needs and expenditures to determine if revisions will be necessary and document the file accordingly.

The borrower is required to submit an annual capital expenditure budget as part of the annual budget submission. The budget should include plans to catch up with any maintenance expenses deferred from previous years, correct any deficiencies identified during Agency site visits, complete capital repairs and replacements scheduled in the project's approved CNA, and/or make necessary modifications to remove physical barriers as identified in a Transition Plan. A cost analysis provides data on projected useful life of materials, common replacement and repair schedules. Independent resources of information such as

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insurance actuary tables, FANNIE MAE Physical Needs Assessment Guidance to the Property Evaluator or Agency documentation should be consulted for common costs and repair/replacements schedules.

When a reserve account and contributions to the reserve account have been sized in accordance with a fully acceptable Agency-approved CNA, the reserve account funds are to be used to fund capital items as described in the plan. Since under a capital needs assessment, funding of the reserve is designed to match the timing and number of needs, following the plan should limit the amount of funds required from operating sources to pay for capital needs.

B. Authorized Uses/Eligible Expenditures

Items usually considered as eligible for draws from the reserve account include capital items such as, but not limited to, the following:

- Making improvements to the housing project without creating new living units, or to retrofit units to make them accessible to the physically handicapped. This is not meant to limit the use of reserve account funds to meet handicapped accessibility needs required to make reasonable accommodations for persons with a disability who apply for housing.

- To address the capital requirements identified by the borrower's Transition Plan and other servicing tools. Loan funds may also be used for this purpose.

- Making permanent improvements to the housing project, such as installing an energy-conserving heat pump.

- For other purposes desired by the borrower, which in the judgment of the Agency will promote the loan purposes; strengthen the security of the loan; or facilitate, improve, or maintain the project and the payment of the loan without jeopardizing the loan or impairing the adequacy of the security.

- Facilitating payment of fees associated with the buying or selling of securities or maintaining a securities account.

- Meet loan obligations of the project in the event the amount available for debt service is not sufficient for the payments.

- Meet an emergency shortfall in operating expenses when the emergency is beyond the control of the borrower and threatens life, or the safety or the physical security of the project. Examples include an extreme weather disaster or reductions in rental income caused by changes in the rental market that affect other housing projects in the market as well. In cases of weather disasters, the project insurance coverage will be reviewed to determine if

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- funding from insurance will be available for repairs. Suitable justification as to why the general operating account is insufficient is required.

- Payment of a return on investment at the end of the borrower's fiscal year, if such payment is from surplus operating cash in the reserve account. The borrower will use *Form RD 3560-12* to request this withdrawal.

- With Agency approval, borrowers operating on a for-profit or a limited-profit basis may make an annual withdrawal from the reserve account equal to no more than 25 percent of the interest earned on the reserve account during the prior year. The borrower will use *Form RD 3560-12 to* request the withdrawal and must provide documentation of the prior year interest earned. For example, in the report submitted for the period January 1, 20X9 through December 31, 20X9, the owner is entitled to 25 percent of the interest earned during calendar year 20X9. The borrower is not entitled to interest earnings from prior years.

- Other items considered eligible for draws from the reserve account include capital items listed in Attachment 4-A, Capital Expenditures.

C. Unanticipated Uses of Reserves

The Agency recognizes that not all capital expenditures can be predicted a year in advance. Sometimes a major piece of equipment will break down unexpectedly or a severe storm will create damage. Borrowers must seek Agency approval for the unforeseen use of reserves. In emergency situations when the borrower can demonstrate an imminent and serious threat to the health, safety, or physical security of the project, the borrower may request the Agency to post-approve the use of reserves. The Agency will only approve emergency withdrawals if the reserves are used for eligible expenses. If post-approval is requested, the bidding requirements, as described below, still apply. If the bid is obtained post-approval and is less than the expense, the difference will be reimbursed to the account by the borrower. Unforeseen circumstances may alter the approved CNA schedule adversely and require further review and modification to meet the reserve deposit schedule in the borrower's loan agreement /resolution. The MFH Servicing Official will review any loan, transfer or servicing conditions that may be impacted and develop a plan to reflect any modified schedule of findings or repairs.

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D. Withdrawal Approval Process

- The borrower must submit a written request, on *Form RD 3560-12*, "Request for Authorization to Withdraw Reserve Funds", to the Agency to withdraw reserve funds, even if the Agency has reviewed and approved the capital expenditures in its review of the annual capital budget.The MFH Servicing Official will take prompt action on a request for reserve withdrawal, normally within 5 working days of receipt of the request, and provide written authorization to the borrower, on *Form RD 3560-12,* for any authorized withdrawal of funds before the borrower actually withdraws any funds.

- When an Agency approved Form RD 402-1A, "Sample Deposit Agreement" or "Deposit Account Control Agreement," other than Form RD 402-1 has been fully executed after September 28, 2018, the borrower may use electronic transfer of reserve funds upon receipt of Agency approval to withdraw reserve funds. After the reserve withdrawal is approved by the Agency, reserve funds can be electronically transferred to the operating account for disbursement. These funds will be recorded as a withdrawal from the reserve account on the annual financial report submission.

- Borrowers will notify the MFH Servicing Official of work completed within 5 days so that needed inspections may occur.

- Borrowers will submit a final invoice that describes the specific service and banking transaction if the amount is different than initially approved or was a preapproved capital budget item.

- Borrowers must maintain records documenting all expenses that were paid by withdrawals from the reserve account.

1. *Bid Requirements*

Expenditures of $10,000 or less for MFH properties with 24 units or less, or $25,000 or less for MFH properties with 25 units or more do not require multiple bids, even if it is an identity-of-interest (IOI) entity.

The expenditure of reserve funds for a project (all work included in one contract) estimated to cost more than $10,000 (for MFH properties with 24 units or less) or more than $25,000 (for MFH properties with 25 units or more) will require a minimum of two bids. When there is an IOI between the borrower or property manager and a bidder, a minimum of three bids must be

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submitted. The entity with the IOI must submit its bid directly to the MFH Servicing Official prior to the borrower requesting bids from other firms. Once the bids are received the borrower will submit the request using Form RD 3560-12 to the MFH Servicing Official with all bids attached.

An explanation of why the borrower was unable to obtain two non-IOI bids must be provided when appropriate.

2. *Projects Involving Moderate Levels of Construction*

If construction does not involve substantial changes to structures or replacement of major systems, e.g. electrical, plumbing, heating, or cooling, the housing project is considered to involve moderate levels of construction. Examples include exterior repainting, roof repair, parking lot repaving, and repairs to plumbing or electrical systems.

When the borrower requests access to reserves for a moderate construction activity, the Agency first reviews the project documents for acceptance, and then reviews a payment request.

In addition to the items for bids specified above, the borrower must provide the following:

- Project planning documents that describe the work to be performed;
- Copies of written bids; and
- A copy of the contract/proposal.

After the project has been completed, the borrower notifies the MFH Servicing Official with actual invoice/cost. The MFH Servicing Official will perform an inspection of the work done to assure it has been completed in accordance with the contract/agreement or statement of work if applicable.

3. *Projects Involving Large Levels of Construction*

A project with large levels of construction involves substantial changes to the structure, replacement of major systems, and/or expenditures estimated in excess of $100,000. Such activities are subject to the design requirements of

Exhibit K of RD Instructions 1924-A and 1924-C. In addition to the items for bids specified above, the borrower must provide:

- Project planning documents, including specifications and drawings as necessary to fully describe the work;

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- Copies of written bids;
- A rationale for awarding the contract; and
- A copy of the construction contract.

The required planning documents may be prepared by any individual or firm meeting the qualification requirements of the local building jurisdiction. After the planning documents and construction contract have been accepted by the Agency, the borrower may request an initial draw to pay for materials or make a down payment to the contractor. The request for an initial draw should be accompanied by an invoice and a check made out to the contractor or vendor, to be cosigned by the Agency. The Agency may approve such a request provided the amount of the initial draw does not exceed a reasonable percentage of the value of the construction contract. Refer to RD Instruction 1924-A.

The Agency will inspect the project before approving the work and again at construction completion before approving the final payment.

- The purpose of the initial inspection is to establish that the proposed work is needed and is an appropriate response to existing conditions.
- The purpose of the final inspection is to establish that the work was performed as described in the Agency-accepted documents.

The Agency may conduct additional inspections as necessary.

The borrower may hire an independent third-party inspector to verify that the work complies with all applicable requirements. To verify that all major systems are adequate, State-licensed inspectors must certify that the dwelling has been inspected and meets Agency standards. When a State does not have licensed inspectors, a qualified, independent, third-party inspector may provide these certifications.

4. *Projects Involving Insurance Claim Proceeds*

To alleviate redundancy and the administrative burden of processing insurance claim proceeds, when the insurance company selects a contractor to perform the mitigation or repairs, the Agency will no longer require the minimum bids.

- In instances where the insurance company selects a contractor to perform insurance proceed funded mitigation or repairs, the Agency agrees that the two-bid reserve account requirement is not applicable.

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- In instances where the insurance company selects a contractor that has an Identity of Interest with the insurance company or owner, the Agency agrees that the 3-bid reserve account requirement is not applicable.

This is based on the insurance industry standard that the selected (preferred) contractor will not charge more than what the insurance company will pay and therefore the deductible is the only expense the property will incur.

The contractor and insurance company must comply with all state and local laws and local code enforcement officials.

If the insurance company receives executed contract documents, such as construction contracts, pay applications, change orders, warranties, inspection reports, etc. the MFH Servicing Specialist will request copies of these documents for the project file.

This does not apply to, or change the bid requirements for, reserve account requirements if the insurance company does not select the contractor on insurance claim mitigation or repairs. This guidance does not apply to reserve withdrawal requests that do not involve insurance claim proceeds.

Plans and specifications should be reviewed by Program Support Services, Architectural Services Branch, prior to the start of work. In all cases where there is substantial or major rehabilitation, the selected contractor must adhere to Section 504 of the Rehabilitation Act of 1973.

Insurance claim proceeds must be tracked by the MFH Servicing Official in the MFIS Tracked Account - Insurance Account.

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SECTION 4: PROJECT BUDGETS

4.14 BUDGET REQUIREMENTS *[7 CFR 3560.205 and 3560.303]*

A. General Information

Project budgets are planning documents that provide a picture of a project's financial operations for the coming year. They reflect:

- Expected revenues and expenses;
- Plans for maintenance, capital improvements, and reserve account activity;
- Return on the owner's investment, or a Non-Profit Asset Management Fee;
- Establish rents; and
- Reasonable and customary costs to cover turnover costs and maintenance which should be in line with the housing project's history, current circumstances, and market conditions.

For projects with 8 units or more, all borrowers will be required to submit project budgets through the Management Agent Interactive Network (MINC). The Agency may make an exception to this requirement if the borrower submits documentation that the costs associated with electronic submission of project budgets would pose a financial hardship to the project. Borrowers must submit annual project budgets to the Agency for approval. Budgets must meet the following requirements:

- Budgets must be reasonable and realistic. Revenues, vacancies and expenses must be consistent with past project budgets, historical actuals, current circumstances, and market conditions. Any differences must be due to legitimate operating needs of the project.
- Project expenses will include only expenses necessary to maintain successful projects. An example of an unnecessary expense is owner or manager entertainment expenses. Project expenses cannot be used for unearned personal benefit or gain, or for reimbursement of false or inaccurate expenses.
- The priority order of project expenditures must be:
    - Senior Position lien holder, if any;
    - Operating and maintenance expenses, including taxes and insurance;

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- Debt service to the Agency;
- Reserve account deposits;
- All accounts payable
- Other authorized expenses; and
- Return on the owner's investment or Non-Profit Asset Management Fee.

B. Sections of the Project Budget (*Form RD 3560-7*)

The *Form RD 3560-7* is used to plan and report the financial activity of a multiple family housing project as required by Agency regulations. Refer to the Forms Manual Insert (FMI) for this form and for a detailed explanation of each line item on the budget. The form is divided in 6 parts as described below:

1. *Part I - Cash Flow Statement*

For budgeting purposes, the cash flow statement projects whether the property will generate enough revenues for all cash needs for the budget period. The proposed budget ending balance must be a positive cash balance and not cause an unwarranted rent increase, nor should it exceed the total of: (1) approximately 20 percent of Total O&M Expenses (Part I, line 16); (2) the amount held for taxes and insurance; (3) any initial operating capital during the first 7 years or until it is withdrawn, whichever comes first. Accrual method accounting will be considered with the annual financial reports and is discussed in Section 5 of this chapter.

- The borrower must not include expenses for purposes unrelated to the housing project or for fines, penalties, and legal fees in the event the borrower has been found guilty of violating laws such as civil rights, evictions, and building codes.
- The borrower is responsible for submitting project budgets that address the project's physical accessibility needs. The MFH Servicing Official may approve the cost of providing accessible rental housing as an authorized use of project funds.
- The borrower must not include organizational expenses among project expenses. These items are covered by the management fee. (For a list of the bundle of services covered in the management fee, see Chapter 3, Attachment 3-D, and 7 CFR 3560.102.)

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A vacancy and contingency allowance is calculated from the previous 36-month historical vacancy rate of the property, and should not exceed the caps as identified below. If the historical vacancy rate is greater than established caps, the vacancy and contingency allowance is capped at the following levels:

◊ For projects with 15 or fewer units, the vacancy and contingency allowance is capped at 15 percent.

◊ For projects with more than 15 units, the vacancy and contingency allowance is capped at 10 percent.

◊ When historical vacancy rates exceed the caps, a budget may be approved with the historical rates only after a feasible workout plan has been submitted and approved.

- A Non-Profit Asset Management Fee may be requested by non-profits and cooperatives. Non-profit owners may request reimbursement for up to $7,500 per project for certain organizational expenses (typical asset management expenses directly attributable to ownership responsibilities), such as Errors and Omissions insurance and actual expenses prorated by the number of Rural Development units. Expense reimbursement may not be duplicated on multiple properties. Documentation of the actual expenses is required to support the requested payment amount. Examples of acceptable documentation for this expense include, but is not limited to:

  ◊ A copy of the Errors and Omissions Insurance policy that reflects who is covered and the cost;

  ◊ Documentation of hours, number of meetings, and the hourly wage rate used for Board of Director's review.

  ◊ The oversight functions include:

    ▪ Board of Director's review and approval of proposed budgets, including proposed repairs, outlays, and accruals;

    ▪ Review of capital expenditures;

    ▪ Approval of annual financial reports and considerations of any management comments noted; and

    ▪ Long-term asset management reviews.

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Any investor asset management fee, investor service fee, or similar fee may be paid solely from the annual Return to Owner and may not be paid from project operating funds. This is not the same as the Non-Profit Asset Management Fee.

1.1.1. Part II - Operating and Maintenance Expense Schedule

- Operating and Maintenance Expenses entered in this section are broken down as indicated on the appropriate lines according to the following categories:

- Operating and Maintenance include items such as maintenance payroll, painting, snow removal, and grounds. Borrowers should include expected unit turnover expenses, based on the properties historic turnover rate, in the operating budget. Turnover expenses, such as the replacement of a refrigerator, scheduled unit carpet cleaning, curtain or flooring cleaning or replacement, painting, etc. should be treated as a normal operating occurrence and do not represent a reserve account need. If the unit sustains damages beyond reasonable wear and tear, then an exception may be warranted, as the costs may be abnormal. This is not the typical situation. If an item is budgeted in the annual operating budget as an operating expense, the item must be paid for out of the operating budget, unless it is a circumstance beyond the borrower's control.

- Utilities include only utilities paid by the project. Utilities paid by the tenant are not included on this form.

- Administrative expenses are project expenses only and do not include expenses that a management firm incurs. The management fee and the services performed for the fee are defined in the 7CFR 3560.102 (i)(1), Management Certification and or Management Agreement. The Management Plan establishes the systems and procedures that will be employed on site to ensure that project operations comply with Agency requirements.

- Taxes and Insurance expenses include all project insurance and real estate taxes, or any special assessments or other taxes allowed.

2. *Part III - Account Budgeting/Status*

This section of the budget reflects the projected reserve account. The balances of the other accounts are not completed for budgeting purposes, only when actuals are received.

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The MFH Servicing Official must review the reserve account levels and contributions to ensure that they are consistent with the loan agreement. The review focuses on four items:

◊ **Beginning balance.** This is an estimate of the balance in the account as of the beginning of the proposed budget period. The MFH Servicing Official should review the beginning balance of the reserve account to ensure accuracy.

◊ **Transfers to reserves.** The MFH Servicing Official should examine the budget to ensure that the appropriate dollar amount, as specified in the loan agreement/loan resolution, is budgeted for deposit in the reserve account.

◊ **Transfers from reserves.** Any transfers from the reserve account that are included in the budget should be described in the budget narrative and justified by the capital plan.

◊ **Ending balance.** The ending reserve account balance is calculated by taking the beginning balance, adding the transfers to the reserve account, and subtracting the transfers from the reserve account.

If the MFH Servicing Official finds that the reserve account level is not where it is supposed to be, that the budget does not show correct contributions to reserves, or that transfers from reserves are not adequately documented, then the borrower must submit corrected budget documents.

3. *Part IV - Rent Schedule and Utility Allowance*

The rent schedule documents the rent and utility allowance structure, and establishes the Rental Income entered in *Form RD 3560-7*, Part I, Line 1.

◊ The Basic Rent is the level required to cover all uses of cash and the repayment of the Rural Development loan at the interest credit reduced payment.

◊ The Note Rate rent is the level required to cover all uses of cash and the repayment of the Rural Development loan at the unsubsidized or promissory note rate.

When tenants pay some or all of their utility costs themselves, borrowers must establish a utility allowance to determine the amount tenants pay toward rent. The utility allowance is deducted from the total shelter cost calculated

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for the tenant, and the difference is paid by the tenant as rent. If the tenant is entitled to a utility reimbursement, management companies may issue a joint check payable to the tenant and utility company, if they choose.

4. *Part V- Annual Capital Budget*

The capital budget portion of Form RD 3560-7, Part V provides information on plans for capital improvements and will assist the Agency on utilization of the reserve account for future rent increase requests. It lists all the capital items in the project and provides space for the borrower to indicate their condition, address transition plan items and any needed improvements. The Annual Capital Budget allows capital items to either be expensed from operations or capitalized from the reserve.

The borrower identifies major maintenance, replacement and accessibility needs during the annual budget cycle and develops a schedule for making withdrawals from the reserve account to pay for their cost. These plans are incorporated by the borrower into the annual capital expenditure budget and may also be reflected in the operating budget if the work is to be paid for out of operating income. Attachment 4-A offers guidance for budgeting capital items. The objective is to help ensure the borrower properly manages reserve account resources and establishes budgets to address the project's capital needs.

If the MFH Servicing Official finds the operating and capital budgets inadequate to keep the project in compliance with Agency standards for physical conditions *[7 CFR 3560.103]*, the MFH Servicing Official must request the borrower to modify the annual capital plan. The MFH Servicing Official may also request modifications if it is found that the borrower has proposed expenditures to be paid from reserves that should be charged to the operating account.

5. *Part VI - Narrative, Signatures, Dates and Comments*

This section of the form will be used to complete the borrower's Budget Narrative, Signatures, Dates and Comments.

1.1.2. Proposed Budget Narrative:

The budget narrative provides a description of the budget and highlights important elements to aid MFH Servicing Officials in their review of the budget.

The budget narrative must be completed, or the budget will be considered incomplete and returned for correction.

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◊ Items to Be Covered in a Proposed Budget Narrative:
The following information must be included in the budget narrative for it to be considered complete.

- A brief description of the project and its status. The description should address key indicators of project status.
- A statement of project compliance. Indicate any outstanding monitoring findings and the progress in addressing the problems. The statement must address Section 504 accessibility compliance. If in Section 504 non-compliance, address steps to be taken to attain full compliance including budgeting items from the Transition Plan that will be funded and completed within the upcoming fiscal year.
- An explanation of projected capital expenditures and reserve withdrawals for the upcoming year and capital needs for the next three years.
- A description of the project's overall financial status and important factors contributing to the changes. (Vacancy, workout plan status, debt deferrals, servicing efforts.) If the analysis reveals that the subtotal for any operating expense category (maintenance and operating costs, utilities, administration, or taxes and insurance) exceeds the 10 percent tolerance threshold, the borrower will provide adequate documentation that the expenses for this category are reasonable and necessary. For example:

  - Costs are comparable to the costs for similar properties in the conventional market. In this example, the borrower might show that insurance costs for the same coverage at a conventional project are comparable to the costs for the project shown in the budget.

  - The factors contributing to the cost increases are beyond the borrower's control and the borrower is actively implementing cost-containment measures. For example, the project is subject to utility rate or tax increases.

  - The cost increase is needed to cover actions to address identified physical deficiencies that are not due to negligence by the borrower or the management agent. Physical deficiencies that are due to negligence by the borrower or the management agent are not acceptable reasons for a rent increase.

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- *Signatures:*

  The budget form requires signatures of the borrower. If the budget has been submitted electronically, a signed copy is not required to be submitted to the Agency. Agency approval may be by letter submitted electronically or by signing and returning form RD 3560-7.

- *Comments:*

  Borrowers are encouraged to submit additional information detailing sources and uses of cash required. Detailed breakouts should relate to specific line subtotals or total entry as listed on the form. Comments are encouraged to better explain the contents of the submitted budget. Use the comment area if additional disclosures or analyses are necessary. MFH Servicing Officials should document additional relevant information, or record issues or concerns noted during review.

C. Borrower Submission Requirements

The borrower should ensure that the project budget meets all the following:

- *Complete Budget*

  The Budget is considered complete when the borrower has submitted the information listed in Exhibit 4-1.

- *Changes in Rents*

  It may be necessary for the borrower to request Agency approval to affect a rent change as operating costs and/or revenues in a project fluctuate. Exhibit 4-3 shows the timeline for borrower submission and Agency review of rent change requests.

  All borrowers, including those using the Department of Housing and Urban Development (HUD) project-based Section 8 contract assistance, must obtain prior Agency approval for a rent increase. Changes in rental rates will apply to all units in a project. Rent change requests for multi-family housing projects with no HUD subsidy are typically submitted and reviewed at the same time the borrower submits an annual budget for approval. Rent changes in HUD project- based Section 8 projects resulting from rent increases by HUD must also be reviewed and are not to be automatically approved. As with any Section 515 project, only the amount of rent necessary to cover project expenses must be approved.

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- *Annual Utility Allowance Reviews*

  The borrower must review utility allowances on an annual basis to determine whether any changes need to be made. The borrower must indicate changes or no changes to utility rates in the budget narrative.

  If all utilities are included in the rent (utilities are paid by the project), there is no utility allowance review.

  Setting Utility Allowances:

  The utility allowance is based on expected costs for utilities that are paid by the tenants. Once established, the borrower must review the utility allowance annually. This is done in conjunction with the annual budget process. The borrower must submit documentation along with *Form RD 3560-7* to the MFH Servicing Official using the following procedures:

  1. An average of tenant utility costs paid during the prior 12-month period will be used for the calculation.

  2. Borrowers must establish utility allowances for each size and type of rental unit in the housing project based on utility costs.

  3. Borrowers will request a change to the existing utility allowance if the proposed change is 10 percent or more.

  4. A summary of the calculations must be submitted to the MFH Servicing Official along with the *Form RD 3560-7*.

  5. The borrower must obtain the following documentation describing the utility allowances and keep in the project files:

     - **Rate Changes:** Documentation of the rate changes may include actual billing information or documentation from utility companies;

     - **Usage:** Documentation of a 12-month sampling of tenant utility usage from the utility company. A sampling will be dependent on the size of the project and will include every size of unit. If tenant utility information is unavailable from the utility company or only provided at cost, utility billings received by tenants are acceptable**.**

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- **No Changes:** Documentation of no change in utility rates has occurred during the period being reviewed. A public release from the utility provider indicating no change in rates has occurred during the period reviewed is acceptable. The borrower must indicate no changes to utility rates in the budget narrative.

- *Tenant Notification and Comments*

  At the same time the borrower submits the initial Notice to the Agency that it intends to submit a rent or utility allowance change request, the borrower will send or deliver notices to each tenant in the project notifying them of the rent change request that will be submitted to the Agency with their annual budget. *Handbook Letter 203(3560)* provides an example of such a Notice. The borrower must also post this Notice in a common area frequented by the tenants, such as the laundry room or near the mailboxes.

  The Notice must inform the tenants that they have 20 calendar days to provide their comments to the Agency. If during this time the Agency receives any tenant comments, these must be immediately forwarded to the borrower with the identity of the tenant protected. This can be done by either paraphrasing the comments for the borrower or by removing any identifying information from the correspondence received from the tenant before forwarding it on to the borrower. The Agency will respond to the tenant that their comments will be considered in the review of the budget. Upon conclusion of the 20-day comment period, the Agency must notify the borrower of approval or denial within 10 days. If the Agency approves a rent or utility allowance increase request on which the comments were solicited, tenants will be notified of the rent or utility allowance change to be effective at least 30 calendar days from the date of the notification.

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Exhibit 4-1 Information required for a complete Budget Submission reflects information the borrower is required to submit on all proposed budget submissions for the project.

Exhibit 4-1
Information Required for Budget Submission to be Complete

1. *Form RD 3560-7* must be used to reflect the project's financial needs for the year and thereby rental charge requirements. Submission of the Form RD 3560-7 data through MINC is acceptable. A proposed operating budget must include:

- Proposed budget at proposed rents
- Operating and Maintenance Expense Schedule
- Rent Schedule and Utility Allowance
- Annual Capital budget
- Narrative explaining
  - Project status
  - Project compliance, including Section 504 accessibility
  - Rent and utility allowance change justification
  - Projected capital expenditures and reserve withdrawals
  - Outstanding findings
  - Servicing effort status (Work out plan/other debt/special note rent)
  - Project financial accountability and concerns
  - Account status (T&I, GOA, Reserve)
  - Any unique situations

2. *Utility allowance review.* Required documentation for utility costs as described earlier in this Chapter and Chapter 7.

3. *HB Letter 203(3560)* Notice to Tenants (Members) Of Proposed Rent (Occupancy Change) And Utility Allowance Change (if applicable).

4. *Other information*. Any other information the borrower believes is necessary to justify the proposed rent and/or utility allowance change request.

- *Documentation*

  The borrower must fully document any rent and utility allowance change request. Requests for a rental charge change must be based on a realistic projected budget for the interim year or the ensuing full year. The borrower must provide to the Agency the information identified in Exhibit 4-1
  .

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The narrative attached to the budget form must clearly explain the necessity for the change request, and the MFH Servicing Official must analyze the supporting documentation to the budget *Form RD 3560-7,* to see if it supports the request. For example, if the rent increase is due to increased taxes, then the MFH Servicing Official should look for copies of tax increase notices in the budget documentation. If the rent increase is due to an increase in general operating expenses, the MFH Servicing Official must review those expenses for reasonableness.

- *Late Budget Submissions*

  The schedule provided for budget reviews relies on timely submission of budget documents by the borrower. If the borrower is tardy in submitting required documents, the Agency cannot ensure that all deadlines will be met. Therefore, if a borrower submits the budget late, Agency deadlines no longer apply, and the borrower is not eligible for "automatic approval" of the budget (as discussed in Paragraph 4.14 D of this chapter). If no budget is approved by the end of the project's fiscal year, the borrower must operate under the previously approved budget (similar to a Carry-Over budget) until the Agency reviews and approves the new budget.

- *Carry-Over Budgets*

  If a budget for the new fiscal year is not entered in MFIS before the first day of the fiscal year, a Carry-Over budget is automatically built from the prior year budget on the first day of the project's fiscal year by MFIS. If there is a transmitted date, the budget has been "entered" and a Carry-Over budget will not be created. If the denied step is populated, a Carry-Over budget will also not be created. This is necessary as the borrower has not presented an acceptable budget in time to be effective on the first day of the project's fiscal year and is, therefore, operating under the current existing budget, which would then become the Carry-Over budget.

  When an acceptable budget is received, after the beginning of the fiscal year, a Mid-Year Budget will need to be completed.

- *Mid-Year Budgets*

  A Mid-Year Budget is a type of budget that is used if there is a change in rents or utilities at the project that is effective other than the first day of the project's fiscal year.

  The borrower's submission must include operating income and expenses that would be expected for the next 12 months after the effective date of the budget. MFIS will prorate the budget correctly for analysis.

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The MFH Servicing Official may add a MFIS Supervisory Activity for a proposed budget with a mid-year due date. The activity will allow the MFH Servicing Official to select the effective date of the mid-year budget. This process would also be used for transfers to establish the first budget, and if the annual proposed budget was not submitted and approved prior to the first day of the project's fiscal year and a Carry-Over budget went into effect.

Exhibit 4-2 Timeline Example for Carry-Over and Mid-Year Budgets provides an example of the timelines for Carry-Over and Mid-Year budgets and updates in MFIS.

Exhibit 4-2
Timeline Example for Carry-Over and Mid-Year Budgets

1. No budget was received by 1-1-XXXX	MFIS creates a Carry-Over budget using a 1-1-XXXX approved date.
2. Budget transmitted 2-10-XX with rent change effective 6-1-XX	New budget in MFIS (Mid-Year budget) with due date prior to effective date of 6-1-XXXX

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1.2. Exhibit 4-3 Schedule for Budget Submission and Review provides the timeframes for project budget submission and its review by MFH Servicing Officials.

Exhibit 4-3 Schedule for Budget Submission and Review	
Budgets Without Rent or Utility Allowance Change	
60 calendar days prior to end of the project's fiscal year *November 1**	Borrower submits all necessary budget documents to Agency. Within 30 calendar days of transmitted, the Agency must take action by approval or denial of the budget or contact the Borrower to request additional information or clarification.
30 calendar days prior to end of fiscal year *December 1*	Agency approves or denies the budget.** • If the budget was unacceptable, the borrower may submit additional information to address deficiencies within 10 calendar days. • Agency makes final approval or denial of budget within 20 calendar days of receipt of this additional information.
End of fiscal year *December 31*	Final approval or denial of the budget. If budget is denied, the current year's budget remains in effect.
Budgets With Rent or Utility Allowance Change	
90 calendar days prior to end of fiscal year *October 1**	Borrower notifies tenants of requested rent change *(Handbook Letter 203(3560)* and submits all necessary budget documents to Agency. • Tenants have 20 calendar day comment period to provide comments to Agency. • Within 30 calendar days of transmitted, the Agency must take action by approval or denial of the budget or contact the Borrower to request additional information or clarification. If no action is taken and the rent increase is $25 or less, it may be considered automatically approved.
60 calendar days prior to end of fiscal year *November 1*	Agency provides notice to the borrower of budget approval or denial.** • If the budget was unacceptable or incomplete, the borrower may submit additional information to address deficiencies within 10 calendar days. • Agency has 20 calendar days to review the additional information.
30 calendar days prior to end of fiscal year *December 1*	Agency gives final approval or denial of the budget. • Tenants will receive *Handbook Letter 204(3560)* notifying of RD approval of the rent or utility allowance change at least 30 calendar days prior to the effective date of the rent or utility allowance change. • If the rent change is denied, the borrower may submit a revised budget at previously approved rents with expenditures acceptable to the Agency. In the absence of such a revised budget, the current year's budget remains in effect.

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Beginning of project's fiscal year *January 1*	New budget and rent increase take effect.

* The dates provided are for a sample project with a fiscal year that begins January 1. For projects with different fiscal years, adjust accordingly.

** If the borrower submitted the budget on time and has not been notified by the Agency of any deficiencies by this time the budget is considered approved unless it is not eligible for automatic approval.

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D. Agency Review Requirements

MFH Servicing Officials must take the steps shown in Exhibit 4-4, Steps in the Budget Review and Approval Process, when reviewing budgets.

Exhibit 4-4

Steps in the Budget Review Process

- Follow procedure for receipt of budgets;
- Prioritize budgets for review;
- Review outstanding monitoring findings;
- Review the budget for reasonableness, overall financial and physical health of the property;
- Review the rent or utility allowance change, if requested; and
- Approve or deny the budget.
- Update MFIS and Asset Management Survey (Risk Rating Tool) data

Budgets for projects that receive HUD project-based Section 8 assistance need to be reviewed with the same rigor as other projects. However, there are certain procedures that differ. These procedures are discussed later in the chapter.

1. *Receiving the Budget*

Standard procedures for budget receipt will help MFH Servicing Officials track the progress of budgets through the review process and meet Agency deadlines. Further, intake procedures should help prioritize the review of budgets so that those with the highest priority (e.g., those with rent or utility allowance changes) receive the attention they need in a timely manner. The following steps are taken upon receipt of budget submissions:

◊ When hard copies of the *Form RD 3560-7* budget are submitted, the documents must be date stamped, entered into MFIS (complete received date and input the financial details), and forward to the appropriate MFH Servicing Official for review.

◊ When budgets are transmitted through MINC, the submission of a hard copy of *Form RD 3560-7* is not required. The MFH Servicing Official will find the budget under Industry Interface in MFIS. If the budget

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transmission is accepted, the system will complete the transmitted date for this item. The following items are needed for the budget to be accepted by the MFIS system:

◊ Effective day must be 1st of the month.

◊ Effective day must be within the fiscal year range.

The budget cannot be in approved status.

◊ The type of units identified in the rent schedule submitted must match the units identified in MFIS and must support all project units.

◊ Budget line items identified as 'Other' must contain a supporting detailed comment.

◊ Within 30 calendar days of transmitted, the Agency must take action by approval or denial of the budget or contact the Borrower to request additional information or clarification. Refer to Exhibit 4-1 for complete budget submission requirements.

◊ If the budget submission is complete, the MFH Servicing Official will input the received date in MFIS and the budget review should continue as described in the following sections. If the budget is incomplete, the MFH Servicing Official must take the steps described below.

◊ Incomplete Budgets:
If any items are missing or are of such poor quality that there is insufficient information to begin an assessment of the budget, the budget is considered incomplete.

If the budget submission is incomplete, the MFH Servicing Official must contact the borrower in writing, stating that the budget is incomplete, and discuss the deficiencies.

◊ If the borrower submits the information within 10 days, the budget is considered to be on time, and the review can still be completed within the required timeline. The budget is eligible for automatic approval, as described later in this chapter.

◊ If the borrower does not submit the requested information within a 10-day time period from the Agency's contact, the Agency cannot guarantee approval of the budget before the beginning of the new

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fiscal year. If the budget cannot be effective at the beginning of

◊ the project's fiscal year, the borrower must continue operations under the previous year's budget until a budget is approved. The borrower is not eligible for automatic approval as described in Paragraph 4.14 D, and the budget may be denied in accordance with 3560.303.

◊ Refer to Exhibit 4-3 for Agency review timeline. If the initial budget is denied, this schedule allows for a second review of the budget and approval (if appropriate) before the start of the fiscal year.

2. *Prioritizing Budgets for Review*

After budgets have been received and determined to be complete, the MFH Servicing Official should prioritize budgets for review. Prioritizing the budgets helps to ensure that the budgets that require the most thorough review receive the attention they need. Budgets with the highest priority for review include budgets for projects with:

- Requests for rent increases above $25/month;
- Vacancy rates above the allowable threshold; and
- Past monitoring findings.

While MFH Servicing Officials should place the highest priority on reviewing these budgets, they should plan their time to allow for sufficient review of all budgets.

3. *Reviewing Outstanding Monitoring Findings*

Having determined that the budget submission is complete, the MFH Servicing Official must check the project for outstanding monitoring findings and assess whether the borrower's budget reflects adequate efforts to address these findings.

- If the outstanding monitoring issues have been adequately addressed in the budget, the MFH Servicing Official should proceed with the review for reasonableness.

  If project outstanding monitoring issues have not been addressed, the budget documents should be returned to the borrower for revision.

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4. *Review the Budget for Reasonableness*

If all outstanding compliance issues have been addressed, the Loan Servicer must review the budget for reasonableness using the steps outlined in Attachment 4-D Budget and Year End Analysis, to make a determination. These review items are automated in the MFIS budget analysis process. Attachment 4-D shows the items included in the analysis and how they are calculated.

- Review Form RD 3560-7 to verify that all appropriate line items are completed. Perform a quick assessment to ensure that they appear to be completed properly.

- Complete the budget analysis which is required prior to entering an "Approved" date in the Supervisory Activity of MFIS. The analysis will reflect areas of observations and review items which will require comments. Just because an item is brought out as an observation or review does not necessarily mean the budget cannot be approved.

  ◊ Observations are the results of a test performed that may be of importance to the MFH Servicing Official.

  ◊ Review items are the results of a test performed that require the MFH Servicing Official to enter comments as documentation of their review.

  ◊ Ratio analyses are reflected in the MFIS budget analysis and are an effective tool for financial analysis. They prescribe various measures of actual operating performance. The MFH Servicing Official should become familiar with these percentages as a comparative analysis and consider utilizing the Hyperion MFH Budget Line-Item Comparative Cost data report for their Region in their analysis. The ratios ran in the MFIS budget analysis are described in Attachment 4-D.

  ◊ Review administrative expenses for project operations exceeding 23 percent, or those typical for the area, of gross potential basic rents (gross potential rents) and revenues. Administrative expenses that exceed 23 percent of gross potential rents highlight a need for closer review for unnecessary expenditures. Excessive administrative expenses can result in inadequate funds to meet other essential project needs.

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◊ Norms are also reviewed on the MFIS budget analysis. The Norms are based on Regional Groupings of "like" properties. This gives the MFH Servicing Official an analysis of how the property is performing compared to other "like" properties. The norm definitions and Regional Groupings are described in Attachment 4-D.

- Determine whether the ending cash balance exceeds the permissible limit. If it does, the MFH Servicing Official must conduct a more in-depth review of the estimated beginning cash balance noted on Part I, Line 31 of Form RD 3560-7, and of prior year's year-end report acceptance letter to determine if a realistic estimate of the operating and tax & insurance account balances for the beginning of the proposed fiscal year was used. And to determine if the projected ending surplus cash balance requires further action with the proposed budget.

- Verify that the capital budget is complete. Capital improvements including implementing a borrower's transition plan, and Capital Needs Assessment (CNA) should be included as part of the capital budget portion of Form RD 3560-7 when applicable. Compliance-related costs include reasonable fees and costs for preparing self-evaluations and transition plans.

The MFH Servicing Official reviews the operating and annual capital budgets, and compares them with previous budgets, site visit reports, physical inspection reports, capital needs assessments, and audit reports. When doing so, the MFH Servicing Official should consider the following questions:

◊ Are expenditures sufficient to maintain the project according to the Agency's performance standards and the requirements of the project management plan?

◊ Were any essential items of maintenance deferred during the past year, which should be financed from the upcoming operating or capital budget?

◊ Are there any outstanding deficiencies noted in site visit reports that should be financed from the upcoming operating or capital budget?

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◊ Has a CNA of the property been prepared? Does the budget match the prepared CNA?

◊ Is the amount budgeted for maintenance and replacement reserve expenditures sufficient to address immediate capital needs?

◊ If capital needs information is available from a prepared CNA, are replacement reserve contributions and funding levels sufficient to address anticipated capital needs over the next 5 years? Does the CNA need to be updated?

5. *Review the of Rent or Utility Allowance Change Requests*

When the borrower submits a budget with a rent or utility allowance change request, the Agency must respond to the borrower within 30 calendar days of submission. If the Agency does not contact the borrower and the budget is eligible for automatic approval, the borrower may assume that any rent change request of $25 per month or less has been automatically approved. The MFH Servicing Official must complete the MFIS budget analysis, notify the borrower in writing, and update the Approval date in MFIS.

Even if the MFH Servicing Official has determined that the budget is reasonable based on the tests outlined in Attachment 4-D, the rent increase must still be reviewed to confirm that the rent/utility allowance change will not adversely affect the marketability of the units and create a vacancy problem. If a review of the rent increase shows that the rent increase will adversely affect the marketability of units, the full rent increase cannot be approved. The borrower should seek a reduced rent increase and, if appropriate, request a servicing action that will enable the project to achieve a positive cash flow at lower rents. The Agency will not consider rent increases based solely on guaranteeing that the borrower will receive a Return on Investment at the end of the project's fiscal year.

a. Circumstances in which the Agency May Deny a Rent Increase Request

The MFH Servicing Official may deny a rent increase request under the following circumstances:

- The borrower is able but unwilling to comply with program requirements. Such a borrower has ignored repeated requests from the MFH Servicing Official to take servicing actions by a specified deadline.

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- If the borrower is in default of the Agency loan agreement and does not have an Agency-approved workout plan or is not in compliance with an Agency-approved workout plan.

- There are sufficient project funds under the existing rents to meet project operating expenses, and the borrower is not able to justify the higher rents. Such a condition is established when the project budget shows that income meets expenses at current rent levels.

- The project is operated on a for-profit basis, and the rent change would result in rents higher than what tenants can afford. This condition is established by comparing rents with 30 percent of tenant-adjusted incomes. If it is shown that tenants would be paying in excess of 30 percent of their adjusted incomes with new rents and the increase is not necessary to meet projected costs, then the increase must not be approved.

If the MFH Servicing Official denies the change request, the borrower must be notified of the denial and be provided with appeal rights. (See Chapter 1)

b. Effective Dates of Change

The effective dates of any approved changes will coincide with the start of the project's fiscal year or the start of the season for labor-housing projects. Handbook Letter 204 (3560) will be sent to notify tenants of RD decision to approve rent or utility allowance change.

For notices to tenants, see Appendix 4.

c. Rent Change Requests Under Special Circumstances (Mid-Year Budgets)

The MFH Servicing Official may accept borrower requests for rent or utility allowance changes at times other than with the annual budget submission. Under special circumstances if a change is necessary to preserve the financial integrity of a project a change request may be considered. Such circumstances might be in the event of a natural disaster, property transfer or when workout procedures and servicing actions are necessary.

When a Plan II housing project is experiencing severe vacancies due to market conditions, the Agency may allow the borrower to charge a Special Note Rent (SNR) that is less than Note Rent but higher than

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Basic Rent, to attract or retain tenants whose income level would require them to pay the SNR. The requirements for receiving an SNR are established in Chapter 10 of HB-3-3560.

Both of these situations would require a Mid-Year Budget be submitted to the Agency for approval.

d. Approving Utility Allowances

Agency Staff must review the utility allowance documents submitted with the budget to make sure that the numbers being used are reasonable and comparable to other projects in the same market area. In addition, the MFH Servicing Official should check project budgets of any other Agency-funded projects in the area to see if utility allowances are similar.

e. Rent Changes for Units Receiving HUD Project-Based Section 8 Assistance [7 CFR 3560.207, and HUD's Section 8 Renewal Policy Guide Book, Chapter 14]

The Agency has the responsibility to review and approve project budgets on an annual basis based on need to meet cash flow and expense requirements. Therefore, the MFH Servicing Official will not take into account HUD's automatic annual adjustment for Section 8 contract rents. The MFH Servicing Official must approve only the rents needed to provide sufficient income to meet approved project expenses.

The agreement in the Memorandum of Understanding (MOU) between HUD and Rural Development indicates that the RD-approved budget will be submitted to HUD by the Project Owner and will serve as the basis for the budget-based rent in the contract renewal process. The rents at initial renewal will be determined by the HUD staff, who will compare the RD- approved, budget-based rent as submitted by the Project Owner to the current rents adjusted by an Operating Cost Adjustment Factor (OCAF) and will set the contract rent at the lesser of the two amounts. HUD staff will then notify both RD and the owner of the new contract rents. Rent adjustment at subsequent renewals will be determined by OCAF unless the owner requests and HUD approves a budget-based increase that has been approved by RD.

Borrowers must notify the Agency of any HUD rent changes. Since HUD- and Agency-approved rental rates frequently differ, it may be necessary to have a 3-column budget in properties with HUD project-based Section 8 contracts. Refer to HB-2, Chapter 7, Exhibit 7-9 for rents applicable for each project type.

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When reviewing the budget, if the MFH Servicing Official concludes that the HUD-authorized rent is more than what is needed to meet project expenses (Basic Rent), a lesser amount than the HUD rent must be approved for Basic Rent.

In accordance with Exhibit 4-5 Impact of Interest Credit Agreement on Ability to Cancel Interest Credit, Collect Overage, and Deposit Excess Funds in the Reserve Account, when the HUD contract rent exceeds Note Rate Rent, borrowers must deposit HUD funds equal to the difference between the Agency approved Note Rate Rent and the HUD approved rent into the reserve account for the housing project. The manager or borrower must use *Form RD 3560-29*, Notice of Payment Due Report (or MFIS Project Worksheet (Report PRJ2000)), to document the extra required deposit in the reserve account. The MFH Servicing Official will monitor this deposit when reviewing the year-end actuals.

If excess HUD rents accumulate in the reserve account beyond the fully funded level shown in the borrower's loan agreement or resolution, the MFH Servicing Official may reduce or cancel the interest credit on the project or increase the fully funded level with a change to the Loan Agreement/Resolution. The Agency may reinstate interest credit whenever HUD rent becomes lower than the Agency Note Rate Rent, determined by the Interest Credit Agreement. Refer to Exhibit 4-5.

Before depositing excess funds in the reserve account, the borrower may have to collect overage. Whether overage is collected, and a project is subject to cancellation of interest credit depends upon the issuance date and execution date of the project's interest credit agreement.

Certain early versions of the Interest Credit Agreement do not have a legal basis to support the Agency's policy to cancel interest credit or collect overage to offset interest credit. Each HUD project-based Section 8/Section 515 project needs to be categorized according to the issuance date and execution date of the project's Interest Credit Agreement on Form FHA 444-7, Interest Credit Agreement or its successor Forms FmHA 444-7, FmHA 1944-7, and RD 3560-9.

Exhibit 4-5, "Impact of Interest Credit Agreement on Ability to Cancel Interest Credit, Collect Overage, and Deposit Excess Funds in the Reserve Account" provides a description of the rules that apply to each interest agreement form.

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Exhibit 4-5
Impact of Interest Credit Agreement on Ability to Cancel Interest Credit, Collect Overage, and Deposit Excess Funds in the Reserve Account

Form	Executed Before October 27, 1980	Executed On Or After October 27, 1980
FHA 444-7, dated 11/17/69 and 7/27/72	No basis to cancel or reduce interest credit, collect overage, or deposit excess funds in the reserve account unless the borrower agrees.	Legal basis exists to cancel or reduce interest credit, collect overage, and deposit excess funds in the reserve account and/or apply it on the loan.
FmHA 444-7, dated 10/13/77	• If first, second, fourth or fifth block of paragraph 2 checked, no legal basis to cancel or reduce interest credit, collect overage, or deposit excess funds into reserves. • If the third block of paragraph 2 is checked, no legal basis to cancel or reduce interest credit, unless borrower agrees. However, there is legal basis to collect overage and deposit excess funds to reserves and/or apply it on the loan.	Legal basis exists to cancel or reduce interest credit, collect overage, and deposit excess funds in the reserve account and/or apply it on the loan.
FmHA 1944-7, dated 11/29/82		Legal basis exists to cancel or reduce interest credit, collect overage, and deposit excess funds in the reserve account.
FmHA 1944-7, dated 4/85		Legal basis exists to cancel or reduce interest credit, collect overage, and deposit excess funds in the reserve account.

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6. *Approval or Denial of Budgets*

Once the budget analysis is complete, MFH Servicing Officials must notify the borrower whether the budget has been approved or denied.

a. Budget Approval

If a budget is received with reasonable operating expenses and a rent increase request to cover turnover costs and maintenance costs in line with comparable properties, the Agency should not unreasonably withhold approval. The MFH Servicing Official must consider the overall financial and physical health of the project. When market conditions do not allow for sufficient rents to fund both operating and capital needs, the workout authorities of 7 CFR 3560, (§ 3560.453) should be reviewed for their applicability in the situation.

If the MFH Servicing Official has determined that the budget represents reasonable costs and adequately addresses all outstanding compliance issues in the budget, the reserve account is current, and the rent change (if requested) is acceptable, the budget may be approved. To approve the budget, MFH Servicing Officials must acknowledge approval (*Form RD 3560-7*) in writing. The MFH Servicing Official must also enter the approval date in MFIS. Handbook Letter 204(3560) will be sent notifying tenants of RD's approval of the rent or utility allowance change at least 30 calendar days prior to the effective date of the rent or utility allowance change.

b. Automatic Budget Approval

In the case of automatic approval, the MFH Servicing Official must acknowledge approval of the proposed budget. The MFH Servicing Official must complete the MFIS budget analysis, notify the borrower in writing, and update the Approval date in MFIS.

Budgets that are not reviewed within the 30-calendar day period are automatically approved unless:

- The budget proposes a monthly rent increase above $25/month per unit; or
- The budget is submitted late or misses other deadlines set by the Agency.
- Vacancy rates are above the allowable threshold.

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- Property is under a workout plan or debt deferral.

If a budget is not eligible for automatic approval and no decision is made prior to the beginning of the project's new fiscal year, the borrower must continue operations under the previous year's budget. If the Agency denies the budget submission, see paragraph (c). "Budget Denial" below.

In these cases, the Agency must continue to work with the borrower to address the requested increase. When an agreement is reached, a mid-year budget will take effect.

A notice will need to be sent to the borrower when it is determined the budget submission is past the deadline set by the Agency. If no response is received within timeframes established in the Notice, servicing actions will begin using Servicing Letter #1 (HB-3, HB Letter 301 (3560)).

c. Budget Denial

If the MFH Servicing Official denies the proposed budget because it is found to be unacceptable for reasons related to outstanding monitoring findings, cost reasonableness, reserves, or a rent increase, the borrower has an opportunity to address the deficiencies.

- Prior to denial, the MFH Servicing Official must provide the borrower with a letter listing deficiencies.

- The borrower has 10 calendar days to submit new information to the Agency. The borrower may adjust the size of the rent increase requested or provide new documentation to justify budget items.

- If the borrower fails to respond, the MFH Servicing Official must send the borrower a denial letter with appeal rights in accordance with Agency appeal procedures (Chapter 1) and inform the borrower that the previous year's budget remains in effect. The MFH Servicing Official must update MFIS with a "Denied" date.

- If the borrower responds, the MFH Servicing Official must review the new submissions within 20 calendar days of receipt, and either approve or deny the budget.

  If the budget is approved based on the new submissions, the MFH Servicing Official must acknowledge approval. See paragraph (a) "Budget Approval" above.

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- If the budget is denied based on the new submission, the MFH Servicing Official must send the borrower a letter stating the deficiencies and informing the borrower that the previous year's budget remains in effect. The borrower must be provided with appeal rights in accordance with Agency appeal procedures (Chapter 1). The MFH Servicing Official must update MFIS with a "Denied" date.

SECTION 5: REPORTING AND FINANCIAL EXAMINATION

4.15 MONTHLY AND QUARTERLY REPORTS *[7 CFR 3560.307]*

A. Overview of Reports

Financial reporting provides the Agency and the borrower a means to monitor the project's financial progress.

- Quarterly Reports.

  Quarterly reports based on a Borrower's Fiscal Year are required in the following situations:

  - At completion of new construction;
  - When the project is subject to a workout agreement; and
  - In the case of a transfer of an existing project loan.

- Monthly Reports.

  MFH Servicing Officials may require borrowers to prepare and submit reports on a monthly basis when additional tracking and supervision are needed. For example, when a project is subject to a workout agreement; when there has been a violation of program rules or reporting requirements; or, when the project shows signs of financial distress.

  MFH Servicing Officials may notify in writing the borrower to discontinue the monthly reporting requirement for projects that have demonstrated consistent compliance with program requirements over a sufficient time.

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B. Review of Monthly and Quarterly Reports

The borrower must submit the required reports following the close of the reporting period (quarter or month, as appropriate), and submit them to the Agency by the 20th of the month following the reporting period via the MINC system. Upon receipt, the MFH Servicing Official must review the MFIS budget analysis as indicated in Attachment 4-D, and review the following:

◊ Look for red flags such as dramatic changes in income, expenses, the general operating account, or the reserve account.

◊ Check balances in accounts as referenced in Paragraph 4.3 Overview of Accounts in this chapter, to make sure they are consistent with the management plan, loan agreement/resolution, and the budget.

◊ Check project expenditures against the budget. Make sure the project is being operated in accordance with the approved budget.

◊ Check progress against workout agreements. Make sure the borrower is taking any actions indicated in a workout agreement and is abiding by the established schedule for these actions.

◊ Update MFIS with "Received" date and "Initial Review" and/or "Final Review" date(s), as applicable.

4.16 ENGAGEMENTS AND PREPARATION OF ANNUAL FINANCIAL REPORTS [7 CFR 3560.308 and 7 CFR 3560.578]

A. General Requirements for All Borrowers: Annual Financial Reports

To ensure that the project is in sound financial condition and is complying with the program financial management requirements, the Agency requires annual financial reports to be submitted by each borrower.

All borrowers who have a Section 515 Rural Rental Housing (RRH) loan or a Section 514 Off-Farm Labor Housing loan must comply with the financial reporting requirements of this section. The requirements are established based on combined Federal Financial Assistance and risk thresholds for each borrower. Projects with fiscal years ending 12-31-19 and after are to follow the reporting requirements outlined in this Section.

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Combined Federal Financial Assistances is defined as a combination of any or all of the following sources:

- Outstanding principal balance and deferred principal balance at the beginning of the fiscal year of a United States Department of Agriculture (USDA) Mortgage, a mortgage insured by the Federal Housing Administration (FHA) or HUD held mortgages and other Government insured loans (Including but not limited to HOME, and CBDG loans);
- Any USDA Rental Assistance or Project based Section 8 assistance received during the fiscal year;
- Interest reduction payments received during the year (interest subsidy);
- Federal grant funds received during the year and/or;
- Outstanding principal balance at the beginning of the fiscal year of an existing USDA Section 538 Guaranteed Rural Rental Housing loan.

Funds the borrower entity receives which must comply with Federal statutes, regulations, or terms and conditions of Federal awards will be included as Federal Financial Assistance.

Exhibit 4-6 Year End Financial Reporting Requirements outlines the financial reporting requirements for specific types of properties.

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Exhibit 4-6 Year End Financial Reporting Requirements			
For-Profit or Limited Profit			
Total Borrower Federal Financial Assistance*	Forms RD 3560-7 and 3560-10	Borrower Certification of Performance Standards	Uniform Administrative Requirements Audit required
RD Borrower with **less than $500,000** in Federal financial assistance	Yes	Yes	No
RD Borrower with **$500,000 or greater** in Federal financial assistance	Yes	Yes	Yes**
State and local Governments, Indian tribes and Non-Profit Organizations			
Total Borrower Federal Financial Assistance*	Forms RD 3560-7 and 3560-10	Borrower Certification of Performance Standards	Single Audit in accordance with 2 CFR part 200 subpart F
RD Borrower with **less than $1 million** in Federal financial assistance	Yes	Yes	No
RD Borrower with **$1 million or greater** in Federal financial assistance	Yes	Yes	Yes***

***See RD Programs Audit Determination Worksheet and Major Program Determination – Attachment 4-G**. Compilation of Prescribed Forms may be necessary, if an audited financial statement is not required by another federal agency or other business agreement.

**Must be completed by an Independent CPA.

***In accordance with the Council of Financial Assistance Reform (CoFAR) uniform guidance. This Single Audit is in accordance with 2 CFR part 200 Appendix XI Compliance Supplement; and submitted to the Agency as part of the financial reporting requirements. Must be completed by an Independent CPA.

Borrowers will be required to submit Forms RD 3560-7 and 3560-10 electronically through MINC. The Agency may make an exception to these requirements if the borrower submits documentation that the costs associated with electronic submission would pose a financial hardship to the project.

Borrowers with fewer than 8 units may submit hard copies to the Agency within 90 calendar days of the project's fiscal year end, if the Agency has approved a MINC waiver.

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B. Budget Actuals and Balance Sheet

Year-end reporting requirements include the use of Forms RD 3560-7, *Multiple Family Housing Project Budget/Utility Allowance Budget Actuals* and Form RD 3560-10, *MFH Borrower Balance Sheet*.

- *Form RD 3560-7* is used for end-of-year reporting of actual income and expenses using the accrual method of accounting.

- *Form RD 3560-10* is a summary of the balances of the accounts, a listing of the liabilities, long term debts, and an indicator of the net worth of the project.

If the borrower has accurately reported income and expenses, specific figures on the two forms should be the same.

- Ending balances of the accounts listed on *Form RD 3560-7*, Part III should match the balances listed on *Form RD 3560-10*, lines 1-4.

- Ending cash balance on *Form RD 3560-7*, line 33 should match the balances listed on Form *RD 3560-10*, lines 1, 2, 5, and 6. These checks are a part of the analysis run in MFIS.

- Since the borrower is using the accrual method of accounting, the accrual-to-cash adjustment, *Form RD 3560-7*, line 32 must equal the difference between lines 31 and 33. This ensures *Form RD 3560-7*, lines 31 and 33 match their respective figures on *Form RD 3560-10*. The sole purpose of this adjustment is to reconcile a company's internal ledger kept on an accrual basis to the IRS forms which are required to be on a cash basis.

Borrower signatures are required on these forms. If they are submitted electronically through MINC, signed copies are not required to be submitted to the Agency.

C. Borrower Certification of Performance Standards

All financial reports must include a Borrower Certification of Performance Standards. Attachment 4-F is used by the owner to certify to these standards. The Borrower or borrower representative must sign and date this self-certification.

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The Borrower must self-certify:

◊ Required accounts are properly maintained and tracked separately;

◊ Payments from operating accounts are disclosed and accurately represented;

◊ Reserve Account is current and maintained in a supervised account and has an Agency approved Form RD 402-1 Deposit Agreement, or the alternate 402-1A Sample Deposit Agreement or Deposit Account Control Agreement executed after September 28, 2018; contributions are on schedule, the balance accounts for contributions less authorized withdrawals; and there are no encumbrances;

◊ The replacement reserve account was used for authorized purposes in accordance with 7 CFR 3560.306 (g);

◊ Tenant security deposit accounts are fully funded and are maintained in separate accounts;

◊ Payment of ROI was consistent with the terms of the applicable loan agreement or loan resolution;

◊ Borrower/grantee has maintained proper insurance in accordance with the requirements of 7 CFR 3560.105;

◊ All financial records are adequate and suitable for examination.

◊ There have been no changes in project ownership other than those approved by the Agency and identified in the certification. All current owners are to be identified in the Status Report of Ownership table on Attachment 4-F. All Non-Profit Organizations certify that the board is active and maintains oversight of the property; and

◊ Real estate taxes are paid in accordance with state and/or local requirements and are current.

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D. Owner's Compilation of Prescribed Forms

For-profit or limited profit borrowers that receive less than $500,000 in combined federal financial assistance, for which there are no audit requirements per other agencies or agreements, will submit an annual owner certified compilation of prescribed forms containing Form RD 3560-7 and Form 3560-10 utilizing the accrual method of accounting in accordance with Statements on Standards for

Accounting and Review Services (SSARS) promulgated by the Accounting and Review Services Committee of the American Institute of Certified Public Accountants (AICPA). Borrowers may use a CPA to complete this report of the prescribed forms (Attachment 4-K provides an example of an Independent Accountants Compilation report on RD Prescribed forms), or borrowers may provide Attachment 4-L, Owner Certified Prescribed Forms - Supporting Documentation Schedules.

E. Financial and Compliance audit utilizing HUD Office of Inspector General's (OIG) Consolidated Audit Guide Standard

For-profit or limited profit Borrowers that receive $500,000 or more in combined federal financial assistance must submit an independent auditors' report to include financial statements and notes to the financial statements, supplemental information containing Agency approved forms for project budgets and borrower balance sheets, a report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements in accordance with Generally Accepted Government Auditing Standards; a report on compliance for each major program and internal control over compliance (if applicable). A CPA must perform the audited financial statements. Attachment 4-M provides a typical report and supporting documents.

Attachment 4-H is an example Engagement Letter which will be used by a CPA. This Engagement Letter should include the procedure, audit objectives to be performed and the fees associated with the service. There may be circumstances where the auditor may ask for information from Rural Development due to third party verification requirements. The MFH Servicing Official shall receive a complete copy of this signed Engagement Letter prior to releasing information to the CPA.

Borrower's s will utilize HUD's Office of Inspector General's (OIG) Consolidated Audit Guide located at https://www.hud.gov/sites/documents/20004OIGH.PDF in developing the audit. The audit will not utilize HUD's Chart of Accounts, nor will the report require the CPA to review any tenant files, as this compliance test is being conducted by Agency staff during regularly scheduled supervisory visits

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and annual improper payment auditing.

An audit will consist of the following items (financial statements issued in two-year comparative format, as applicable):

- Independent Auditor's Report
- Financial Statements
    - Balance Sheets
    - Statements of Operations (also known as Statements of Income (Loss))
    - Statements of Changes in Partner's Equity (Deficit)
    - Statements of Cash Flows
    - Notes to the Financial Statements
- Supplemental Information
    - Management Fee Calculation
    - Insurance Disclosure
    - Return to Owner
    - Changes in Rental Property (also known as Changes in Fixed Assets)
    - Accrual to Cash Schedule
- Schedules of Expenses
- Multiple Family Housing Borrower Balance Sheet and supporting documentation – Form RD 3560-10
- Multiple Family Housing Project Budget and supporting documentation – *Form RD 3560-7*
- Independent Auditors Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards
- Independent Auditor's Report on compliance for each major RD program and Internal control over Compliance
- Audit Findings
- Corrective Action Plan (if applicable)

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F. Standards for State and local governments, Indian tribes, and Non-Profit Organizations

1. State and local governments, Indian tribes, and Non-Profit Organizations that receive less than $1million in combined Federal financial assistance and there are no audit requirements per other agencies or agreements will submit an annual owner certified compilation of prescribed forms containing Forms 3560-7 and 3560-10 utilizing the accrual method of accounting in accordance with Statements on Standards for Account and Review Services. Borrowers may use a CPA to complete this report of the prescribed forms (Attachment 4-K provides an example of an Independent Accountants Compilation report on RD Prescribed forms), or Attachment 4-L, Owner Certified Prescribed Forms - Supporting Documentation Schedules.

2. State and local governments, Indian tribes, and Non-Profit Organizations that receive $1 million or more in combined federal financial assistance must submit audits in accordance with 2 CFR 200, Part F, and the Office of Management and Budget's (OMB) Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards. Copies of the audit will be forwarded by the borrower to the MFH Servicing Official and the appropriate Federal cognizant agency for audit. Within USDA, the USDA, OIG fulfills "cognizant agency" for audit responsibilities, (see "cognizant agency" defined 7 CFR 3052.105).

Attachment 4-N is provided as an example of Single Audit requirements. The auditor may refer to the American Institute of Certified Public Accountants (AICPA) for additional guidance in meeting audit requirements.

Organizations subject to 2 CFR 200, Part F, must submit the single audit along with the borrower's certified performance standards (Attachment 4-F), Forms RD 3560-7, and 3560-10. Per Uniform Guidance the single audit should also be submitted using the Federal Audit Clearinghouse. The audit will not require the CPA to review tenant files, as this compliance test is being conducted by Agency staff during regularly scheduled supervisory visits and annual improper payment auditing.

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G. Other Financial Reports

- **Year-End Narrative.**
  Statements from the borrower providing a description of the project's year-end financial, physical and compliance status that highlight important elements to aid the Agency with the review of the year-end reports (Exhibit 4-7).

- Additional Opinions.
  The Agency may require additional opinions of financial condition and compliance, such as audits, to ensure the security of the asset; to determine whether the project is being operated at a reasonable cost; or to detect fraud, waste, or abuse.

- Annual Financial Statements.
  Another regulatory agency, legal entity, and/or other business agreement may require an audit in accordance with Generally Accepted Auditing Standards or Government Auditing Standards. Any project audits independently obtained by the borrower must be submitted to the Agency.

H. Annual Financial Reporting Due Dates and Agency Review of Annual Financial Reports

1. Annual Financial Reporting Due Date

For-Profit or Limited Profit – Annual financial reports including *Form RD 3560-7* with 12 months of actual income and expenses, *Form RD 3560-10*, compilations of prescribed forms, certification of performance standards and audits, as appropriate, must be submitted to the Agency no later than 90 days following the close of the project fiscal year.
State and local Governments, Indian tribes and Non-Profit Organizations – 2 CFR §200.512 allows the audit of Not-for-profits to be submitted within the earlier of 30 days after receipt of the auditor's report, or 9 months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant or oversight agency for audit.
If the annual financial reports cannot be submitted by the due date, the borrower must present a request for extension supported by evidence that delay is at the request of the auditor, and the request has a reasonable explanation of why an extension of the due date is needed. The MFH Servicing Official may authorize up to a 30-day extension of the due date.

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If an explanation is not forthcoming from the Borrower, or the explanation received is without good reason, or the MFH Servicing Official otherwise suspects fiscal difficulty, the MFH Servicing Official may request the borrower to submit to the Agency for review, the project bank statements for the general operating, reserve, and investment accounts covering the most recent 60-day period.

If the borrower fails to submit the requested bank statements by the date stipulated by the MFH Servicing Official, the MFH Servicing Official will immediately refer the matter to the OIG.

The MFH Servicing Official may authorize the initial verification of review to cover a period up to 18 months for a new project whose first operating year was less than 6 months or when an existing owner changes their fiscal year.

2. Agency Review of Annual Financial Reports

MFH Servicing Officials must review financial reports within 60 days of receipt, in accordance with guidelines provided in Attachment 4-O to ensure that they meet Agency requirements. MFH Servicing Officials may complete the checklist provided as Attachment 4-O. In particular, the MFH Servicing Official must:

- Confirm that the engagement (audit report) was conducted as described in the requirements above;
- Confirm that the performance standards were certified as described above;
- Confirm that non-profit and public bodies have submitted any OMB required annual financial statements;
- Note any findings identified in the engagement and determine corrective actions. These would be located in the findings of the audit findings page;
- Utilize the MFIS analysis tool to perform the preliminary assessment of the financial statements. Refer to Attachment 4-D for the Analysis process;
- Confirm the information on *Forms RD 3560-7 and 3560-10,* submitted to the Agency electronically through MINC, is the same as the forms submitted with the financial reports from the auditor.
- Confirm the Year-End Narrative is complete and acceptable. Refer to Exhibit 4-7, Items to be Covered in the Year-End Narrative.

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- If the MFH Servicing Official has determined that the annual financial reports are suitable, the reports may be accepted. The MFH Servicing Official must acknowledge acceptance of the annual financial reports in writing. The MFH Servicing Official must also enter the final reviewed date in MFIS and update the Asset Management Survey (Risk Rating Tool) data.

If the MFH Servicing Official has determined that the annual financial reports are not acceptable, a notice will be sent to the borrower explaining the issues and requesting a response within 30 days. If no response is received from this notice, servicing actions will begin using Servicing Letter #1 (HB-3, HB Letter 301(3560).

Exhibit 4-7
Items to be Covered in the Year End Narrative

The Year End Narrative must be complete and acceptable, or the Annual Financial Reports will be considered incomplete and returned for correction.

- A brief description of the project and the year-end status, including financial and physical status. The description should address key indicators of current project status.
- A statement of project compliance. Indicate any outstanding monitoring findings and the methods for addressing the problems. Statement must address Section 504 accessibility compliance. If in non-compliance, address steps taken to attain full compliance including which items from the TP were funded and completed within the previous fiscal year.
- An explanation of capital expenditures, transfers from reserve account, and reserve withdrawals for the previous operating year, including a plan for those capital expenditure items budgeted for but were not completed during the year.
- A description of the property's overall financial status and important factors contributing to any changes. (Vacancy, workout plan status, debt deferrals, servicing efforts.) If the subtotal for any operating expense category (maintenance and operating costs, utilities, administration, or taxes and insurance) differs from last year's value by more than 10 percent, the borrower will provide adequate explanation for the expenses in this category.
- If the property is not in compliance with any performance standard noted on Attachment 4-F, one must state the property is not in compliance with the standard and provide the Agency with a statement about the non-compliance and the methods taken to correct the non-compliance.

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3. MFIS Tracking Steps

MFIS tracking steps must be updated for each activity related to the year-end review.

Below are descriptions of tracking step in MFIS for the activity on Form RD 3560-7 (actual) and balance sheet.

- Received: this date is completed when all required documents are received by the MFH Servicing Official per the handbook, constituting a complete financial instrument.
- Initial Review: this date is completed after an initial MFIS analysis has been conducted, and the MFH Servicing Official determines that additional clarification or information is needed before the financial records are acceptable to the Agency.
- Final Review: this date is completed after the actuals are analyzed and the MFH Servicing Official determines they are acceptable to the Agency.
- Follow-up: this date is used as needed (for example, when additional clarification/information has been requested or an extension has been granted).

It is not required for both the initial review and final review dates to be completed, but a final review date is required to document that the Agency has determined the annual financial records of the project are acceptable.

4. MFIS Findings

Below are some examples of manual findings that may be associated with year- end reviews.

- Unacceptable (Form RD 3560-7 Actual). If this finding is used, a comment must be added to explain the outstanding issue(s). For example, if the reserve account is underfunded (i.e. – the required annual deposit was not made), a comment explaining the amount of the underfunded Tracked Account and fiscal year should be entered.
- Unauthorized RTO/Asset Mgmt Fee.
- Underfunded T&I Acct.

When the borrower provides adequate documentation to resolve the finding, the MFH Servicing Official must manually resolve the finding in MFIS.

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ATTACHMENT 4-A
CAPITAL EXPENDITURES

TYPICAL REPLACEMENT RESERVE ACCOUNT USE

Items traditionally contemplated as eligible for draws from the replacement reserve account include capital items such as (but not limited to):

1. Unless shown in the operating budget, replacement of range hood, refrigerators, ranges, washer, dryers and other major appliances in the dwelling units.
2. Unless shown in the operating budget, flooring and carpeting.
3. Extensive replacement of kitchen and bathroom cabinets, vanities, sinks and countertops, bathroom tubs, toilets, and doors (exterior and interior).
4. Extensive unit clean up and repairs due to tenant death, misuse of unit, damage or vermin eradication.
5. Unless shown in the operating budget, window coverings – blinds, draperies.
6. Replacement or major overhaul of central air conditioning and heating systems, including cooling towers, water chilling units, furnaces, stokers, boilers, and fuel storage tanks.
7. Major plumbing and sanitary system repairs
8. Permanent improvements to the housing project, such as installing an energy-conserving heat pump.
9. Overhaul of elevator systems.
10. Systematic replacement of building or unit components.
11. Major roof repairs, including major replacements of gutters, downspouts, and related eaves or soffits.
12. Repainting of the entire building exterior.
13. Extensive replacement of siding.
14. Window system replacement or extensive window screen replacement.
15. Major landscape and grounds items, such as fencing, recreation areas, property signs.
16. Major repaving/resurfacing/seal coating (sidewalks, parking lots, and driveways).
17. Extensive replacement of exterior (lawn) sprinkler systems.
18. Capital requirements identified in transition plan.
19. Automation equipment located on site.
20. Shortfalls in operating expenses occurring on site beyond the control of the borrower and threatens life, safety, or the physical security of the project. Example: weather disaster.
21. Twenty-five percent of the interest earned on a reserve account during the prior year. [7 CFR 3560.306 (h)(3)].
22. Return on Investment according to 7 CFR 3560.305 (a)(2)(i) which states: “Surplus cash exists in either the general operating account as defined in 7 CFR 3560.306(d)(1) or the reserve account, if the balance is greater than the required deposits minus authorized withdrawals…” And must meet the requirement of 7 CFR 3560.306(h)(2)(ii) which states, “Payment of a return on investment at the end of the borrower’s fiscal year if such payment comes from surplus operating funds in the reserve account.”

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23. Improvements to accommodate reasonable accommodation/modification requests.
24. The replacement reserve account should not be used to pay for turnover or routine maintenance costs. Turnover and routine maintenance expenses should appear in the operating budget except in extenuating circumstances, such as when a unit that has been damaged is in need of wall repair, door repair or replacement, etc.; deep filth; damage and cleanup due to a death in the unit; damage and cleanup due to the manufacture of drugs; dumpster rental when tenant leaves belongings including labor; bed bug or termite eradication.

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ATTACHMENT 4-B

AMENDMENT TO LOAN AGREEMENT/RESOLUTION RESERVE ACCOUNT REQUIREMENTS

1. **PARTIES AND TERMS DEFINED.** This amendment hereby modifies reserve account requirements contained in Form _____ dated _____ signed by _____, herein called "Borrower" with the United States of America acting through Rural Development, United States Department of Agriculture, herein called the "Government." This amendment is necessary due to life-cycle needs, including equipment and facility replacement costs, and is supported by a Capital Needs Assessment, dated _____.

2. **MODIFIED RESERVE ACCOUNT REQUIREMENTS.** Transfers at the rate not less than **$**_____ (annually) shall be made to the Reserve Account beginning _____ until the amount in the Reserve Account reaches the sum of **$**_____ or according to the scheduled listed at the bottom of this form, or such higher amount later agreed to with the Government and shall be resumed at any time necessary, because of disbursements from the Reserve Account to restore it to said sum. Withdrawal and use of funds deposited to this account will be in accordance with 7 CFR part 3560. With prior consent of the Government, funds in the Reserve Account may be used by the Borrower as provided for in the original document referred to in paragraph 1.

3. All other provisions of the prior executed document referred to in paragraph 1 above shall remain in effect.

Optional Schedule (if applicable)

Annual Transfer	Beginning Date
$_____	_____
$_____	_____
$_____	_____
$_____	_____
$_____	_____
$_____	_____
$_____	_____
$_____	_____
$_____	_____
$_____	_____
$_____	_____
$_____	_____
$_____	_____
$_____	_____
$_____	_____

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$_____ _____
$_____ _____
$_____ _____
$_____ _____

Borrower Name: _____

_____ _____
(Representative Name and Title) **(Date)**

_____ _____
(Representative Name and Title) **(Date)**

Agency Approval:

_____
(RD Representative Name and Title)

_____
(Date)

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ATTACHMENT 4-B-1

AMENDMENT TO LOAN AGREEMENT/RESOLUTION RESERVE ACCOUNT REQUIREMENTS

1. **PARTIES AND TERMS DEFINED.** This amendment hereby modifies reserve account requirements contained in Form _____ dated _____ signed by _____, herein called "Borrower" with the United States of America acting through Rural Development, United States Department of Agriculture, herein called the "Government." This amendment is necessary due to the Borrower electing to allow for an annual adjustment to increase the reserve account annual deposits by Operating Cost Adjustment Factor (OCAF) as published by Housing & Urban Development (HUD) annually.
   ◊
2. **MODIFIED RESERVE ACCOUNT REQUIREMENTS.** Transfers at the increased rate of the annually published HUD OCAF adjustment shall be made to the Reserve Account beginning _____ until the amount in the Reserve Account reaches the sum of **$**_____, or such higher amount later agreed to with the Government and shall be resumed at any time necessary, because of disbursements from the Reserve Account to restore it to said sum. The annual OCAF rate increase to the reserve deposit will be implemented each year for the proposed budget submitted to the Agency after the annually published OCAF adjustment rate.
   ◊
3. Withdrawal and use of funds deposited to this account will be in accordance with 7 CFR part 3560. With prior consent of the Government, funds in the Reserve Account may be used by the Borrower as provided for in the original document referred to in paragraph 1.

1.3. Borrower Name: _____

Signed by:

_____ _____

(Borrower Representative Name and Title) Date

1.4. Agency Approval:

_____ _____

(RD Representative Name and Title) Date

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ATTACHMENT 4-C

ALLOWABLE AND UNALLOWABLE PROJECT EXPENSES

There are generally accepted project expenses outlined in the MFH Regulation 7 CFR 3560.102 (management fee-related) and 3560.303 (project related) allowable expenses that should be charged to the operating account. *Text in boxed Italics* following the Regulation citation provides clarification on allowable expenses.

§3560.303(b) Allowable and unallowable project expenses and §3560.303(d) Determining if expenses are reasonable. Expenses charged to project operations, whether for management agent services or other expenses, *must be reasonable, typical, necessary and show a clear benefit to the residents of the property*. Services and expenses charged to the property must show value added and be for authorized purposes. If such value is not apparent, the service or expense should be further examined.

(1) Allowable expenses. Allowable expenses include those expenses that are directly attributable to housing project operations and are necessary to carry out successful operations.

(i) Housing project expenses must not duplicate expenses included in the management fee as defined in §3560.102(i).

- *Housing Authorities should only include cost directly associated with the operations of the MFH financed property.*

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(ii) Actual costs for direct personnel costs of permanent and part-time staff assigned directly to the project site. This includes managers, maintenance staff, and temporary help including their:

- On-site staff costs (including maintenance employees directly assigned) are project expenses. If staff is responsible for multiple properties, then their costs should be prorated between each property. Regional managers' costs are to be covered by the management fee.
- Payroll and fringe benefits expenses included in the proposed budget must agree with the number of employees, positions, salaries, fringe benefits, health plans, etc. in the management plan and the property must be able to cash flow with the included expense(s).
- On-Site personnel who oversee multiple properties must pro-rate the expense of benefits between properties. Wages will be charged per billing method to the property.
- Large increases in site payroll or site maintenance should be supported by management plan changes. RD does not have to approve a budget that includes positions that are not shown in the management plan.
- To be a project expense, tasks must be project specific in nature.
- Tenant service coordinator is an allowable project expense. Service Coordinators assess tenant needs, identifies and links tenants to needed services, assists with resourcing free tenant services or additional funding sources for these types of services, and educates tenants on the availability of resources and supportive services.
- Payment of supervisory positions are paid from the management fee bundle of services and not from project operations. See §3560.102(i)(1)(i).

(A) Gross salary;
(B) Employer Federal Insurance Contributions Act (FICA) contribution;
(C) Federal unemployment tax;
(D) State unemployment tax;
(E) Workers' compensation insurance;
(F) Health insurance premiums;

-The management plan should identify site personnel. If there is a question about health insurance coverage for site employees, MFH Servicing Officials should review the health insurance policy for confirmation of coverage and appropriate charges to the project.
-Management's central office staff's health insurance is not a project expense.

(G) Cost of fidelity or comparable insurance;
(H) Leasing, performance incentive or annual bonuses, that are clearly provided for by the site manager salary contract;

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*-This expense is for **project-specific site personnel** and should be included as part of the site compensation. Costs of fidelity bonds covering central office staff, and general liability directly related to protection of the funds and records of the borrower are covered as part of the management fee. See § 3560.102(i)(1)(xiii)(E).*
-Site manager incentives are to be identified in the management plan as part of the site manager's salary.

(I) Direct costs of travel to off-site locations by on-site staff for property business or training; and/or

-On-site staff travel to and from the management company office to the property is an allowable expense. However, such travel should be reasonable. For example, maintenance staff should not routinely be sent out from the main office to do one thing each day when it would be more efficient to combine trips or can be completed by the on-site maintenance person.
-Other management company staff travel to and from the property is a management fee expense (see §3560.102 (i)(1)(xiii)(I))
-Purchase of "company vehicles" for such travel is not an allowable project expense.

(J) Retirement benefits.

(iii) Legal fees directly related to the operation and management of the property including tenant lease enforcement actions, property tax appeals and suits, and the preparation of all legal documents.

-Property legal fees are for the borrower or the project, and not for third-parties, such as investors or syndicators.
-Fees must be paid by Borrowers from non-project funds for fines, penalties and legal fees when the borrowers are found guilty of civil rights or other violations.

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(iv) All outside account and auditing fees, if required by the Agency, directly related to the preparation of the annual audit, partnership tax returns, and Schedule K-1, as well as other outside reports and year-end reports to the Agency, or other governmental agency.

-The account, auditing, partnership, and year end reports must be directly related to the property. It does not include individual tax filing expenses for any member of the ownership entity. Properties may have financial reporting requirements beyond that required by the Agency. If these are directly related to the property, and not the partnership or ownership, they are allowable project expenses.
-There are no regulatory caps on the audit expense, however if costs exceed the average for similar properties, confirm the audit is not of the partnership etc., which is a borrower expense.
-Utilize Agency reports to assist in the comparison process of similar properties.

(v) All repair and maintenance costs for the project including:

-Repair and maintenance expenses appear on the Form RD 3560-7 in Part II, lines 1-11. Capital expenses, which are discussed in §3560.103(c), should not appear in the operating repair and maintenance costs; capital budget expenses appear in Part V.
- Maintenance staff should not routinely be sent out from the main office to do one thing each day when it would be more efficient to combine trips or can be completed by the on-site maintenance person.
-There should be no manipulation of the budget or expenses to avoid taxes.
-The reserve account should not be used to pay for typical unit turnover or routine maintenance costs; these should appear in the operating budget. Excessive repairs due to (for example) death in the unit, drug production clean up or extreme vandalism is not typical unit turnover.
-MFH Servicing Officials should question unusually low maintenance and repairs costs, especially in an aging property.

(A) Maintenance staffing costs and related expenses.
(B) Maintenance supplies.

MFH Servicing Officials should carefully review this item. Small tool purchases, such as hammers, putty knives, and sprayers, which could be used repetitively, should not be repeatedly purchased by the property.

(C) Contract repairs to the projects (e.g., heating and air conditioning, painting, roofing).
(D) Make ready expenses including painting and repairs, flooring replacement and appliance replacement as well as drapery or mini-blind replacement. (Turnover maintenance).

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(E) Preventive maintenance expenses including occupied unit repairs and maintenance as well as common area systems repairs and maintenance.
(F) Snow removal.
(G) Elevator repairs and maintenance contracts.
(H) Section 504 and other Fair Housing compliance modifications and maintenance.

-Annual reviews updating of transition plans by management should be completed with budgets and actual financial reviews. An explanation for the lack of work and not following the transition plan schedule should be provided in the narrative.
-Having an independent third party review the property every 3 years for accessibility provides the borrower, management agent, and Agency with an additional opinion from a non-interested party.
- Management should review the existing plan annually with a year-end update.
-A knowledgeable source or third-party provider is considered one that is experienced, and well versed in Section 504 accessibility requirements, practices, and solutions.
-Future changes may occur to the property as a result of maintenance work, at which point, if it is not clear that the proper work is completed, a further self-evaluation and transition plan may be needed.
-If there is a change in the applicable standard or circumstances at the property the Transition plan should be updated.
-The cost of providing Limited English Proficiency (LEP) services is an allowable expense.

(I) Landscaping maintenance, replacements, and seasonal plantings.
(J) Pest control services.

-This includes the expense of bed bug control. If the property is experiencing unusual pest activity or an unusually high expense, MFH Servicing Officials should request a breakdown of costs.

(K) Other related maintenance expenses.

-"Other maintenance expenses" is a broad category that should be carefully reviewed by MFH Servicing Officials to ensure that charges are appropriate and reasonable. Expenses that belong in other categories should be moved by the Borrower to ensure that the Agency is collecting the correct data on specific property costs.
-If the expense appears on Part II, line 10, it must be identified.

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(vi) All operational costs related to the project including:

-"Sales tax" on management fees is not an allowable expense unless state law requires "sales tax".
-"Other Administrative" in general: MFH Servicing Officials should closely review this line item for potential abuse. "Other Administrative" should include only directly property-related administrative costs; for example, the

Section 538 Guarantee Fee is an allowable expense. A listing of the expenses must be provided with the narrative or in the Comments column.
-Bad debts should not appear in the O & M Expense Schedule:
-
-On year end actuals, account for bad debt (NSF checks) would be reflected as Miscellaneous (Part I, Line 27) with a comment to explain.
-Other fees and charges should appear in the appropriate line item (i.e., bank charges, HFA compliance fees, credit checks, etc.) Such expenses must be accompanied by a narrative with detailed explanation.
-For-profit borrowers are entitled to 25 percent of the interest earnings on the Reserve account in the prior year, which must be a Reserve withdrawal request; this amount should not be taken from the operating account. See §3560.306(h)(3).

(A) The costs of obtaining and receiving credit reports, police reports, and other checks related to tenant selection criteria for prospective residents.

The cost of these items may be charged as an application fee as long as it does not exceed the actual cost of obtaining the necessary items related to the tenant selection criteria.

(B) Photocopying or printing expense related to actual production of project brochures, marketing pieces, forms, reports, notices, and newsletters are allowable project expenses no matter what location or point of origin the work is performed including outsourcing the work to a professional printer.

(C) All bank charges related to the property including purchases of supplies (e.g., checks, deposit slips, returned check fees, service fees).

Bank charges should be typical and not extraordinary; bank-charged fees should be closely reviewed for reasonableness and not due to mismanagement. Electronic check readers and lockbox fees are an allowable project expense.

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(D) Costs of site-based telephone including initial installation, basic services, directory listings, and long-distance charges.

Cell phones issued to on-site personnel for project-related work is allowable. On-site personnel who oversee multiple properties must pro-rate the expense between properties.
An allowance to site personnel for use of a personal cell phone is acceptable.

(E) All advertising costs related specifically to the operations of that project. This can include advertising for applicants or employees in newspapers, newsletters, social media, radio, cable TV, and telephone books.

Advertising costs does not include a portion of the central management office's website costs for listing project on their website or making tenant applications available on their website, etc. Management's website costs are not allowable project expenses.

(F) Postage expense to mail out rental applications, third-party (asset, income, and adjustments to income) verifications, application processing correspondence (acceptance or denial letters), mailing project invoice payments, required correspondence, report submittals to various regulatory authorities for the managed property are allowable project expenses no matter what location or point of origin the mail is generated.

This expense does not include normal or routine management company personnel responsibilities covered under §3560.102(i)(1)(xiii)(C).

(G) State taxes and other mandated Tribal, State, or local fees as well as other relevant expenses required for operation of the property by a third- party governmental unit. Costs of continuation financing statements and site license and permit costs.

(H) Expenses related to site utilities.

(I) Site office furniture and equipment including site-based computer and copiers. Service agreements and warranties for copiers, telephone systems and computers are also included (if approved by the Agency).

Items must be part of a proposed approved budget to be an eligible expense. Explain in Budget Narrative.

(J) Real estate taxes (personal tangible property and real property taxes) and expenses related to controlling or reducing taxes.

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May include special assessments and service charges which are not based upon the value of the property and milage. Late fees due to mismanagement must be paid by Borrowers from non-project funds.

(K) All costs of insurance including property liability and casualty as well as fidelity or crime and dishonesty coverage for on-site employees and the owners.

Costs of insurance coverage for Agent's office and operations and costs of insurance that protect the management agent or their staff, including, but not limited to, Employee Professional Liability Insurance (EPLI) or General Liability (Abuse/Molestation) coverage are covered as part of the management fee. See §3560.102(i)(1)(xiii)(E).

(L) All bookkeeping supplies and recordkeeping items related to costs of collecting rents on-site.

Note that these costs are for supplies such as notices; costs of processing transactions, maintaining books and records are covered as part of the management fee. See §3560.102(i)(1)(iii).

(M) All office supplies and copies related to costs of preparing and maintaining tenant files and processing tenant certifications to include electronic storage.

-Office supplies, copies and other associated expenses needed to physically establish and maintain tenant files must be site-specific.

-Costs associated with off-site tenant file storage, physical or digital, are allowable project expenses.

-Costs to be paid from the management fee include review of tenant certifications and submission of monthly rental assistance request, and overage. Submissions of payments where required. These costs are part of the salary expense to be paid by the management fee. § 3560.102(i)(1)(xi).

-Projects should not be double charged for "front-line fees" at a prorated rate and having personnel who are responsible for performing the same task being paid a salary is not acceptable.

(N) Public relations expense relative to maintaining positive relationships between the local community and the tenants with the management staff and the borrowers. Chamber of Commerce dues, contributions to local charity events, and sponsorship of tenant activities, are examples.

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(O) Tax Credit Compliance Monitoring Fees imposed by Housing Finance Authorities (HFAs).

-This expense pays the charge from the tax credit allocator.
-Reporting to general and limited partners for LIHTC, compliance purposes are included in the management fee and is not an allowable project expense; see §3560.102(i)(1)(xxvii). These fees can be paid from either management fee or return to owner.

(P) All insurance deductibles as well as adjuster expenses.

(Q) Professional service contracts (audits, owner-certified submissions in accordance with § 3560.308(a)(2), tax returns, energy audits, utility allowances, architectural, construction, rehabilitation and inspection contracts, capital needs assessments (CNA), etc.)

-If costs appear unreasonable MFH Servicing Officials should review any professional services contracts.

-The Agency has no monthly unit inspection requirement.

-Inappropriate practices are covered under §3560.102(i)(4)(viii).

-The cost of installation of project-wide cable, satellite TV, or wi-fi/Internet, is an allowable project expense, provided that each apartment unit receives a separate billing for the service, and it is not included in the rent charge or utility allowance. The property will not pay for access by each unit, including vacant units. Management could negotiate a service fee for the property and collect the monthly fee from each tenant. The budget would reflect other income source from the tenants and a cable expense in O & M. With an explanation in the narrative or comments.

(R) Association dues to be paid by the project should be related to training for site managers or management agents. To the extent that association dues can document training for site managers or management agents related to project activities by actual cost or pro-ration, a reasonable expense may be billed to the project.

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-Training for on-site staff should be appropriate to managing affordable housing with subsidies from RD, HUD, or LIHTC. Suspected abuses should require documentation of the course or certifications received.
-Site training planned or completed should be explained in the Budget Narrative.
-Site staff who oversee multiple properties must pro-rate the expense between properties.

-Borrowers who attend trainings do so at their own expense and it is not an allowable project expense.
-Management company meetings to discuss management policies are a management fee expense (see §3560.102(i)(1)(xiv), (xv), (xxiv) and (xxv).
-Expenses during training should be reasonable and not involve costs for items previously identified by the OIG audit, especially gifts, bonuses (other than that identified in the management plan as part of the site manager's salary), or alcohol. Training expenses may include reasonable hotel charges, meals, and snacks; such expenses should not be excessive.

(S) Legal fees if found not guilty of civil lawsuits, commercially reasonable legal expenses and costs for defending or settling lawsuits.

(vii) With prior Agency approval, cooperatives and Non-Profit Organizations may use housing project funds to reimburse actual and typical asset management expenses directly attributable to ownership responsibilities. Such expenses may include:

(A) Errors and omissions insurance policy for the Board of Directors. The cost must be prorated if the policy covers multiple Agency housing properties.
(B) Board of Directors review and approval of proposed Agency's annual operating budgets, including proposed repair and replacement outlays and accruals. The cost must be prorated if the review covers multiple Agency housing properties.
(C) Board of Directors review and approval of capital expenditures, financial statements, and consideration of any management comments noted. The cost must be prorated if the review covers multiple Agency housing properties.
(D) The cost must be prorated if the policy covers multiple Agency housing properties.

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A Non-Profit Asset Management Fee may be requested by non-profits and cooperatives. Non-profit owners may request reimbursement for up to $7,500 per project for certain organizational expenses, such as Errors and Omissions insurance and actual expenses prorated by the number of Rural Development projects.

When reviewing the justification, and the organization expenses attributed to each property, the owner should make sure that the expenses are prorated across all of the properties, and each expense is not charged in full to each property. For example if the errors and omissions insurance policy for the Board of Directors is covering all the properties and costs $3,000, the $3,000 needs to be prorated for all of their non-profit properties and non-profit properties cannot charge $3,000 per property for the insurance policy.

(viii) Agency approved third party debt service for the project.

(2) Unallowable expenses. Housing project funds may not be used for any of the following:

(i) Equity skimming as defined in 42 U.S.C. 543 (a);
(ii) Purposes unrelated to the housing project;
(iii) Reimbursement of inaccurate or false claims;
(iv) Court ordered settlement agreements, court ordered decrees, legal fees, or other costs that result from the filing of civil rights complaints or legal action alleging the borrower, or a representative of the borrower, has committed a civil rights violation. It is inappropriate to charge for legal services to represent any interest other than the borrower's interest *(i.e.*, representing a general partner or limited partner to defend their individual owner interest is not allowable);

Borrowers must pay from non-project funds for fines, penalties and legal fees when the borrowers are found guilty of civil rights or other violations.

(v) Fines, penalties, and legal fees where the borrower or a borrower's representative has been found guilty of violating laws, including, but not limited to, civil rights, and building codes. Charging for payment of penalties including opposition legal fees resulting from an award finding improper actions on the part of the owner or management agent is generally an inappropriate project expense. The party responsible for the penalty generally pays such expense for violating the standards or by their insurance carriers.
(vi) Association dues unless related to training for site managers or management agents. To the extent that association dues can document training for site managers or management agents related to project activities by actual cost or pro-ration, a reasonable expense may be billed to the project.

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(vii) Pay for bonuses or monetary performance awards to site managers or management agents that are not clearly provided for by the site manager salary contract.
(viii) Billing for parties or gifts to management agent staff.
(ix) Billing for practices that are inefficient such as routine use of collect calls from a site manager to a management agent office.
(x) Billing the project for computer hardware, some software, and internal connections that are beyond the scope and size reasonably needed for the services supplied (*i.e.*, purchasing equipment or software for use by a site manager that is clearly beyond that needed to support project operations). Note that computer learning center activities benefiting tenants are not covered in this prohibition; or
(xi) Costs of tenant services.

-The cost of a tenant service coordinator is an allowable project expense. It is NOT an allowable cost for the project to pay for the actual supportive service. Supportive services might include computer classes, skill building classes, health and wellness classes, adult education, English as second language, foreign language classes, etc. These types of tenant services are not allowable project expenses.

§3560.303 (c) Priorities. The priority order of planned and actual budget expenditures will be:

1. Senior position lienholder, if any;
2. Operating and maintenance expenses, including taxes and insurance;
3. Agency debt payments;
4. Reserve account requirements;
5. All accounts payable;
6. Other authorized expenditures; and
7. Return on owner investment.

§3560.305(a) includes the conditions on the return payment.
§3560.305(b) discusses when an unpaid ROI may be taken:
"An earned, but unpaid ROI for the previous year only may be requested by the borrower and authorized by the Agency under the provisions of §3560.305(a)(2) provided the current year's ROI has been paid first and a rent increase is not required to generate funds to pay the unpaid ROI."
§3560.306(h)(2)(ii) includes the conditions on when the ROI can be paid from the reserve account, and when §3560.306(g)(4) have been met. "Payment of a return on investment at the end of the borrower's fiscal year if such payment comes from surplus operating funds in the reserve account."

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ATTACHMENT 4-D
PROPOSED BUDGET AND YEAR END ANALYSIS PROCESS

Including Return to Owner/Surplus Cash Worksheet

The summary of the budget analysis process is reviewed in the Multi-Family Information System (MFIS). The Agency must review this analysis for reasonableness for the budget and year end reports. If items are noted as a deficiency or concern, the MFH Servicing Official will determine whether the budget narrative or case file provides an adequate explanation, whether the borrower must submit a corrected budget, or if appropriate servicing actions should be considered prior to approval. The document is split into the following nine sections:

1. **Project Information**
   This area contains the Project Name, Borrower Name, State Code, Servicing Team Code, County Code, Borrower ID, Project Number, Classification, Budget Effective Date, Last Analysis Date, Project Unit counts, and Last Rent Change (year-end actual only). Vacancy data is displayed for each type of budget. Proposed budget shows the average vacancy over the last 36 months; the last 6 months; and the last month's average vacancy. Monthly, quarterly and year-end actual budgets show the vacancy covered by that period. The MFH Servicing Official needs to determine if the vacancy allowance is reasonable.

2. **Surplus Cash**
   This section displays the calculated amount of surplus cash per the information entered on the budget. If there is surplus cash it may need to address capital needs, make a deposit in the housing project's reserve account, reduce the debt on the borrower's loan, or reduce rents in the following year.

   The calculation used is displayed on the analysis document. (This is not displayed for Monthly/Quarterly reports)

   * **Tax & Insurance Escrow should be evaluated based on the following:**

     - **Total Annual Tax Expense / 12 months = Monthly Expense**
     - **Monthly Tax Expense x # Months remaining in fiscal year figured from last due date month = Tax Escrow Required**
     - **Insurance expense / 12 Months x # Months remaining in fiscal year figured from renewal date = Insurance Escrow Required**

   The calculation for a Proposed Budget is indicated on the following page:

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RETURN TO OWNER/SURPLUS CASH WORKSHEET

CASH AVAILABLE	***EXAMPLE***
Actual Ending Cash Balance (Form RD 3560-7 Actuals Part I Line #33) (Includes Balance Sheet #1, 2, 5 & 6)	$34,000
Subtract Tax & Insurance Escrow Amount *(Escrow Analysis based on Proposed Budget)	$ 8,500
Subtract 2% Remaining Initial Operating (Balance in MFIS 2% Tracked Account)	$-0-
Subtract Accounts Payable (Balance Sheet Line #22)	$ 4,000
Cash Available	**$21,500**

CASH REQUIRED	
Proposed O & M Expense (Form RD 3560-7 Proposed Part I Line #16)	$95,000
Subtract Annual Tax & Insurance Expense (Proposed Part 2, Line 34, 37, 38 and 39)	$10,000
Subtotal	$85,000
Multiply Subtotal by 20%	20%
Cash Required	**$17,000**

SURPLUS CASH	
Cash Available	$21,500
Subtract Cash Required	$17,000
Surplus Cash	**$ 4,500**

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3. **Rent Schedule Change (proposed budget only)**

This section indicates if the budget includes or does not include a rent change. If a new rent schedule is entered for the budget, the rent structure will be checked to see if the correct rents are entered dependent on the Subsidy Code of the Project and also that all revenue producing project units are covered. If these checks fail, the message "Invalid Rent Schedule Structure" will be displayed.

The amount of the rent increase will be shown as dollar value representing the average of all bedroom sizes for the project. It will be either the basic, note or HUD rent depending on the project subsidy code. Rent increases of greater than $25 will be red flagged. Increases in the other two rent types will be noted at the bottom of the section.

The MFH Servicing Official will review the request to determine if the proposed change is acceptable and will notify borrowers.

4. **Reserve Account Status**

This section lists information about the Reserve Account as it is within MFIS. Displayed information includes:

If a Work Out Plan is In Place, Fully Funded Amount, Annual Deposit Amount, Capital Needs Amount, Capital Needs Amount As of Date, Account Balance Amount, Account Balance Amount As of Date, Required Balance Amount, Required Balance Amount As of Date, GAP Account Amount, GAP Account Amount As of Date and Amount Behind Schedule or Amount Ahead of Schedule.

The MFH Servicing Official will review amounts to determine if these amounts are adequate.

5. **Reserve Account Authorizations**

The section lists the entered authorizations that still have funds available for use or were created within the last year. This will be compared to what was actually reported.

6. **Project Servicing Efforts**

The section lists all non-complete Servicing Efforts along with all completed efforts posted within the last fiscal year. A review will be made to determine if all appropriate servicing efforts are being utilized.

7. **Review Findings**

List all open non-physical findings or any created within the last fiscal year regardless of status. A review will be made to determine if these are correctly displayed and populated.

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8. **Physical Findings**

   This area lists all open physical findings, or any created within the last fiscal year regardless of status. A list of capital budget items with a budgeted value is also displayed to compare the project response to these findings.

9. B**udget Analysis Results**

   This area contains one or more general observations or situations that raise question on the viability of the budget. Observations are just the results of a test performed that may be of importance to the MFH Servicing Official. All 'Review' items must have their check box clicked to indicate they have been reviewed before the budget is considered analyzed and therefore can be approved.

   If the item is corrected it will not be displayed the next time the analysis is executed. If the item is reviewed, a comment must be entered as to why the situation is OK. The budget may not be approved if any review item remains present and not marked as reviewed in this section. Once an item is marked as reviewed (or comment entered), it will maintain those changes in future analysis runs.

   A detailed list of the tests that are executed on the indicated lines of the budgets is available in the MFIS Message Board under Frequently Asked Questions. The results of the tests will display in the analysis report.

The following tests are common across multiple line items:

1. **TYPO CHECK** – all input values of Proposed, Monthly/Quarterly or Year-End Actual budget line items – system will flag if:
   - If the input value is equal or greater than 100 times the last year's value (if last year's value is not zero).
   - If the input value is equal or greater than $1,000,000.

2. **MONTHLY/QUARTERLY CHECK** – some Monthly/Quarterly budget line items
   - All Part I input lines period and YTD are compared to the associated proposed for expected period value
   - All Part II subtotals period and YTD are compared to the associated proposed for expected period value

3. **GENERAL RULE** – for some Year-End Actual line items
   - If the proposed budget had a non-zero value, the actual should have a non-zero value.

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4. **10 PERCENT RULE** – for some Proposed and Year-End Actual line items
Proposed items - if proposed budget value differs from last year's value by more than 10 percent (even if last year's value was zero) MFIS will comment about a narrative explanation

- Actual items - if actual budget differs from proposed by 10 percent or more it is flagged for review.
- The system checks operating expenses and income sources to see if subtotals are more than 10 percent different from last years. If this is the case, determine if the budget narrative provides an adequate explanation for the unusual item.

5. **$12 RULE** – for direct comparison of numbers on some Proposed and Year-End Actual line items such as correct debt payment, correct reserve payment, owner's return on investment:

- If values differ by more than +- $12.00 then flag as a REVIEW item
- If values differ by less or equal to +- $12.00 then flag as an OBSERVATION item
- If any of these are unacceptable, the borrower will need to submit a new budget.

6. **COMMENT RULE** – for some Proposed and Year-End Actual line items

- OTHER type line items with a value require a comment
- LIST type line item with a value require a comment

7. **INHERITANCE RULE** – for some Proposed line items

- If last year's actual had a value and this years proposed does not have a value

8. **RATIO ANALYSIS** - are reflected in the Budget Analysis. Ratios are an effective tool for financial analysis. They prescribe various measures of actual operating performance. The ratios should be reviewed for a comparative analysis. The MFH Servicing Official should become familiar with these percentages as a comparative analysis and should consider utilizing the Hyperion MFH Budget Line Item Comparative Cost data report for their Region in their analysis. The ratios run in the MFIS Analysis Review are as follows:

- Maintenance and Operating Expense / Total Operating & Maintenance
- Utilities/Total Operating & Maintenance
- Administrative/Rental Income
- Total Operating & Maintenance/Rental Income
- Per Unit Per Month Operating & Maintenance Expense
- 3-year Resident Turnover Rate

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9. **NORMS** - are also reviewed on the Budget Analysis. The Norms are based on Regional Groupings of "like" properties. This gives the MFH Servicing Official an analysis of how the property is comparing to other "like" properties. The norm definitions are as follows:

- Utility Allowance: If Rent schedule has one yes, else no.
- Profit type: Code = 1 or 2 yes, else no
- Tax Status: Line 34 > 0 yes, else no
- Interest Credit: Plan code = 07, 08, 21, 24 yes, else no
- Age (years): <6, <11, <20, <30, all others
- Size (units): <5, <12, <24, <40, <80, all others
- Elderly: Rental code = EL, CG yes, else no

The States are grouped into regions as follows:

1. CT, MA, ME, NH, RI, VT
2. NJ, NY
3. DE, MD, PA, VA, WV
4. AL, FL, GA, KY, MS, NC, SC, TN
5. IL, IN, MI MN, OH, WI
6. AR, LA, NM, OK, TX
7. IA, KS, MO, NE
8. CO, MT, ND, SD, UT, WY
9. AZ, CA, HI, NV
10. AK, ID, OR, WA
11. PR, VI, WP, GUAM

10. Look at the cash flow and ending cash balance.
    a. Cash flow: Is the cash flow positive? A negative cash flow is permissible as long as it does not appear to represent a trend that cannot be corrected.
    b. Cash balance:
        i. If cash flow is negative, what is the ending cash? Does it cover the negative cash flow?
        ii. Does the ending cash balance exceed the permissible limit? If so, the surplus must address capital needs, be deposited in the housing project's reserve account, reduce the debt service on the borrower's loan, or reduce rents in the following year.
        iii. Using the accrual method of accounting, the accrual to cash adjustment must equal the difference of Beginning Cash Balance and Ending Cash Balance to ensure these balances match their respective Balance Sheet figures. The sole purpose of this adjustment is to reconcile a company's internal ledger kept on an accrual basis to the IRS forms which are required to be on a cash basis.

If the analysis of cash flow and cash balance reveals a problem, appropriate servicing actions should be considered prior to budget approval.

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Attachment 4-E
AUDIT PROGRAM

USED TO REPORT CONSTRUCTION COST ENGAGEMENTS.

(For additional guidance refer to HB-1-3560 Loan Origination Handbook.)

USDA

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF INSPECTOR GENERAL
Washington D.C. 20250

AUDIT PROGRAM	Rural Development Rural Housing Service Multi-Family Housing Division Rural Rental Housing Program

This audit program provides instruction and guidance for independent public accountants in conducting agreed-upon procedures engagements of recipients of Rural Development loans, except for those audits required to be performed in accordance with Office of Management and Budget Circular A-133. The audit program is effective for the period ending December 31, 2005, and thereafter.

This audit program may not be changed, altered, revised, or modified without the concurrence of the Office of Inspector General.

APPROVED BY: Robert W. Young
ROBERT W. YOUNG
Assistant Inspector General
for Audit

9/29/04
Date

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EXHIBIT A – ILLUSTRATIVE AUDITOR'S AGREED-UPON PROCEDURES REPORT (FORM RD 1924-13)

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I. GENERAL

A. PURPOSE

This guide is designed to assist independent public accountants (practitioners) in conducting agreed-upon procedures engagements of Rural Rental Housing (RRH) properties financed by Rural Development. The RRH Program has a history of abuse involving the construction and ongoing operation of properties. This guide includes procedures to assist the practitioner in determining borrower and management company compliance with certain statutory, regulatory, and contractual requirements of the RRH Program. Thus, practitioners need to be familiar with laws, regulations, and procedures related to the RRH Program.

B. *BACKGROUND*

Rural Development uses cost certifications to verify that borrowers spent loan funds for eligible and actual costs when constructing apartment complexes as part of the RRH Program.

RRH borrowers typically use identity-of-interest companies in both the construction of apartment complexes and in managing the day-to-day operations of RRH properties. RRH borrowers that have an identity-of-interest with the borrower (general contractor) are required by Rural Development to report the actual costs of construction on *Form RD 1924-13, Estimate and Certificate of Actual Cost.* In addition, *Form RD 1924-13* must be submitted whenever there is an identity-of-interest relationship between a borrower and a subcontractor, material supplier, or equipment lessor.

The USDA Office of Inspector General has performed audits and investigations that identified significant fraud and abuse in the RRH Program. Some of the fraud and abuse related to construction includes: Ineligible, unsupported, and duplicate costs; misrepresentation by borrowers of their roles as general contractors; shifting costs (e.g., overhead expenses) that exceeded budgeted amounts to different cost categories on *Form RD 1924-13*; and using identity-of-interest companies which are merely "shell" companies to either inflate legitimate charges or bill properties for costs that were never incurred.

Similar abuse using identity-of-interest companies has been identified in the ongoing management of RRH properties. Borrowers and management companies also charge ineligible, unsupported, and duplicate expenses (generally for management related costs) to properties. Also, management companies frequently do not maintain suitable records when of properties, and overcharge for these services. Rural Development regulations refer to any scheme that improperly withdraws funds from RRH project accounts as "equity skimming."

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USDA Office of Inspector General audits have also identified instances of conflicts of interest and a lack of independence on the part of certified and licensed public accountants when performing audits of RRH properties. Thus, practitioners should strictly adhere to the standards and principles of the American Institute of Certified Public Accountants' Code of Conduct and Bylaws and applicable State Boards of Accountancy.

C. ***PERTINENT REGULATIONS AND INSTRUCTIONS***

Construction Cost:

The instructions for *Form RD 1924-13* provide guidance on eligible construction costs, as well as the required format for the presentation of costs. Rural Development has also established regulations that restrict the amount of builder's profit for each project, the use of identity-of-interest companies, and the business relationships of practitioners performing engagements of RRH construction costs. The following regulations and Rural Development instructions should be used as guidance:

- Rural Development Instruction 1924-A, and
- Rural Development 7 CFR 3560.

Management of Ongoing Operations:

Rural Development regulation 7 CFR 3560 provides details on allowable and unallowable operating costs, and places restrictions on the use of identity-of-interest companies and other activities related to managing RRH properties.

D. ***STANDARDS FOR CONDUCTING THE AGREED-UPON PROCEDURES ENGAGEMENTS***

Practitioners are to perform attestation engagements using agreed-upon procedures of construction costs and ongoing operations in accordance with attestation standards established by the American Institute of Certified Public Accountant's (AICPA) and the standards applicable to attestation engagements contained in Government Auditing Standards issued by the Comptroller General of the United States." The practitioner's report on agreed-upon procedures should be in the form of procedures and findings. (See exhibit A for an illustrative example.)

If practitioners become suspicious of fraud or illegal acts during the course of performing the agreed-upon procedures engagement, they are to promptly report these matters (regardless of materiality) to:

U.S. Department of Agriculture
Rural Development - Rural Housing Service
Director, Multi-Family Housing Processing
Division 1400 Independence Avenue, SW
Washington, D.C. 20250
Telephone: (202) 720-3773

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The report and workpapers prepared in the course of these engagements are subject to a quality control review by the USDA Office of Inspector General.

E. *OBJECTIVES*

The objective of the construction cost engagement is to verify the propriety of costs reported on *Form RD 1924-13*. The practitioner should be alert for kickbacks on the purchase of services and materials, billings in excess of agreed-upon prices, billings for non-existent materials or services, "sweetheart contracts," and the diversion of materials to other construction sites.

Of primary concern is compliance with general contractor and management company requirements and the role of identity-of-interest companies in the construction and management of RRH properties.

II. CONSTRUCTION COST ENGAGEMENTS

A. AGREED-UPON PROCEDURES FOR THE CONSTRUCTION COST ATTESTATION ENGAGEMENT

The procedures in this section are designed to identify ineligible expenses and fictitious charges to Form RD 1924-13. Per 7 CFR 1924 subpart A and the instructions for preparing *Form RD 1924-13* provide guidance on eligible construction costs.

Borrowers and contractors involved in the construction of Rural Development financed RRH properties are required to maintain recordkeeping systems which establish accounts that categorize costs in conformity with sections 1924.13 (e) (1) (v) (A) and 1924.13 (e) (2) (i) (H) of RD Instruction 1924-A. *Form RD 1924-13* includes a certification that the cost of labor, materials, and other necessary services incurred during construction are accurate and fairly presented.

Borrowers are required to comply with laws, regulations, and Rural Development procedures related to the construction of RRH properties. USDA Office of Inspector General audits have identified borrowers that received builder's profit for being the general contractor when, in fact, general contractor responsibilities were being performed by other contractors. The audits also disclosed that some identity-of-interest companies were merely "shell" companies with no employees, inventory, or other business activities. Other identity-of-interest companies have charged rental fees for equipment use for the entire construction period when the equipment was actually used for short or intermittent periods during construction.

These actions have resulted in significant amounts of overcharges to RRH properties. Sections 1924.13 (e) (1) (v) (H) and 1924.13 (e) (2) (viii) of RD Instruction 1924-A prohibit borrowers from receiving builder's profit for

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acting as the general contractor if more than 50 percent of the property is subcontracted to one subcontractor or 75 percent to three or fewer subcontractors. Sections 1924.13 (e)(1)(v) (I) and 1924.13 (e)(2)(viii) (D) of RD Instruction 1924-A Contractors, subcontractors, material suppliers, and any other individual or organization sharing an identity of interest and providing materials or services for the project must certify that it is a viable, ongoing trade or business qualified and properly licensed to undertake the work for which it intends to contract.

Agreed-Upon Procedures

1. Compare the total amount paid through the construction checking account (by adding the total amount from monthly statements) to the total amount of costs reported on *Form RD 1924-13*. Report any differences.
2. Examine selected checks, invoices, job cost ledgers, receiving documentation, etc., that support costs presented on *Form RD 1924-13* to ensure they were actually incurred to construct the project. (Note: Verify that checks have been cancelled and ensure that indirect costs are not included with the cost of labor and materials on *Form RD 1924-13*.)
3. Inspect selected checks held as retainage from subcontractors for evidence that they were actually paid by the bank. Confirmation with subcontractors may be necessary if cancelled checks are not available or not cancelled by the bank. (Note: Office of Inspector General audits have disclosed instances where checks were made to subcontractors, but never cashed.)
4. Compare the address on selected delivery documents and invoices (using the sample from audit step II.A.2.) to the project's address to ascertain whether materials and services were provided to the project under review. (Note: Office of Inspector General audits have disclosed instances where delivery was not made to the RRH project site.)
5. Examine selected cancelled checks related to accounts included in the "to be paid" column of *Form RD 1924-13* to determine the propriety of the costs reported. (Note: Office of Inspector General audits have disclosed instances where these costs were invoiced by identity-of-interest companies but were never actually paid by the borrower.)
6. Confirm payments with selected subcontractors and material suppliers and investigate any discrepancies. (Note: be alert for any discounts, rebates, or refunds that were provided to the contractor but not included on *Form RD 1924-13*.)
7. Inspect selected bid documentation to verify that the lowest bid submitted was accepted. If the lowest bid was not accepted, evaluate the justification for the higher bid. If documentation does not exist, report this and the reason why as a finding. (Note: be alert for "sweetheart contracts" and contracts to disclosed or undisclosed identity-of-interest companies.)
8. Compare selected subcontractor billings (invoices) to contract amounts. If billings were in excess of contractual terms, ascertain the reason for the higher expenses.

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9. Obtain the number of subcontractors used during construction and calculate the percentages of subcontractors to ensure compliance with Rural Development requirements.[1]
10. Examine selected accounting records for undisclosed identity-of-interest companies. The practitioner should focus on transactions involving the use of one or two contractors/subcontractors, or if one contractor/subcontractor provided a significant percentage of materials or services.
11. Determine if identity-of-interest companies meet Rural Development requirements[2] of providing services to the general public.

    a. Question the general contractor/borrower about the business activities of any identity-of-interest company used and request evidence that the company provides services or materials to the general public.
    b. Review identity-of-interest records (e.g., sales records, invoices, receiving documents, etc.).
    c. Confirm by independent verification that identity-of-interest companies exist and provide services to the general public. (Note: This evidence could include listings in a telephone directory, advertisement to the public, etc. Also, be alert for "shell" companies that exist solely for processing invoices and adding markups to the original supplier's invoices. Markups made by identity-of- interest companies that do not provide services/supplies to entities other than the RRH property are not allowable.)
12. Compare equipment rental and supervision charges by identity-of-interest companies to independent rental companies to determine reasonableness[3] of charges. Report any significant variances.

    a. Question the borrower about the use of equipment during construction and how rental rates were established and time of use determined.
    b. Contact an independent rental company to determine commercial rental rates and compare them to the identity-of-interest charges.
    c. Examine borrower documentation (e.g., commercial rate lists, time sheets, construction schedules, etc.) to support the rates that were used and time that was charged for equipment rental fees. (Note: Office of Inspector General audits have disclosed that borrowers are charging rental fees when equipment is not in use.)
    d. Question the borrower about supervision charges.
    e. Verify that the borrower has documentation (e.g., timesheets or timecards, travel reports, payroll records, etc.) to support supervision charges.

[1]Sections 1924.13 (e) (1) (v) (h) and 1924.13 (2) (2) (viii).

[2]Sections 1924.13 (e) (1) (I) and 1924.13 (2) (viii).

[3]A charge would be considered reasonable if it is approximately the same amount of cost that a non-identity-of-interest company would charge.

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Illustrative Auditor's Agreed-Upon Procedures Report

1.4.1. (*Form RD 1924-13*)

To the Owners and Management Company of *(name of RRH project, city and State)* and the project's financial accounts:

We have performed the procedures enumerated below, which were agreed to by Rural Development and the owner of *(name of RRH project, city and State)* and the project's financial accounts, solely to assist those parties in evaluating the accompanying (*Form RD 1924-13, Estimate and Certificate of Actual Cost*) prepared in accordance with the criteria specified in Rural Development Regulations 1924 for the year ended December 31, *(applicable year)*. The owner is responsible for *(name of the RRH project)* financial accounts. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and the standards applicable to attestation engagements contained in Government Auditing Standards issued by the Comptroller General of the United States. The sufficiency of these procedures is solely the responsibility of Rural Development. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The agreed-upon procedures performed during this engagement were included in the audit program designed for the Rural Rental Housing Program dated September 29, 2004. The findings for each of the agreed-upon procedures are as follows.

(Agreed –Upon Procedure No.) (Finding) (Agreed –Upon Procedure No.) (Finding) (Agreed – Upon Procedure No.) (Finding) (etc)

We were not engaged to and did not conduct an audit, the objective of which would be the expression of an opinion on the financial statements of *(name of RRH project, city and State)*. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the owner and management company of *(name of RRH project, city and State)*, and Rural Development, and is not intended to be and should not be used by anyone other than these specified parties.

(Signature)

(DATE)

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ATTACHMENT 4-F

Performance Standards

Borrower Self-Certification Letter

Date

USDA Rural Development Office Address
Address

In accordance with the criteria specified in Section 5; Paragraph 4.16 C. of the USDA Rural Development Handbook (HB-2-3560) for the year ended ***DATE, YEAR***, the borrower must self-certify that ***PROJECT NAME*** is in compliance with the nine performance standards. The following is a summary of our compliance with the performance standards.

1. The required accounts are *(are not)* properly maintained and tracked separately. The accounts we maintain are marked below:

   __ Operating Account(s) __ Security Deposit Account
   __ Tax & Insurance Account __ Reserve Account
   __ Other Accounts: _____

2. The payments from operating account(s) are *(are not)* disclosed and accurately represented.

3. The reserve account(s):
   a. is on *(not on)* schedule with the Agency required minimum funding requirements;
   b. is either:
      i. ____ maintained in a supervised bank account that requires the Agency's countersignature on all withdrawals;
      ii. ____ maintained in a supervised bank account that has a Deposit Account Control Agreement fully executed after September 28, 2018;

   c. is on *(not on)* schedule with contributions to the reserve account for the current year with the Agency required minimum funding;
   d. has no *(has)* encumbrances on the reserve funds; and
   e. replacement reserve accounts were *(were not)* used only for authorized purposes in accordance with 7 CFR 3560.306(g).

4. The tenant security deposits accounts are *(are not)* fully funded and are (*are not)* maintained in separate accounts.

5. The payment of owner return was:

   __ paid in the amount of $_____ for 20XX fiscal year and was *(was not)* in accordance with the Agency's requirements; OR
   __ not paid during the reporting year; OR
   __ not allowable due to our non-profit status; OR

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__ not allowable due to our non-profit status. However, an asset management fee in the amount of $_____ was paid for 20XX fiscal year.

6. The borrower has *(has not)* maintained proper insurance in accordance with the requirements in 7 CFR 3560.105. Coverage maintained for ***PROJECT NAME*** is as follows:

__ Liability Insurance __ Flood Insurance
__ Property Insurance __ Earthquake Insurance
__ Fidelity Bond __ Other: _____

7. All financial records are *(are not)* adequate and suitable for examination.

8. There have been no changes in the ownership of ***PROJECT NAME***, other than those approved by the Agency and identified in the certification. All current owners are identified in the Status of Ownership table in this Certification. This includes all General Partners, Limited Partners, President, Vice President, Secretary, Treasurer, Member and other Partners as applicable.

   For non-profit borrowers: The Board of Directors is *(is not)* active and maintains oversight responsibilities for the project.

9. The real estate taxes (property taxes) are paid in accordance with state and/or local requirements. As of ***YEAR-END DATE,*** there are no delinquent real estate taxes (property taxes).

I certify that the above is true, accurate and is properly supported by documentation kept in our files.

[Signature of Borrower] _____

PRINTED SIGNATURE _____

DATE _____

BORROWER ENTITY NAME _____

NOTE TO BORROWER: *If the project is not in compliance with any of the above Performance Standards, you must state that you are not in compliance with the standard and provide the Agency with a statement about the non-compliance and the methods taken to correct the non-compliance.*

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STATUS REPORT OF OWNERSHIP

Fiscal Year: _____

Borrower's Name:_____

TITLE or POSITION (*i.e.*- Board President (all non-profit Board Member info is not needed)**, Managing Member, GP or LP)**	**NAME**	**ADDRESS PHONE NUMBER & EMAIL ADDRESS**	**TAXPAYER ID NUMBER or SOCIAL SECURITY NUMBER** (not needed for non-profit Board President)

_____The above information is current and there have been no changes in the ownership since the inception of the loan agreement/resolution(s), except as approved by the Agency. *(7 CFR 3560.405 (c) (2))*

_____There has been/will be a change in the ownership as reflected above. For any change in the ownership, information is attached as required by *7 CFR 3560.405 (c) (3)* and *HB-3-3560, Chapter 5 or 7* as applicable.

_____ _____
Date Owner

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ATTACHMENT 4-G

RD MFH PROGRAM AUDIT DETERMINATION WORKSHEET

Step 1: Gather all the information below to determine whether a Financial and Compliance audit is required by Rural Development.

RD Borrower Name: _____ **Borrower ID:**_____

RD projects associated with ID
(List all – may need additional pages) _____ _____

Federal Financial Assistance Received Current Year (See Section 4.16)

RD 515 Loan balances at beginning of FY	_____	_____
Interest Subsidy	_____	_____
RD Rental Assistance	_____	_____
HUD Section 8 Assistance	_____	_____
RD GRRH 538 Loan balance	_____	_____
Other: _____	_____	_____

Total Federal Financial Assistance received from the borrower: $_____

Step 2: Is the RD project owned by a State, Local Government, Indian tribe or not-for-profit entity?

No, go to step 3

Yes- Was $1million or greater, in the aggregate, in Federal Financial Assistance received?

Yes -follow the rules under Exhibit 4-7 of this HB 2 3560 Ch 4 and the single audit requirements under 2 CFR part 200.

No, go to Step 5.

Step 3: Did the borrower receive $500,000 or greater, in the aggregate, in Federal Financial Assistance?

Yes, an RD Financial and Compliance Audit is necessary. Go to Step 4.

No, go to Step 5.

Step 4: Are any of the individual programs identified in Step 1 equal to or greater than $500,000?

Yes, these program(s) are the property's major program(s). A major program report is required. Refer to Attachment 4-I.

No, there are no major programs. A major program report is not required in the audited financial statements.

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Step 5: Does another regulatory agency, legal entity, and/or other business agreement require an audit in accordance with Generally Accepted Auditing Standards or Government Auditing Standards?

Yes, submit a copy of that audit to RD. This audit must contain the required reporting information illustrated in this Chapter.

No, Go to Step 6.

Step 6: Submit a compilation of prescribed forms as outlined in Chapter 4.16.

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ATTACHMENT 4-H

Example Engagement Letter —For-Profit Entity

$500,000 or greater in Federal Financial Assistance

[CPA Firm's Letterhead]

Date, Year

Name Company
Name Address
City, State Zip

We are pleased to confirm our understanding of the nature and limitations of the services our firm will provide for each of the Entities detailed in Exhibit A.

We will perform an audit of the balance sheet as of ***DATE, YEAR***, and the related statements of operations, changes in partners' equity and cash flows for the year then ended. Also, the supplementary financial information required by the *United States Department of Agriculture RD Handbook HB-2-3560* listed below will be subjected to the auditing procedures applied in our audit of the financial statements:

- Calculation of Management Fee
- Return to Owner
- Insurance Detail
- Changes in Rental Property Ownership
- Accrual to cash schedule

AUDIT OBJECTIVES

The objective of our audit is the expression of an opinion about whether the financial statements are fairly presented, in all material respects, in conformity with accounting principles generally accepted in the United States of America and to report on the fairness of the supplementary information referred to in the second paragraph when considered in relation to the financial statements taken as a whole. The objective also includes reporting on each Entity's Internal controls and its compliance with certain provisions of laws, regulations, contracts, and grant agreements in conformity with auditing standards generally accepted in the United States of America and as required by *Government Auditing Standards* and the *United States Department of Agriculture RD Handbook HB-2-3560*. Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America, the standards for financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, and the *United States Department of Agriculture RD Handbook HB-2-3560.*

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AUDIT PROCEDURES - General

Our audit will include tests of the accounting records of each Entity and other procedures we consider necessary to enable us to express such an opinion and render the required reports. If our opinion is other than unqualified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed an opinion, we may decline to express an opinion or to issue a report as a result of this engagement.

The report on internal control and compliance will include a statement that the report is intended for the information and use of the partner, management, others within the organization and the United States Department of Agriculture Rural Development and is not intended to be and should not be used by anyone other than these specified parties.

The management of each Entity is responsible for establishing and maintaining effective internal control and for compliance with the provisions of applicable laws, regulations, contracts, and grant agreements. In fulfilling this responsibility, estimates and judgments by management are required to assess the expected benefits and related costs of the controls. The objectives of internal control are to provide management with reasonable, but not absolute, assurance that assets are safeguarded against loss from unauthorized use or disposition, that transactions are executed in accordance with management's authorizations and recorded properly to permit the preparation of financial statements in accordance with accounting principles generally accepted in the United States of America, and that Rural Development programs are managed in compliance with applicable laws and regulations and the provisions of contracts and grant agreements.

In planning and performing our audits, we will consider the internal control sufficient to plan each audit in order to determine the nature, timing, and extent of our auditing procedures for the purpose of expressing our opinions on the Entity's financial statements and on its compliance with specific requirements applicable to its Rural Development programs and to report on the internal control in accordance with the provisions of *Government Auditing Standards* and not to provide any assurance on the internal control.

We will obtain an understanding of the design of relevant controls and whether they have been placed in operation, and we will assess control risk. Tests of controls may be performed to test the effectiveness of certain controls we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other non-compliance matters that have a direct and material effect on the financial statements. (Tests of controls are required only if control risk is assessed below the maximum level.) Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

We will perform tests of controls over compliance, as required by *Government Auditing Standards* and the *United States Department of Agriculture RD Handbook HB-2-3560*, to evaluate the effectiveness of the design and operation of controls that we consider relevant to

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preventing or detecting material non-compliance with specific requirements applicable to each Entity's Rural Development programs. Our tests will be less in scope than would be necessary to render an opinion on these controls and accordingly, no opinion will be expressed.

AUDIT PROCEDURES – Internal Control

Our audit will include obtaining an understanding of internal control sufficient to plan each audit and to determine the nature, timing, and extent of audit procedures to be performed. An audit is not designed to provide assurance on internal control or to identify deficiencies in internal control. However, during the audit, we will communicate to you, internal control related matters that are required to be communicated under professional standards.

Identifying and ensuring that each Entity complies with laws, regulations, contracts, and grant agreements is the responsibility of management. As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of each Entity's compliance with applicable laws and regulations, and the provisions of contracts and agreements, including grant agreements. However, the objective of those procedures will not be to provide an opinion on overall compliance, and we will not express such an opinion.

Our audits will be conducted in accordance with the standards referred to in the third paragraph. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether material non-compliance with the requirements described in the *United States Department of Agriculture RD Handbook HB-2-3560* that are applicable to its Rural Development programs occurred. The purpose of each audit will be to express an opinion on each Entity's compliance with specific requirements applicable to major programs listed in the previous sentence.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the account, and may include direct confirmation of cash, investments, loan balances, and certain other assets and liabilities by correspondence with certain individuals, creditors and financial institutions. We may also request written representations from your attorneys as part of each engagement, and they may bill you for responding to that inquiry. At the conclusion of each engagement, we will require a written representation letter from the owner and or management of each specific Entity that, among other things, will confirm management's responsibility for the presentation of the financial statements.

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audits will involve judgment about the number of transactions to be examined and the areas to be tested. Also, we will plan and perform the audits to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from errors, fraudulent financial reporting, misappropriation of assets, or violations of laws or governmental regulations that are attributable to each Entity or to acts by management or employees on behalf of each Entity. Because the

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determination of abuse is subjective, *Government Auditing Standards* do not expect auditors to provide reasonable assurance of detecting abuse. As required by *Government Auditing Standards*, our audits will include tests of transactions related to federal awards programs for compliance with applicable laws and regulations and the provisions of contracts and agreements.

Because an audit is designed to provide reasonable, but not absolute, assurance and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements or non-compliance may exist and not be detected by us. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements or on major programs. However, we will inform you, of any material errors and any fraudulent financial reporting or misappropriation of assets that comes to our attention. We will also inform you of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. We will include such matters in the reports required for Rural Development audits. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

You are responsible for establishing and maintaining internal controls, including monitoring ongoing activities; for the selection and application of accounting principles; and for the fair presentation in the financial statements of financial position, changes in partners' capital, and cash flows in conformity with accounting principles generally accepted in the United States of America. You are also responsible for management decisions and functions; for designating a management-level individual with suitable skill, knowledge, or experience to oversee the tax services and any other non-attest services we provide; and for evaluating the adequacy and results of those services and accepting responsibility for them.

OTHER SERVICES

As part of our engagements:

We will not perform any management functions or make management decisions.

We will assist you and/or management in the calculation of depreciation expense and maintenance of fixed asset and depreciation records, however, you and/or management shall be responsible for determining the depreciation method, rate and life of each class of assets and determining salvage value, if any. You and/or management shall be solely responsible for the completeness and accuracy of the related fixed asset and depreciation schedules.

We will prepare a general ledger trial balance for use during each engagement. Our preparation of the trial balance will be limited to formatting information in the respective Entity's general ledger into a working trial balance.

We will also prepare federal, state and local income tax returns for the Entities listed in the attached Exhibit A for the year ended **DATE, YEAR**. You are responsible for the decisions and functions of your property, and for designating a competent employee to oversee these services.

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You are responsible for evaluating the adequacy and results of the services performed and accepting responsibility for the results. You are also responsible for establishing and maintaining internal controls, including monitoring ongoing activities. You should be aware that, under the Internal Revenue Service Restructuring and Reform Act of 1998, certain information discussed by you with members of our firm who are authorized tax practitioners or their agents for the purpose of obtaining our firm's advice on tax matters is privileged from disclosure in any non-criminal tax matters before the IRS. Information compiled for the purpose of preparing a tax return is not privileged under common law because it is intended for disclosure to the IRS or others. The privilege will be waived if the communication is voluntarily disclosed to a third party. Professional standards require us to discuss matters that may affect the engagement with our firm personnel responsible for non-attest services, which includes tax services. The IRS might not take the position that such communication results in a waiver of privilege.

MANAGEMENT RESPONSIBILITIES

Management is responsible for making all financial records and related information available to us, including any significant vendor relationships in which the vendor has the responsibility for program compliance. We understand that you will provide us with such information required for each audit and that you are responsible for the accuracy and completeness of that information. Management's responsibilities include adjusting the financial statements to correct material misstatements and for confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

Management is responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud or illegal acts or illegal acts affecting each Entity involving management, employees who have significant roles in internal control, and others where the fraud or illegal acts could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud or illegal acts affecting each Entity received in communications from employees, former employees, regulators, or others. In addition, management is responsible for identifying and ensuring that each Entity complies with applicable laws and regulations and for taking timely and appropriate steps to remedy any fraud, illegal acts, violations of contracts or grant agreements, or abuse that we may report.

As part of each audit, we will prepare a draft of your financial statements, supplementary financial information, and related notes. In accordance with *Government Auditing Standards*, you will be required to review and approve those financial statements prior to their issuance and have a responsibility to be in a position in fact and appearance to make an informed judgment on those financial statements. Further, you are required to designate a qualified management-level individual to be responsible and accountable for overseeing our services.

We will submit our report for each of the Entities in Exhibit A listing the procedures performed and our findings. Each report is intended solely for the use of the project's owners, the management agent and Rural Development, and should not be used by anyone other than these

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specified parties and take responsibility for the sufficiency of the procedures for their purposes. Our reports will contain a paragraph indicating that had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

At the conclusion of each engagement, we will require a representation letter from the owner and or management of each specific Entity that, among other things, will confirm management's responsibility for the presentation of Forms RD 3560-7 and 3560-10 in accordance with the criteria specified in 7 CFR part 3560 Section 303(b) and 7 CFR part 3560 Section 306, for the year ending DATE, YEAR and management's responsibility for compliance with the requirements of 7 CFR part 3560 Sections 308(a), 308(b) and 308(c).

During the course of each engagement, we shall request information and explanations from the owner and/or management regarding the respective Entity's operations, internal controls, compliance matters, future plans, specific transactions, and accounting system and procedures. We understand that your employees will prepare all cash, vendor, accounts payable and other confirmations we request and will work with our staff to locate any documents selected by us for testing. We will request written confirmation from financial institutions as part of each engagement, and they may bill you for responding to that inquiry.

At the conclusion of each engagement, we will require, as a precondition to the issuance of our report, that management reconfirm this information in a written representation letter. The procedures which we will perform in each engagement will be heavily influenced by the representations that we receive from you and/or management. Accordingly, false representations could cause us to expend unnecessary efforts or could cause a material error or a fraud to go undetected by our procedures. You acknowledge that as a condition of our agreement to perform each engagement, you and all members of your management, agree to the best of your knowledge and belief to be truthful, accurate, and complete in the representations you make to us during the course of each engagement and in the written representations provided to us at the completion of each engagement. In view of the foregoing, you agree that we shall not be responsible for any misstatements in the financial and compliance reports as a result of false or misleading representations that are made to us by you or your management. In addition, because our failure to detect material misstatements could cause others relying upon our report to incur damages, you and management further agree to indemnify and hold us harmless for any liability and all reasonable costs (including legal fees) that we may incur in connection with claims based upon our failure to detect material misstatements in the respective Entity's financial and compliance reports resulting from false or misleading representations made to us by you or any member of your management.

Management is also responsible to notify us in advance of your intent to print our reports in whole or in part, and to give us the opportunity to review any printed material containing our reports before its issuance.

The documentation for these engagements is the property of **CPA FIRM NAME** and constitutes confidential information. However, we may be requested to make certain documentation available

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to the United States Department of Agriculture acting through Rural Development, the Office of Inspector General (OIG) and the Government Accountability Office (GAO) or their representatives, pursuant to authority given to them by law or regulation. We will notify you of any such request. If requested, access to such documentation will be provided under the supervision of **CPA FIRM NAME** personnel. Furthermore, upon request, we may provide copies of selected documentation to Rural Development, OIG or GAO representatives. Rural Development, OIG and GAO may intend, or decide to distribute the copies or information contained therein to others, including other governmental agencies. We may also be requested to make certain documentation available to the investment partner(s)/member(s) or their representatives pursuant to authority given to them by the Partnership/Operating Agreement. Access to such documentation will be provided under the supervision of **CPA FIRM NAME**. Furthermore, upon request, we may provide photocopies of selected documentation to the investment partner(s)/member(s) or their representatives and they may intend or decide to distribute the photocopies or information contained therein to others, including governmental agencies.

Each engagement ends on delivery of our financial and compliance reports. Any follow-up services that might be required will be a separate, new engagement. The terms and conditions of that new engagement will be governed by a new, specific engagement letter for that service.

ENGAGEMENT ADMINISTRATION, FEES, AN OTHER

Our fees for these services are based upon the actual time spent at our standard hourly rates, travel, and other out-of-pocket costs such as report production, word processing, postage, etc. Our standard hourly rates vary according to the degree of responsibility involved and the experience level of the personnel assigned to each engagement. Our invoices for these fees will be rendered each month as work progresses and are payable on presentation. In accordance with our firm policies, work may be suspended if your account becomes XX days or more overdue and will not be resumed until your account is paid in full. If we elect to terminate our services for non-payment, each engagement will be deemed to have been completed even if we have not completed our report. You will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket expenditures through the date of termination. The suspension or termination of our work may result in adverse consequences to you including your failure to meet deadlines imposed by governments, lenders, or other third parties. You agree that we will not be responsible for your failure to meet such deadlines, or for penalties or interest that may be assessed against you resulting from such failure. Based on our preliminary estimate, the audit and tax procedure fees will be as detailed in Exhibit A. The fee estimate is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the engagements. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs.

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Government Auditing Standards require that we provide you with a copy of our most recent external peer review report and letter of comments, and any subsequent peer review reports and letters of comment received during the period of the contract. Our peer review report and letter of comments accompanies this letter.

We appreciate the privilege and opportunity to work with you and your staff during the completion of these important engagements. If the engagement letter terms are acceptable and in accordance with your understanding of each engagement, please sign the attached agreement and return the signed agreement page. Please retain the original letter and the client copy of the agreement page for your files. If you have any questions or comments regarding the terms of this engagement letter, please do not hesitate to contact us.

Very truly yours,

CPA FIRM NAME
Certified Public Accountants

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EXHIBIT A

Entity and Fee Schedule Year End DATE, YEAR

ENTITY NAME	FEE AMOUNT

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Exhibit B

[CPA FIRM NAME] SERVICE AGREEMENT

Agreement to report on Rural Development Financial and Compliance Reports and prepare Federal, State & Local tax reporting forms for the Entities listed in the Exhibit A managed by Company Name as outlined in the CPA FIRM NAME engagement letter dated Date, Year.

To accept the schedule of fees in Exhibit A and the terms as stated in the attached engagement letter:

- Sign below,
- Return this page to us,
- Retain the original engagement letter and the client copy of this letter for your files.

By: _____ Date: _____
(Signature)

_____
(Name, Printed)

_____
(Title)

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ATTACHMENT 4-I

ANNUAL RD COMPLIANCE AUDIT TO BE CONDUCTED IN CONNECTION WITH THE ANNUAL FINANCIAL STATEMENT AUDIT

Background – This section contains the U.S. Department of Agriculture, Rural Development's (RD) requirements for conducting the compliance portion of the annual financial audits of profit-motivated entities participating in RD's housing programs.

Compliance Procedures – See Attachment 4-J, Compliance Requirements and Audit Areas of this Chapter: Financial Management.

Major Program Determination/Defined – **Attachment 4-G** of Chapter 4: Financial Management has been developed to assist auditors on how to determine a major program in For-profit entities. Major program is defined as an individual assistance program for which expenditures equal or exceeded $500,000 during the applicable year.

Special Note on RD Rental Assistance, Major Program Determination and Reporting.
For RD projects that have determined that RD Rental Assistance is a major program, no additional testing or reporting (such as testing of a tenant file, review of the recertification forms, etc.) is necessary for the rental assistance program.

Non-Major Program Testing – Under this attachment, there are no requirements to test non-major programs.

Group Project-Based Testing - RD prohibits the use of Group Project Based Testing as allowed and defined by the HUD audit guide.

Instances of Non-Compliance – All material instances of non-compliance should be reported as finding in the Schedule of Findings and Questioned Costs. However, non- material non-compliance must be reported to management in writing and must be referenced in the auditor's report by name and the actual or planned date of issuance. A copy of this letter may be requested by RD at its discretion.

Test of Controls Over Compliance – The auditor is required to test controls over compliance.

Attribute Sampling – Applies to all testing performed for the compliance component of an audit performed under this section. When planning to test a particular sample of transactions, the auditor should consider the specific audit objective to be achieved and determine whether the audit procedure or combination of procedures to be applied will achieve that objective. The size of a sample is necessary to provide sufficient evidential

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matter depends on both the objectives and the efficiency of the sample. All material instances of non-compliance, including those identified through sampling, must be reported as findings in the audit report.

Determining Test Objective, Defining the Population, and Defining an Exception

Before testing begins, the auditor must understand and document what attributes and assertions are being tested. The auditor needs to identify and document the appropriate population and should also perform procedures (for example, reconciliations or inquiry) to ensure that the population from which the sample is selected is complete. Each compliance requirement selected for testing should be considered a separate population, and samples should be selected accordingly. The sample selected could possibly be used to test multiple attributes within each compliance requirement. Additionally, auditors must assess the control environment at entities with multiple locations. If controls at the different locations are significantly different, each location must be considered a separate population. The auditor must document the "sampling unit," which is the individual item subject to sampling in the population. When selecting the sample of individual items, auditors must ensure that the sample is representative of the universe for the compliance requirement being tested.
The auditor should also clearly define what would be considered an exception. A single exception would indicate non-compliance, subject to further determination of materiality necessary to determine the required method of reporting.

Determining the Sample Size

To determine attribute testing sample sizes, the auditor needs to determine the value for three inputs: desired confidence level, tolerable exception rate, and expected exception rate. The compliance sample size table below is based on the following assumptions:

- **Desired Confidence –** Auditors should obtain the appropriate level of assurance by using a confidence level of 90 or 95 percent.
- **Tolerable Exception Rate –** A 5-10 percent exception rate is acceptable.
- **Expected Exception Rate –** No exceptions should be expected.
- **Materiality –** Using attribute testing, monetary materiality, or tolerable misstatement is not a necessary input for determining sample size.

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Sample Size Table

Using the above considerations and standard attribute sampling methodology, a low to normal level of assurance can be obtained by applying a 90 percent confidence level when there is an expectation of an error rate between 0 and 5 percent. The minimum recommended sample size using these parameters at a 5 and 10 percent tolerable exception rate is 50 and 25, respectively. Similarly, using a 95 percent confidence level, an expected error rate between 0 and 5 percent, and a 5 or 10 percent tolerable exception rate, the sample size is 65 and 35, respectively. These sample sizes are shown in the table below.

1.4.2. Compliance sample size table

Importance or significance of the attribute being	Confidence level	Tolerable rate	Minimum sample size for populations
Low to normal	90%	5%	50
Low to normal	90%	10%	25
High	95%	5%	65
High	95%	10%	35

This table is illustrative and does not replace professional judgment. As noted in the table, these are minimum sample sizes, and there may be many situations in which the auditor should also consider qualitative factors when determining sample size. Factors indicative of higher risk include but are not limited to:

- Whether this is the initial audit of the entity performed by the auditor.
- The entity's size and level of decentralization. The existence of a large number of prior, significant deficiencies, material weaknesses, or other audit findings.
- Poor internal controls.
- Extremely high volume of activity relating to a particular compliance requirement.
- High employee turnover in a particular area or department.

If the initial sample does not include a particular attribute being tested, typically there would be a need to have additional items included in the sample to address only that specific attribute.

Each compliance test performed should be evaluated separately for purposes of determining sample size. Professional judgment should be used to determine what tests are considered low versus high risk. When making the risk determination, it is important to understand the nature of the population.

Populations of 250 Items or Fewer

When performing compliance testing of populations of 250 items or fewer, auditors generally should examine at least 10 percent of the items in the population. This is a minimum sample size, and qualitative factors may exist that would require a larger sample size.

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Testing and Evaluating Results

The sample sizes in the table above are based on an expectation of no exceptions. If the testing performed discovers no exceptions, the auditor has achieved a high degree of confidence that the attribute or assertion is being performed at an acceptable level.

If there are observed exceptions, the auditor should investigate the nature and cause of the exceptions to determine whether the exceptions are immaterial or represent material compliance findings or significant deficiencies or material weaknesses in internal control. It is not necessary to expand testing when exceptions are found.

In cases in which an exception is found, the auditor must determine whether the individual exception is material enough to report as a compliance violation. The auditor should also consider whether the lack of an effective internal control constitutes a significant deficiency or a material weakness and document the basis for an unqualified opinion if a finding is determined to be a significant deficiency or material weakness.

Audit Documentation

Documentation of sampling procedures must include the test objective, the definition of an exception, a description of the population tested and the sampling unit, the confidence level, the significance of the attribute, the sample size, and the results of testing.

Technical Assistance

Technical guidance on audit sampling is available in the AICPA's Audit Guide for Government Auditing Standards. Auditors may substitute an approach from the AICPA's audit guide for the approach described above, provided that the resulting sample size is equal to or greater than the above minimum sample sizes.

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ATTACHMENT 4-J

COMPLIANCE REQUIREMENTS AND AUDIT AREAS

The following sections within this Attachment contain suggested audit procedures that RD believes should be performed. If an auditor determines that the stated procedures to be inappropriate and/or other audit procedures should be performed, the deviation from the stated procedures must be justified and documented in the auditor's working papers. The term "Owners" is utilized throughout this Attachment to refer to Borrowers, Projects, Entities, etc.

A. *Mortgage Status.*

1. **Compliance Requirement.** Owners shall promptly make all payments due under the note and mortgage.

2. *Suggested Audit Procedures.*

   a. Obtain a copy of the mortgage note, mortgage (or deed of trust), and associated loan amortization schedule to determine the terms and conditions of those agreements.

   b. Obtain an understanding of the Owner's procedures for assuring prompt payment of the mortgage.

   c. If the project is operating under a mortgage modification agreement, workout agreement, forbearance agreement, use agreement, or other agreement, determine whether the Owner is complying with the terms and conditions of the agreement.

B. *Replacement Reserve.*

1. **Compliance Requirement.** Owners, as required, shall establish a reserve for replacement account and make deposits in accordance with RD requirements, usually the loan agreement or other similar business agreement. Disbursements from the reserve for replacement fund may be made only after written consent is received from RD.

2. *Suggested Audit Procedures.*

   a. Obtain an understanding of the Owner's deposit and maintenance requirements included in the loan agreement, business agreement and any amendments or other written agreements with RD and determine whether there were any changes to the funding requirement by obtaining and reviewing Multi-Family Information System (MFIS) Project Reserve Checkbook Authorization (FIN 2100).

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b. Obtain an understanding of the Owner's procedures for depositing, maintaining, requesting, and disbursing reserve for replacement funds.

c. Verify the yearend balance of the replacement reserve. In addition to the verification of the balance, verify with the financial institution that no encumbrances are being held on the reserve account.

d. Determine whether all disbursements from the reserve for replacement account were properly authorized by RD.

e. Determine whether the reserve fund has been established in a federally insured depository.

f. RD requires funds to be invested, determine whether funds were invested and interest was only withdrawn with RD approval.

g. Using the FIN 2100 Report, verification of the account balance and the approved withdrawals, determine whether all required deposits to the reserve for replacement were made in compliance with RD requirements and agreements and the project is on schedule with its funding requirements.

h. Review the related repairs covered by funds from the reserve for replacement account. Trace the reserve withdrawal amount to cancelled invoices and cancelled checks or check images to determine whether funds were used for the purpose authorized by RD.

C. ***Return on Investment (ROI) or Return to Owner (RTO)s.***

1. **Compliance Requirement.** Owners may not make, receive, and/or retain any distribution of assets or any income of any kind unless the project has positive net cash flow per Form RD 3560-7 "*Multiple Family Housing Project Budget,"* line 30. This process is further defined in this Chapter.

2. *Suggested Audit Procedures.*
   a. Obtain a copy of the project's loan agreement, business agreements and any amendments or associated documents to determine the owner's rights for receiving distributions.

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b. Obtain an understanding of the Owner/management agent's procedures for determining the cash available for making distributions.

c. Scan minutes of board or partnership meetings for discussions authorizing distributions.

d. Question the Owner or management agent about the existence of any notices of default or other items of non-compliance under any of the terms of the loan or business agreement.

e. Determine whether the Form RD 3560-7 was prepared in accordance with the loan or business agreement and other RD guidance.

f. Determine whether distributions taken during the audit period exceeded the amounts calculated and/or authorized for that period based on the loan or business agreements, including any amendments.

g. Scan cash disbursements for evidence of any payments made to the Owner or related parties. Scan journal entries for unexplained decreases in accounts payable, notes payable, and the related unpaid interest to the Owner or related parties. Determine whether the owner paid partnership management fees, asset management fees, incentive management fees, and write-offs of related party receivables from funds other than allowable distribution amounts.

h. Scan the bank statements for any deposit, from the Owner and/or related parties, which would evidence that incorrect distributions or payments were made and that those funds were redeposited into the project's accounts during the year under audit.

i. Review inspection reports, documented evidence, and Owner responses to verify compliance with all outstanding Notices for proper maintenance of the project. Delays in making repairs could erroneously result in excess operating cash being reported to be on hand at the end of the reporting period, making funds available for distribution to the Owners.

j. With Agency approval, Owners operating on a for-profit or a limited profit basis may make an annual withdrawal from the reserve account, equal to no more than 25 percent of the interest earned on a reserve account during the prior year. The borrower uses Form RD 3560-12, requesting the withdrawal and must provide documentation of the prior year interest earned.

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D. Equity Skimming.

1. **Compliance Requirement.** Equity skimming is the willful misuse of any part of the rent, assets, proceeds, income, or other funds derived from the project covered by the mortgage for any purpose other than to meet actual or necessary expenses of the project. Equity skimming deprives the project of needed funds for repairs, maintenance, and improvements, which contributes to the financial and physical deterioration of the project and the standard of living conditions for the families who depend on the federal government to provide housing. Also, a community where the project is located suffers since the project may become the breeding ground for crime, violence, and drugs.

2. **Suggested Audit Procedures.** The various compliance areas in this Attachment have included audit steps that are designed to disclose equity skimming.

E. Cash Receipts.

1. **Compliance Requirement.** All cash receipts, including those collected by a management agent, must be deposited into an account in the name of the project at an institution in which deposits are federally insured.

2. **Suggested Audit Procedures.**

   a. Obtain an understanding of the Owner/management agent's procedures for handling cash receipts.

   b. Determine whether the account is exclusively in the name of the project.

   c. Verify that cash receipts are maintained in an FDIC account.

   d. Obtain the monthly project worksheets and determine the net tenant rent and rental assistance are reasonable compared to amounts recorded in the general ledger.

   e. Owners may be motivated to both understate and overstate revenue. The following audit steps are designed to disclose such occurrences:

      (1) Consider the fraud risk factors and the potential for material misstatement of the financial statements related to revenue recognition including vacancy loss and bad debt expense. Perform testing to address any material fraud risk factors identified. The auditor should tailor audit steps/procedures based on the individual risk factors identified and the results of other audit evidence gathered.

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(2) Determine whether vacancy loss is greater than 15 percent of total rental revenue or if the change in vacancy loss between the current year and prior year is greater than 5 percent. If so, the following steps should be performed:

i. Determine whether rent potential and vacancy loss were properly calculated.
ii. For all revenue accounts, scan the detailed general ledger. Review the supporting documentation for all material manual entries and unusual entries.
iii. Determine the reason for the increase or cause of the high vacancy rate via discussion with management. The auditor may also want to select a sample of vacant units and perform tests to substantiate the high vacancy rate. Possible tests on the sample include but are not limited to the following:

(i) Reviewing the move-out notice from the tenant.
(ii) Reviewing the documentation from the move-out inspection.
(iii) Determining whether the security deposit was refunded to the tenant.
(iv) Reviewing the itemized list of damages and charges provided to the tenant, which was used to reduce the amount of security deposit due back to the tenant.
(v) Inspecting the vacant unit if the unit is still unoccupied.
(vi) Questioning site personnel, including the resident manager and the building manager, to determine the period when the unit was vacant.
(vii) Reviewing work orders to determine the period when the unit was vacant.

(3) Determine whether bad debt expense is greater than 10 percent of total rental revenue or whether the change in bad debt expense is greater than 5 percent between the current year and the prior year. If so, the following steps should be performed:

i. Obtain an understanding of the owner/management agent's procedures for collecting delinquent debt and policy for writing off debt.
ii. Determine whether delinquent accounts are sufficiently pursued according to procedures.
iii. Select a sample of accounts written off to bad debts expense and review supporting documentation to determine whether debt was written off in accordance with policy and generally accepted accounting principles.
iv. Determine the reason for any activity on the tenant record after the debt was written off.

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F. ***Cash Disbursements.***

1. **Compliance Requirement.** All disbursements from the regular operating account must be supported by approved invoices, bills, or other supporting documentation. Project funds should only be used to pay for mortgage payments, required deposits to the reserve for replacement fund, reasonable expenses necessary for the operation and maintenance of the project, distributions, as permitted, and repayment of owner advances or as authorized by RD.

2. *Suggested Audit Procedures.*

a. Obtain an understanding of the Owner/management agent's procedures for withdrawing funds from the regular operating account and determine whether they are properly supported and used in accordance with the loan agreement.

b. Select a sample of disbursements from the cash disbursement ledger or similar record related to Form R D 3560-7, Part II, line items 1-10 and 19-32 and perform the following steps:
   (1) Determine whether the disbursements are supported by approved invoices, bills, or other supporting documentation; the supporting documents are in the name of the project; and the costs are reasonable and necessary for the operation of the project. If the supporting documentation is not in the name of the project, determine whether only the portion applicable to the project was paid from project funds.
   (2) Determine whether the disbursements were made on behalf of other projects or entities since project funds cannot be loaned or used for non-project purposes. Report instances even if amounts have been repaid prior to the issuance of the audit report unless clearly inconsequential and was discovered in the normal course of internal control processes.
   (3) Determine whether the disbursements were properly charged to the correct account.
   (4) Determine whether the disbursement sampled items were allowable eligible project expenses (Attachment 4-C).

G. ***Tenant Security Deposits.***

1. **Compliance Requirement.** Funds collected as a security deposit shall be kept in the name of the project, separate and apart from all other funds of the project in a trust account. The amount of this account shall always equal or exceed the aggregate of all outstanding obligations under that account. In addition, state and local governments may have specific regulations governing the handling of tenant security deposits.

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2. ***Suggested Audit Procedures.***

a. Obtain an understanding of the Owner's procedures, including state and local laws, and regulatory agreement and RD requirements for establishment and maintenance of the security deposit account and making approved disbursements from that account.

b. Determine whether the account has been established in a federally insured depository in the name of the project, which is segregated from project operating funds, and the owner's records support the amount on deposit.

c. Determine whether interest is earned on the security deposit account and the disposition of that interest. If state and local law requires the owner to pay the tenant for interest earned, determine that the tenant interest is credited to tenants and paid upon termination of tenancy.

H. *Management Functions.*

1. **Compliance Requirement.** The Owner is responsible for complying with all requirements of the regulatory and loan agreements. *The Owner may perform all management functions or contract with a management agent to provide project management, but the responsibility cannot be delegated to the management agent. The owner or management agent must be approved by RD and must certify that it will follow RD's rules and regulations.

2. **Suggested Audit Procedures.**

a. Obtain a copy of the most recent RD-approved management agent's certification Form RD 3560-13. Perform the following steps:

(1). Determine whether RD has approved the Owner or current management agent.

(2). Obtain the identity-of-interest (IOI) disclosure certificate Form RD 3560- 31 from the owner or RD and that the IOI's have been reported in the notes to the financial statements.

(3). Using the Form RD 3560-31, examine a sample of invoices from IOI companies and determine that the actual services and fees charged to the project were approved and properly supported.

(4). Determine whether the management agent fees paid exceeded the amount listed on the management agent certification. This amount should also agree with the amount in the management agreement.

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b. Determine whether the Owner or the management agent has obtained a fidelity bond in accordance with 7 CFR 3560.105.

c. Determine whether hazard insurance has been obtained in the amount required by the project's mortgage.

d. Determine whether the Owner or management agent has responded to all RD management review reports, physical inspection reports, and inquiries regarding annual financial statements or monthly accounting reports within 30 days.

I. Unauthorized Change of Ownership/Acquisition of Liabilities.

1. Compliance Requirements. Owners shall not, without the prior written consent of RD, convey, assign, transfer, dispose of, or encumber any of the mortgaged property or permit the conveyance, transfer, or encumbrance of such property.

2. Suggested Audit Procedures.

a. Question management about the existence of any agreements to sell, assign, dispose of, or encumber any of the mortgaged property or assets of or beneficial interest* in the property. Review any agreements. Determine whether RD has approved transactions or is in the process of approving transactions and report any instances of non-compliance.

b. Confirm all material liabilities listed on the client's balance sheet. Review for indications of change of ownership or additional encumbrances that may have been made without RD approval.

c. Report any other instances of unauthorized conveyance, assignment, transfer, disposal, or encumbrance of any of the mortgaged property or assets of or beneficial interest* in the property identified during the course of the audit.

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J. Unauthorized Loans of Project Funds.

1. Compliance Requirements. Owners shall not, without the prior written consent of RD, assign, transfer, dispose of, or encumber any personal property of the project, including rents, or pay out any funds except for reasonable operating expenses and necessary repairs.

2. Suggested Audit Procedures.

a. Question management about the existence of any agreements to assign, transfer, dispose of, or encumber any of the personal property of the project, including rents, and read any agreements.

b. Review the results of the audit procedures applied to specific accounts or other general procedures to identify the existence of any unauthorized transactions.

c. Test accounts receivable to determine whether receivables are the result of routine operations and whether project funds have been loaned to the management agent, other projects, employees, or the owner.

*Beneficial interest is generally the right to profits from an estate or property without owning the estate or property.

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ATTACHMENT 4-K

EXAMPLE INDEPENDENT ACCOUNTANTS' COMPILATION REPORT ON RD PRESCRIBED FORMS

Note – Subject to change based on the most recent professional literature and guidance. It is the accountant's responsibility to use the most up to date language.

INDEPENDENT ACCOUNTANT'S COMPILATION REPORT

ABC LIMITED PARTNERSHIP DBA ABC
APARTMENTS
RD PROJECT NO: 00-000-000000000
COMPILATION OF PRESCRIBED FORMS (WITH
SUPPLEMENTAL INFORMATION)
AND INDEPENDENT ACCOUNTANT'S COMPILATION REPORT DECEMBER 31, 20xx

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To the Partners of ABC Limited Partnership
City, State

Management is responsible for the accompanying financial statements of ABC Limited Partnership (a limited partnership), which comprise the balance sheet as of December 31, 20XX, and the related statements of income for the year then ended, included in the accompanying prescribed forms in accordance with accounting principles generally accepted in the United States of America. I (We) have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. I (We) did not audit or review the financial statements included in the accompanying prescribed forms nor was I (were we) required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, I (we) do not express an opinion, a conclusion, nor provide any form of assurance on the financial statements included in the accompanying prescribed form.

The financial statements included in the accompanying prescribed forms are presented in accordance with the requirements of the U.S. Department of Agriculture, Rural Development, and are not intended to be a presentation in accordance with accounting principles generally accepted in the United States of America.

The supplementary information is presented for purposes of additional analysis and is not a required part of the basic financial statements. Such information is the responsibility of management. The supplementary information was subject to my (our) compilation engagement. I (We) have not audited or reviewed the supplementary information and do not express an opinion, a conclusion, nor provide any assurance on such information.

This report is intended solely for the information and use of the management of ABC Limited Partnership and the U.S. Department of Agriculture, Rural Development and is not intended to be and should not be used by anyone other than these specified parties.
Firm Name
City, State

Report Date

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Form RD 3560-10
Multi-Family Housing Borrower Balance Sheet

See Independent Accountant's Compilation Report

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Form RD 3560-7
Multi-Family Housing Project Budget

See Independent Accountant's Compilation Report

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ABC Limited Partnership
Supporting Documentation to RD Forms 3560-10 and 3560-7
Year Ended Dec 20XX

Accounts receivable (Form 3560-10, line 7)	
Accounts receivable-tenants	$ -
Accounts receivable-subsidy	-
Accounts receivable-other	-
	$ -
Notes payable – current detail (Form 3560-10, line 23)	
Prepaid rents	$ -
Accrued compilation fees	-
Accrued real estate taxes	-
Construction loan	-
Bridge loan	-
ABC loan	-
	$ -
Other details (Form 3560-10, line 27)	
Due to partners	$ -
Development fee payable	-
	$ -
Accrual to cash adjustments	
Accounts receivable	-
Accounts payable	-
Prepaid rent	-
Property management fee	-
Tenant security deposit	-
	$ -

See Independent Accountant's Compilation Report.

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ATTACHMENT 4-L

OWNER CERTIFIED
PRESCRIBED FORMS
On the accrual method of accounting Include RD
Forms 3560-10 and 3560-7 and
SUPPORTING DOCUMENTATION SCHEDULES

1. Accounts Receivable (Form RD 3560-10, Line 7)	**Yr XXXX**	**Yr XXXX**
Accounts Receivable - Rental Subsidy	$ -	$ -
Accounts Receivable - Tenants	-	-
Accounts Receivable - Other	-	-
2. Notes Payable (Form RD 3560-10, Line 23)		
Accrued Mortgage Interest	$ -	$ -
Accrued Real Estate Taxes	-	-
Prepaid Rents	-	-
3. Other (Form RD 3560-10, Line 27)		
Due to Partners	$ -	$ -
4. Miscellaneous (Form RD 3560-7, Line 27)		
Bad Debts	$ -	$ -
Other	–	-
5. Accrual to Cash Adjustment (Form RD 3560-7, Line 32)		
Assets		
Accounts Receivable	$ -	$ -
Accounts Receivable - Other	-	-
Prepaid Expenses	-	-
Security Deposits	-	-
Liabilities		
Accounts Payable - Trade	-	-
Accrued Real Estate Taxes	-	-
Security Deposits & Prepaid Rents	-	-
Other Adjustments	-	-
20XX Mortgage Payment made in 20XX	-	-
Total Accrual to Cash Adjustment (Form RD 3560-7, Line 32)	$	

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ATTACHMENT 4-M

EXAMPLE REPORTS

1. **Independent Auditor's Report**

2. **Independent Auditor's Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards**

3. **Independent Auditor's Report on Compliance For Each Major RD Program and Internal Control Over Compliance required by the Audit Guide for Audits of RD Programs**

Note – Subject to change based on most recent professional literature and guidance. It is the auditor's responsibility to use the most up to date language.

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Audited Financial Statements

With Required Rural Development
Supplemental Information

ABC Apartments, LP

RHS Project Number: 00-000-000000000-00-0

1.5. December 31, 20x2 and 20x3

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ABC Apartments, LP
RHS Project No. 00-000-000000000-00-0

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Independent Auditor's Report

To the Partners of
ABC Apartments, LP
City, State

USDA Rural Development

Report on the Financial Statements

We have audited the accompanying financial statements of ABC Apartments, LP RHS Project No. 00-000-000000000-00-0 (Partnership), which comprise the balance sheets as of December 31, 20X2 and 20X1, and the related statements of income (loss), changes in partners' capital (deficit), and cash flows for the years then ended, and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to Partnership's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of Partnership's internal control.
Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

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Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Partnership as of December 31, 20X2 and 20X1, and the results of its operations, changes in partners' capital (deficit), and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Report on Supplementary Information

Our audits were conducted for the purpose of forming an opinion on the financial statements as a whole. The accompanying supplementary information is presented for purposes of additional analysis as required by the *United States Department of Agriculture Rural Development.*

Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audits of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the financial statements as a whole.

Reports Issued in Accordance with *Government Auditing Standards*

In accordance with *Government Auditing Standards*, we have also issued a report dated March XX, 20X3 on our consideration of Partnership's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, grant agreements, and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. Those reports are an integral part of an audit performed in accordance with *Government Auditing Standards* in considering Partnership's internal control over financial reporting and compliance.

ABC Firm, LLC
Indianapolis, Indiana March
XX, 20X3

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ABC Apartments, LP
RHS Project No. 00-000-000000000-00-0

Balance Sheets

December 31, 20X2 and 20X1

Assets

	20X2	**20X1**
Current Assets:		
Cash	$ -	$ -
Accounts Receivable – tenant	$ -	$ -
Accounts Receivable – subsidy	$ -	$ -
Prepaid expenses	$ -	$ -
Total Current Assets	**$ -**	**$ -**
Restricted Deposit and Funded Reserves:		
Tenant security deposits	$ -	$ -
Reserve for taxes and insurance	$ -	$ -
Reserve for replacements	$ -	$ -
Operating reserve	$ -	$ -
Total Restricted Deposits and Funded Reserves	**$ -**	**$ -**
Rental Property – At Cost:		
Land and Improvements	$ -	$ -
Buildings and improvements	$ -	$ -
Furnishings and equipment	$ -	$ -
	$ -	$ -
Less: Accumulated depreciation	($ -)	($ -)
Net Rental Property	$ -	$ -
Other Assets:		
Capitalizes costs – net	$ -	$ -
Total Other Assets	**$ -**	**$ -**
Total Assets	**$ -**	**$ -**

The accompanying notes are an integral part of the financial statements.

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ABC Apartments, LP
RHS Project No. 00-000-000000000-00-0

Balance Sheets (continued)

December 31, 20X2 and 20X1

Liabilities and Partners' Capital (Deficit)

	20X2	20X1
Current Liabilities		
Accounts payable – operations	$ -	$ -
Accrued mortgage interest	$ -	$ -
Accrued real estate taxes	$ -	$ -
Mortgage payable – current portion	$ -	$ -
Deferred revenue	$ -	$ -
Total current liabilities	**$ -**	**$ -**
Tenant Deposits Held in Trust		
Tenant deposits held in trust	**$ -**	**$ -**
Long Term Liabilities		
Mortgage payable, net of current portion	$ -	$ -
Due to related parties	$ -	$ -
Total long-term liabilities	**$ -**	**$ -**
Total Liabilities	**$ -**	**$ -**
Total Partners' Capital (Deficit)	**$ -**	**$ -**
Total Liabilities and Partners' Capital (Deficit)	**$ -**	**$ -**

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ABC Apartments, LP
RHS Project No. 00-000-000000000-00-0

Statements of Income (Loss)
For the Years Ended December 31, 20X2 and 20X1

	20X2	20X1
Rental Income		
Tenant payments	$ -	$ -
Tenant assistance payments	-	-
Total potential rental income	-	-
Vacancies	-	-
Total rental income	-	-
Other Income		
Interest income	-	-
Laundry and vending	-	-
Tenant charges	-	-
Other income	-	-
Total other income	-	-
Total income	-	-
Expenses		
Maintenance and operating	-	-
Utility	-	-
Administrative	-	-
Tax and insurance	-	-
Total expenses	-	-
Income from Operations	-	-
Non-Operating Income (Expense)		
Interest subsidy income	-	-
Interest expense	-	-
Depreciation expense	-	-
Total non-operating income (expense)	-	-
Net Income	$ -	$ -

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ABC Apartments, LP
RHS Project No. 00-000-000000000-00-0

Statements of Changes in Partners' Capital (Deficit)
For the Years Ended December 31, 20X2 and 20X1

	20X2	20X1
Partners' Capital (Deficit), Beginning of Year	$ -	$ -
Net Income	-	-
Distributions	-	-
Partners' Capital (Deficit), End of Year	$ -	$ -

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ABC Apartments, LP
RHS Project No. 00-000-000000000-00-0

Statements of Cash Flows
For the Years Ended December 31, 20X2 and 20X1

	20X2	20X1
Reconciliation of Net Income to Net Cash Provided by Operating Activities		
Net Income	$ -	$ -
Adjustments to Reconcile Net Income to Net Cash Provided by Operating Activities		
Depreciation expense	-	-
Decrease (increase) in assets		
Prepaid expenses	-	-
Tenant deposits held in trust	-	-
Increase (decrease) in liabilities		
Accounts payable - operations	-	-
Accrued mortgage interest	-	-
Accrued real estate taxes	-	-
Tenant deposits held in trust	-	-
Net Cash Provided By Operating Activities	-	-
Cash Flow From Investing Activities		
Net withdrawals from the reserve for taxes and insurance	-	-
Purchase of fixed assets	-	-
Net Cash Used In Investing Activities	-	-
Cash Flow from Financing Activities		
Principal payments	-	-
Payments on deferred revenue	-	-
Proceeds on deferred revenue	-	-
Distributions	-	-
Net Cash Used In Financing Activities	-	-
Increase (Decrease) in Cash and Cash Equivalents	-	-
Cash and Cash Equivalents, Beginning of Year	-	-
Cash and Cash Equivalents, End of Year	$ -	$ -
Supplemental Disclosure		
Cash paid for interest	$ -	$ -

The accompanying notes are an integral part of the financial statements.

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ABC Apartments, LP
RHS Project No. 00-000-000000000-00-0

Notes to the Financial Statements
For the Years Ended December 31, 20X2 and 20X1

Note 1 – Nature of Activities

ABC Apartments, LP RHS Project No. 00-000-000000000-00-0 (Partnership) was formed on June 1, 1908, under the laws of the State of New York, for the purpose of operating a XX-unit apartment community located in New York, New York. The community is financed by a United States Department of Agriculture Rural Development (RD) Section 515 Loan, and therefore is regulated by RD as to rent charges and operating methods. Under this program, Partnership provides housing to low-income and moderate-income families, subject to regulation by RD as to rental charges and operating methods. Lower rental charges to tenants are recovered by Partnership through rental and interest subsidies provided by RD.

Note 2 – Significant Accounting Policies

A summary of Partnership's significant accounting policies consistently applied in the preparation of the accompanying financial statements is as follows:

Basis of Accounting

Partnership's financial statements were prepared on the accrual basis of accounting.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of continent assets and liabilities at the date of the financial statements and the reported amounts of revenues, expenses, and other changes in partners' capital (deficit) during the reporting period. Actual results could differ from those estimates.

Cash and Cash Equivalents

For the statements of cash flows, all unrestricted investment instruments with original maturities of three months or less are cash and cash equivalents. As of December 31, 20X2 and 20X1, cash and cash equivalents consist of an operating checking account.

Subsequent Events

Partnership evaluated subsequent events through March XX, 20X3, which is the date the financial statements were available to be issued. This evaluation determined that there are no subsequent events that necessitated further disclosure in and/or adjustments to the accompanying financial statements.

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ABC Apartments, LP
RHS Project No. 00-000-000000000-00-0

Note 2 – Significant Accounting Policies (continued)

Tenant Receivable and Bad Debt
Tenant rent charges for the current month are due on the first of the month. Tenants who are evicted or move out are charged with damages or cleaning fees, if applicable. Tenant receivable consists of amounts due for rental income, security deposits, or the charges for damages and cleaning fees. Partnership does not accrue interest on the tenant receivable balances.

Partnership has not established an allowance for doubtful accounts and does not use the reserve method for recognizing bad debts. Bad debts are treated as direct write-offs in the period management determines that collection is not probable.

Tenant Security Deposits
Partnership maintains accounts for security deposits received from tenants. The cash is restricted for reimbursement of the security deposits unless there is evidence of default by a tenant under the lease agreement.

Tax and Insurance Reserve
Tax and insurance reserve is restricted cash for payments of real estate taxes and insurance. Partnership is required to establish and maintain a reserve account. This account is used to receive monthly deposits sufficient to pay annual real estate taxes and insurance premiums that are paid from the account.

Replacement Reserves
In accordance with the loan agreement with RD, a reserve for replacement is to be funded $AMT annually until it reaches $AMT.

Property and Equipment
Property and equipment are recorded at cost. Depreciation is computed using the straight-line method of depreciation. When assets are retired or otherwise disposed of, the cost and related accumulated depreciation are removed from the accounts, and any resulting gain or loss is recognized as income or loss for the period. The cost of maintenance and repairs is charged to expense as incurred and significant renewal and betterments are capitalized. Deductions are made for retirements resulting from renewals or betterments.

Accrued Real Estate Taxes
Partnership is subject to real estate and personal property taxes and pays one year in arrears. Partnership was assessed in 20X1 and made bi-annual payments in May 20X2 and November 20X2. Failure to make these payments could have resulted in additional penalties, interest, and liens. At December 31, 20X2 and 20X1, accrued real estate taxes represent an estimated amount to be paid in the subsequent year.

Recognition of Rent Revenue
Partnership recognized net rent revenue in the period in which the rent is earned. In accordance with the RD financial reporting requirements, potential rental income represents total possible rent revenue as if all units are 100 percent occupied during the year. Total rental income represents potential rental income less vacancies. Rents collected in advance are deferred until the rental income is earned.

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ABC Apartments, LP
RHS Project No. 00-000-000000000-00-0

Note 2 – Significant Accounting Policies (continued)

Rental Assistance Payments

Partnership entered into a rental assistance contract for low-income families as provided by RD.

Advertising

Partnership expenses advertising costs as they incur. For the years ended December 31, 20X2 and 20X1, advertising and marketing expenses were $AMT and $AMT, respectively.

Income Taxes

No provision for federal or state income taxes was made in the financial statements as the federal and state income tax effect on Partnership's activities accrued to its partners.

Generally accepted accounting principles in the United States require Partnership to examine its tax positions for uncertain positions. Partnership is not aware of any tax positions that are more likely than not to change in the next twelve months, or that would not sustain an examination by applicable taxing authorities. Partnership's policy is to recognize penalties and interest as incurred in its statements of income (loss) as a component of operating expenses, and totaled $0 for December 31, 20X2 and 20X1. Partnership's federal and state income tax returns for fiscal years ended 20XX through 20XX are subject to examination by the applicable tax authorities, generally for three years after the later of the original or extended due date.

Impairment of Long-Lived Assets

In accordance with the provisions of accounting for the impairment or disposal of long-lived assets, Partnership reviews long-lived assets for impairments when circumstances indicate the carrying amount of an asset may not be recoverable based on the undiscounted future cash flows of the asset. If the carrying amount of an asset may not be recoverable, a write-down to fair value is recorded. Fair values are determined based on the discounted cash flows, quoted market values, or external appraisals, as applicable. Long-lived assets are reviewed for impairment at the individual asset or the asset group level for which the lowest level of independent cash flows can be identified.

Fair Value Measurements

Partnership adopted fair value measurements of financial assets and financial liabilities of non-financial items that are recognized or disclosed at fair value in the financial statements on a recurring basis. This establishes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to measurements involving significant unobservable inputs (Level 3 measurements).The three levels of the fair value hierarchy are as follows:

- Level 1 inputs are quoted prices (unadjusted) in active markets for identical assets or liabilities that Partnership has the ability to access at the measurement date.
- Level 2 inputs are inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly.
- Level 3 inputs are unobservable inputs for the asset or liability.

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ABC Apartments, LP RHS
Project No. 00-000-000000000-00-0

Note 2 – Significant Accounting Policies (continued)

The level in the fair value hierarchy within which a fair measurement in its entirety falls is based on the lowest level input that is significant to the fair value measurement in its entirety. Partnership had no investments at December 31, 20X2 and 20X1 except for certificate of deposits.

Partnership operates in a heavily regulated environment that typically includes restrictions such as land use, rent regulations, government subsidies in the form of rental assistance through either rent subsidy or tenant vouchers, subsidized mortgage interest rates, and restrictions on selling or transferring.
A summary of the methods and significant assumptions used to estimate the fair values of financial instruments is as follows:

- Short-term financial instruments – The fair value of short-term financial instruments, including cash and cash equivalents, restricted deposits, accounts receivable, accounts payable and accrued liabilities approximate their carrying value due to the short-term nature of these instruments.
- Long-term financial instruments – The fair value of long-term financial instruments, including mortgage payable which approximates the carrying value in the accompanying financial statements based on current borrowing rates.

Reclassifications
Certain accounts in the 20X1 financial statements were reclassified for comparative purposes to conform with the presentation in the 20X2 financial statements. Total assets, liabilities, partners' capital (deficits), and net income are unchanged due to these reclassifications.

Note 3 – Mortgage Payable
The mortgage payable is payable to RD in monthly installments of $AMT at an interest rate of RATE% per annum and a term of # years, maturing on DATE. As part of the Loan Agreement, Partnership entered into an Interest Credit and Rental Assistance Agreement that effectively lowers the interest rate to approximately 1 percent over the term of the loan. The mortgage liability of Partnership is limited to the underlying value of the real estate collateral pledged. No partner is personally liable on the mortgage note payable. The original amount of the note payable was $AMT.

Estimated annual maturities of the mortgage notes payable are as follows:

20X3	$ AMT
20X4	AMT
20X5	AMT
20X6	AMT
20X7	AMT
Thereafter	AMT

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ABC Apartments, LP RHS
Project No. 00-000-000000000-00-0

NOTE 4 – DISTRIBUTION TO PARTNERS
Under the mortgage payable agreement, annual distributions to partners are limited by RD regulations to $AMT. During the years ended December 31, 20X2 and 20X1, $AMT and $AMT, respectively were distributed to the partners. Distributions are paid one year in arrears of being earned.

Note 5 – Related Party Transaction

Management Fee
Partnership entered into a management agreement with ABC Property Management (management agent), an identity of interest with the general partner, to manage the rental operations. The management agreement allows for a management fee based on per occupied unit per month. Property management fees were $AMT and $AMT during the years ended December 31, 20X2 and 20X1, respectively.

Management Services
Management agent provides administrative services to Partnership and was reimbursed $AMT and $AMT for the cost of site employee payroll, payroll taxes, and benefits during the years ended December 31, 20X2 and 20X1, respectively.

Legal Services
ABC Legal, an identity of interest with the general partner, performs legal services for Partnership. During the years ended December 31, 20X2 and 20X1, $AMT and $AMT, respectively, was incurred and expensed.

Advances from General Partner
A general partner made non-interest-bearing operating deficit loans of $AMT which are payable from the proceeds of the sale or refinancing of the rental property. At December 31, 20X2 and 20X1, Partnership owes the general partner $AMT and $AMT, respectively.

Note 6 – Current Vulnerability Due to Certain Concentrations

Concentration in Affordable Housing Market
Partnership's sole asset is ABC Apartments. Partnership's operations are concentrated in the affordable housing real estate market. In addition, Partnership operates in a heavily regulated environment. The operations of Partnership are subject to the administrative directives, rules, and regulations of federal, state, and local regulatory agencies, including, but not limited to, RD and the State Housing Agency. Such administrative directives, rules, and regulations are subject to change by an act of Congress or an administrative change mandated by RD or the State Housing Agency. Such changes may occur with little adequate funding to pay for the related cost, including the additional administrative burden, to comply with a change.

Concentration in Government Funding
Partnership received X percent and X percent of gross revenue from RD in the form of rental assistance and interest reduction subsidy payments during the years ended December 31, 20X2 and 20X1, respectively.

Concentration in Credit Risk
Partnership continually monitors its positions with, and the credit quality of, the financial institutions with which it invests. Financial instruments that potentially subject the company to concentration of credit risk consist principally of cash. Management believes Partnership placed all cash with high-credit quality financial institutions and that there is no significant concentration of credit risk with respect to cash.

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ABC Apartments, LP RHS
Project No. 00-000-000000000-00-0

Schedule of Required Supplemental Information
For the Year Ended December 31, 20X2

1. Management Fee Calculation

The management fee is based on a fee per unit occupied by tenants during the month.

Total qualified units	-	
Less: Rent free units	-	
Vacancies	-	
Total occupied units		-
Fee per unit		$ -
Management fee expense		$ -

2. Insurance Disclosure

Partnership maintains insurance coverage as follows:

	Coverage period	Coverage
Property coverage on buildings	November 20X2 to October 20X3	$ -
Fidelity / employee dishonesty	March 20X2 to March 20X3	$ -

3. Return to Owner

In accordance with the loan agreement, the annual return to owner is as follows:

Maximum return to owner	$ -
Budgeted return to owner	$ -
Return to owner paid	$ -

4. Schedule of Changes in Fixed Assets

	Beginning Balance	Additions	Disposals	Ending Balance
Land	$ -	$ -	$ -	$ -
Buildings	-	-	-	-
Furniture and equipment	-	-	-	-
Total fixed assets	$ -	$ -	$ -	$ -
Accumulated depreciation				
Buildings	$ -	$ -	$ -	$ -
Furniture and equipment	-	-	-	-
Total accumulated depreciation	$ -	$ -	$ -	$ -

Fixed asset additions for the year ended December 31, 20X2

None

Fixed asset disposals for the year ended December 31, 20X2

None

1.6. See Independent Auditors report

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Schedules of Expenses
For the Years Ended December 31, 20X2 and 20X1

	20X2	20X1
Maintenance and Operating Expenses		
Maintenance and repairs - payroll	$ -	$ -
Maintenance and repairs - supplies	-	-
Maintenance and repairs - contract	-	-
Painting	-	-
Snow removal	-	-
Grounds	-	-
Services	-	-
Annual capital budget	-	-
Other operating expenses	-	-
Total maintenance and operating expenses	$ -	$ -
Utility Expenses		
Electricity	$ -	$ -
Water	-	-
Sewer	-	-
Fuel (Oil/Coal/Gas)	-	-
Garbage and trash removal	-	-
Other utilities	-	-
Total utility expenses	$ -	$ -
Administrative Expenses		
Site management payroll	$ -	$ -
Management fee	-	-
Project audit fee	-	-
Legal expense	-	-
Advertising	-	-
Telephone and answering service	-	-
Office supplies	-	-
Training expense	-	-
Health insurance and other employee benefits	-	-
Payroll taxes	-	-
Workers' compensation	-	-
Other administrative expenses	-	-
Total administrative expenses	$ -	$ -
Taxes and Insurance Expenses		
Real estate taxes	$ -	$ -
Property and liability insurance	-	-
Fidelity coverage insurance	-	-
Total taxes and insurance expenses	$ -	$ -

1.7. See Independent Auditors report

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ABC Apartments, LP RHS

Project No. 00-000-000000000-00-0

1.8. Form RD 3560-10

Multi-Family Housing

Borrower Balance Sheet

See Independent Auditors report

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ABC Apartments, LP RHS
Project No. 00-000-000000000-00-0

1.9. Form RD 3560-7

Multi-Family Housing

Project Budget

See Independent Auditors report

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1.9.1. INDEPENDENT AUDITORS' REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS

To the Partners of
ABC Limited Partnership
DBA ABC Apartments City,
State

USDA Rural Development

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of ABC Limited Partnership, which comprise the balance sheet as of December 31, 20X2, and the related statements of operations, changes in partners' equity and cash flows for the year then ended, and the related notes to the financial statements, and have issued our report thereon dated DATE, YEAR.

1.10. Internal Control Over Financial Reporting

In planning and performing our audit of the financial statements, we considered ABC Limited Partnership's internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of ABC Limited Partnership's internal control. Accordingly, we do not express an opinion on the effectiveness of ABC Limited Partnership's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

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ABC Limited Partnership
Independent Auditors' Report
on Internal Control Page Two

Compliance and Other Matters

As part of obtaining reasonable assurance about whether ABC Limited Partnership's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, non-compliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of non-compliance or other matters that are required to be reported under *Government Auditing Standards*.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of ABC Limited Partnership's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering ABC Limited Partnership's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

Firm's signature
City, State DATE,
YEAR

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INDEPENDENT AUDITOR'S REPORT ON COMPLIANCE FOR EACH MAJOR RD PROGRAM AND ON INTERNAL CONTROL OVER COMPLIANCE REQUIRED BY THE CONSOLIDATED AUDIT GUIDE FOR AUDITS OF RD PROGRAMS

To the Partners of
ABC Limited Partnership
DBA ABC Apartments
City, State

USDA Rural Development

Report on Compliance for Each Major RD Program

We have audited ABC Limited Partnership's compliance with the compliance requirements described in the *Audit Guide for Audits of RD Programs* (the Guide) that could have a direct and material effect on ABC Limited Partnership's major U.S. Department of Rural Development (RD) program for the year ended December 31, 20X2. The Partnership's major RD program is as follows:

List the major program.

Name of Major RD Program	Direct and Material Compliance Requirements
Section 515 Rural Rental Housing Loan	Mortgage status, replacement reserve, return on investment or return to owner, equity skimming, cash receipts, cash disbursements, tenant security deposits, management functions, unauthorized change of ownership or acquisition of liabilities and unauthorized loans of project funds.

Management's Responsibility

Management is responsible for compliance with the requirements of laws, regulations, contracts, and grants applicable to its RD program.

Auditor's Responsibility

Our responsibility is to express an opinion on compliance for each of ABC Limited Partnership's major RD programs based on our audit of the compliance requirements referred to above. We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and the Guide. Those standards and the Guide require that we plan and perform the audit to obtain reasonable assurance about whether non-compliance with the compliance requirements referred to above that could have a direct and material effect on a major RD program occurred. An audit includes examining, on a test basis, evidence about ABC Limited Partnership's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances.

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We believe that our audit provides a reasonable basis for our opinion on compliance for each major RD programs. However, our audit does not provide a legal determination of ABC Limited Partnership's compliance.

Opinion on Each Major RD Program

In our opinion, ABC Limited Partnership complied, in all material respects, with the compliance requirements referred to above that could have a direct and material effect on each of its major RD program for the year ended December 31, 20X2.

Other Matters (needs to be included if immaterial instances of non-compliance were noted)

We noted certain matters that we are required to report to management of ABC Limited Partnership in a separate written communication. These matters are described in our management letter dated DATE, YEAR.

Report on Internal Control Over Compliance

Management of ABC Limited Partnership is responsible for establishing and maintaining effective internal control over compliance with the compliance requirements referred to above. In planning and performing our audit of compliance, we considered ABC Limited Partnership's internal control over compliance with the requirements that could have a direct and material effect on its major RD program to determine the auditing procedures that are appropriate in the circumstances for the purpose of expressing an opinion on compliance for its major RD program and to test and report on internal control over compliance in accordance with the Guide, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of ABC Limited Partnership's internal control over compliance.

A *deficiency in internal control over compliance* exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, non-compliance with a compliance requirement of an RD program on a timely basis. A *material weakness in internal control over compliance* is a deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material non-compliance with a compliance requirement of a RD program will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance with a compliance requirement of a RD program that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance..

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Our consideration of internal control over compliance was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies. We did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

The purpose of this report on internal control over compliance is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the requirements of the Guide. Accordingly, this report is not suitable for any other purpose.

Firm's signature
City, State
DATE,YEAR

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ABC Apartments, LP RHS

Project No. 00-000-000000000-00-0

Schedule of Findings and Questioned Costs
For the Year Ended December 31, 20X2

For the Year Ended December 31, 20X2:

There were no findings or questioned costs for the year ended December 31, 20X2.

For the Year Ended December 31, 20X1:

There were no findings or questioned costs for the year ended December 31, 20X1.

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ABC Apartments, LP RHS
Project No. 00-000-000000000-00-0

Schedule of Lead Auditor
For the Years Ended December 31, 20X2 and 20X1

Auditor Information:	ABC Firm, LLC Main Street, Suite 104 New York, New York 10017
Phone Number:	(000) 000-0000
Fax Number:	(000) 000-0000
Auditor Contact:	John Doe, CPA
Auditor Contact Title:	Member
Auditor Contact Email:	Jdoe@ABCfirm.com

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Attachment 4-N

Year End Financial Reporting Requirements

State and Local Government, Indian Tribes and Non-Profit Organizations

Single Audit

The Single Audit is divided into two areas: Compliance and Financial.

The compliance component of a Single Audit covers the study and understanding (planning stage) as well as the testing and evaluation (exam stage) of the recipient with respect to federal assistance usage, operations and compliance with laws and regulations

The financial component is exactly like a financial audit of a non-Federal entity which includes the audit of the financial statements and accompanying notes.

Single Audit Component Reference /Checklist

Financial Statement(s) 2 CFR 200.510(a)
Opinion on Financial Statements 2 CFR 200.515(a)
Uniform Guidance Report on Internal Control 2 CFR 200.515(b) (major programs)
Uniform Guidance Report on Compliance 2 CFR 200.515(c) (major programs)
GAS Report on Internal Control 2 CFR 200.515(b)
Schedule of expenditures of Federal Awards 2 CFR 200.510(b) (Example provided)
Opinion or Disclaimer of Opinion on Schedule of Federal Awards 2 CFR 200.515(a)
GAS Report on Compliance 2 CFR 200.515(c)
Schedule of Findings and Questioned Costs 2 CFR 200.515(d) (Example provided)
Summary Schedule of Prior Audit Findings 2 CFR 200.511(b)
Corrective Action Plan (if findings) 2 CFR 200.511(c) (Example provided)

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DEF Apartments NFP
Project No. 00-000-000000000-00-0

SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS
Year ended December 31, 20X7

Federal Grantor/ (Pass-through Grantor)/ Program Title	Federal CFDA Number	Agency or Pass-through Number	Federal Expenditures
U.S. Departments of Agriculture Rural Rental Housing Loans	10.415		$2,247,033
U.S. Departments of Agriculture Rural Rental Housing Loans	10.427		242,249
U.S. Departments of Agriculture Interest Assistance Programs	10.437		87, 046
Total			$ 2,576,328

1. Basis of Presentation

The accompanying schedule of expenditures of federal awards (the Schedule) includes the federal award activity of DEF Apartments under programs of the federal government for the year ended December 31, 20X7.

The information in this Schedule is presented in accordance with the requirements of Title 2 U.S. *Code of Federal Regulations* (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). Because the Schedule presents only a selected portion of the operations of the Project, it is not intended to and does not present the Project's financial position, changes in net assets, or cash flows.

2. Summary of Significant Accounting Policies

(a) Expenditures reported on the Schedule are reported on the accrual basis of accounting. Such expenditures are recognized following the cost principles contained in the Uniform Guidance, wherein certain types of expenditures are not allowable or are limited as to reimbursement.

(b) DEF Apartments NFP has elected not to use the 10 percent de minimus indirect cost rate as allowed under the Uniform Guidance.

(c) The outstanding balance of loan and loan guarantee programs at December 31, 20x7 with continuing compliance requirements which are reported as federal expenditures on the accompanying schedule of expenditures of Federal Awards was $2,229,088.

(08-31-26) PN 661
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.DEF Apartments NFP

Project No. 00-000-000000000-00-0

SCHEDULE OF FINDINGS
Year ended December 31, 20X7

Financial Statements

Type of auditor's report issued: *Unmodified*

Internal control over financial reporting:
Material weakness identified? _____ Yes __X__ No

Significant deficiency identified not considered to be material weaknesses? _____ Yes __X__ None

Non-compliance material to financial statements noted? _____ Yes __X__ No

Federal Awards

Type of auditor's report issued on compliance for major programs:

Internal control over financial reporting:
Material weakness identified? _____ Yes __X__ No

Significant deficiency identified not considered to be material weaknesses? _____ Yes __X__ None

Any audit findings disclosed that are required to be reported in accordance with CFR Section 200.516(a)? _____ Yes __X__ No

Identification of major programs:

CFDA Number	Name of Federal Program or Cluster
10.415	Rural Rental Housing Loans

Dollar threshold used to distinguish between Type A and Type B programs: $XX0, 0000

Auditee qualified as low-risk auditee? _____ Yes __X__ No

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DEF Apartments NFP
Project No. 00-000-000000000-00-0

SCHEDULE OF FINDINGS, QUESTIONED COSTS, AND RECOMMENDATIONS
December 31, 20X7

Findings Financial Statements Audit

None noted

Findings and Questioned Costs Major Award Programs Audit

None noted

Findings and Questioned Costs Prior Years

None noted

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Attachment 4-O

Agency Review of Annual Financial Reports

A guide to assist in the review and identify areas of risk that may need closer scrutiny.

Property Name: _____ Fiscal Year: _____

Borrower Name: _____ Number of Units: _____

Date Complete Package Received: _____ Revenue Units: _____

To Be Completed By Date (60 Days): _____ RA Units: _____

Federal Financial Assistance (FFA) From Attachment 4-G: _____

Borrower Submissions

☐ **Year End Narrative** (Exhibit 4-8) Must be complete and acceptable, or the Annual Financial Reports will be considered incomplete and returned for correction.

☐ **Borrower Self-Certification Of Performance Standards** (Attachment 4-F).

☐ **Form RD 3560-7** MFH Project Budget / Actuals (Through MINC Unless < 8 Units).

☐ **Form RD 3560-10** MFH Borrower Balance Sheet (Through MINC Unless < 8 Units).

☐ **RD MFH Program Audit Determination Worksheet** (Attachment 4-G).

☐ **Owner Certified Prescribed Forms** (Attachment 4-L) Needs to be submitted if an independent accountant does not assist with the preparation of the Forms RD 3560-7 and 3560-10 and an audit was not required.

☐ **Independent Accountants' Compilation Report** (Attachment 4-K) Only needed if an independent accountant assists with the preparation of Forms RD 3560-7 and 3560-10 and an audit was not performed.

☐ **Engagement Letter** (Attachment 4-H Example) Only needed for Limited/For Profit entities with $500,000 or more in Federal Financial Assistance.

☐ **Audited Financial Statement** (Attachment 4-M Example) Only for Limited/For Profit entities with $500,000 or more in Federal Financial Assistance, to be done in accordance with GAGAS, yellow book and HUD Office of Inspector General's (OIG) Consolidated Audit Guide standards.

☐ **Single Audit** (Attachment 4-N Example) Only for Non-Profit/Government/Tribes with $ 1 million or more in Federal Financial Assistance, to be done in accordance with 2 CFR 200 Part F.

MFIS Reports and Documents For The Review

☐ MFIS Report FIN1100 Year-End Actuals, run using fiscal year that is being reviewed.

☐ MFIS Report FIN1200 Balance Sheet, run using fiscal year that is being reviewed.

☐ MFIS Report FIN1700 – Budget History, run for most recent 3 years, leaving Fiscal Year as Current.

☐ MFIS Report FIN2100 – Project Reserve Account Checkbook & Project Outstanding Authorizations, run using fiscal year that is being reviewed.

☐ MFIS Report PRJ2000 – Project Worksheet, run using most recent date.

☐ MFIS Report PRJS4200 – Occupancy Trend, run using fiscal year that is being reviewed and also run using the three fiscal years ending with the year being reviewed.

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☐ Form RD 3560-54 MFH Annual Statement of Loan Account As Of (Year Being Reviewed).

☐ Previous Year's Annual Financial Review.

☐ Last Reviewed Proposed Budget Letter

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BORROWER SELF-CERTIFICATION OF PERFORMANCE STANDARDS REVIEW

☐ Verify that it is formatted and contains all the information found in Attachment 4-F, the following numbering corresponds with the 4-F:

1. ☐ Yes ☐ No Are accounts properly maintained and are all four primary accounts checked? If they are not, follow-up on why and provide them with HB 2-3560, Chapter 4, Section 2 for guidance.
2. ☐ Yes ☐ No Are payments from the operating account disclosed and accurately represented? If No, find out why.
3. ☐ Yes ☐ No For reserve account items a – f, if the second space was checked for any of them, find out more details and provide them with HB-2-3560, Chapter 4, Section 3 for guidance.
4. ☐ Yes ☐ No If either (are not) spaces is checked, find out why and provide them with HB 2-3560, Chapter 7, Section 2 for guidance.
5. ☐ Yes ☐ No ☐ N/A If a return to owner was paid, was it done in accordance with Agency requirements? If they mark no, find out why. Check Form RD 3560-7, Part I, Line 23 Return To Owner to make sure it matches this certification, if it doesn't follow-up with the borrower. The Return To Owner guidance is found in HB-2-3560, Chapter 4, Section 2, Paragraph 4.4 B and guidance for the non-profit asset management fee is found in HB-2-3560, Chapter 4, Section 4, Paragraph 4.14 B 1, 4th bullet point.
6. ☐ Yes ☐ No Was insurance maintained with Agency requirements? They should mark that the borrower *has* maintained at least the Liability and Property Insurance but could have other insurance as well. They should have Fidelity Insurance unless the loan is to an individual or general partnership and they are managing the property and responsible for the financial activities. If they do not have Liability or Property Insurance (or earthquake or flood and you know they should), provide them with HB-2-3560, Chapter 3, Section 4. For guidance on Fidelity Insurance, provide them HB-2-3560, Chapter 3, Section 4, Paragraph 3.11.
7. ☐ Yes ☐ No Are financial records adequate and suitable for examination? If they mark no, find out why.
8. ☐ Review the Status Report of Ownership and compare it to what we have in MFIS by going to Customer Details / Project Borrowers / Customer / Select the Borrower on the left. The Status Report and the Borrower Members at the bottom of the page should match. If MFIS is missing anyone, check the organizational documents that we have on file and update MFIS if we know they are part of the organization. If the borrower made a change without our knowledge, provide them HB-3-3560, Chapter 5 and ask that they provide us proper documentation of the change. For a non-profit, if the Board of Directors is not active, follow-up and find out why.
9. ☐ Review the Form RD 3560-7 and verify that the Part II, Line 34 Real Estate Taxes actual amount is similar to the budget amount. If it is not or they indicate taxes are not current, follow-up with the borrower on why and provide them HB-2-3560, Chapter 3, Section 4, Paragraph 3.20 as guidance. *It is extremely important that you continue to follow-up with the borrower to bring the taxes current.* You should also contact the County Assessor's office for more information on the delinquency.

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Comments on the Borrower Certification of Performance Standards:

_____

_____

_____

_____

_____

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FORM 3560-7 MFH PROJECT BUDGET / ACTUALS REVIEW

☐ Review the MFIS Year End Actual Analysis. At a minimum you will need to review and analyze any items that are in red. You will need to check the Reviewed box and enter a comment when you are satisfied that there is a reasonable explanation provided. **Do not put nondescriptive comments like "Okay" or "Done", you need to provide an explanation**. The MFIS Analysis is a tool to help you review the yearend actuals, but you still need to do a thorough review of the financials yourself.

☐ All property expenses need to conform with Attachment 4-C Allowable and Unallowable Project Expenses. It is easiest to identify these during the Supervisory Visit, but you can also address them during the yearend actuals review if something looks questionable.

☐ Yes ☐ No Does the MFIS Rental Income Analysis show more than a small difference for Part I, Lines 1, Rental Income and Line 2, Rental Assistance? A small amount can be explained by mid-month move-ins and move-outs. For a larger amount, work with the borrower to document what the difference is from and make sure it is reasonable.

☐ Yes ☐ No Is there an amount in Part I, Line 11 Cash Non-Project? If it is for insurance proceeds, check Tracked Accounts to make sure it is recorded either in the reserve account or Other Tracked Accounts.

☐ Yes ☐ No Is there an amount in Part I, Line 12 Authorized Loan (Non-RHS)? If yes, does RD know the details of it? If not previously notified of this loan, RD will need to get more details and record it in MFIS Servicing Efforts.

☐ Yes ☐ No Is there an amount in Part I, Line 23 Return To Owner / Asset Management Fee? If no, no further review needed. If yes:

- ☐ For limited/full profit borrowers, does the amount meet the requirements outlined in HB-2, Chapter 4, Paragraph 4.4 B, including:
  - ☐ Yes ☐ No Was there a positive cash flow on Part I, Line 30? If no, see Paragraph 4.4 B 2.
  - ☐ Yes ☐ No Did Line 23 have a comment indicating the year the return represents? If no, add that comment based upon the year provided in the Borrower Self Certification of Performance Standards.
  - ☐ Yes ☐ No Is the amount equal to or less than the amount authorized in the borrower's Loan Agreement/Resolution? If no, investigate why.
  - ☐ Yes ☐ No Based upon your review, is the borrower entitled to the RTO being paid? If no, request that the borrower return the funds to the property.

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☐ For non-profit/government/tribal borrowers, does the amount meet the requirements outlined in HB-2-3560, Chapter 4, Section 4, Paragraph 4.14 B 1, 4th bullet point, including:

☐ Yes ☐ No Is the amount equal to or less than $7,500. If no, investigate why.

☐ Yes ☐ No Is documentation of actual expenses provided? If no, request the documentation and if they can't provide it, they will need to return what can't be documented.

☐ Yes ☐ No Is there an amount in Part I, Line 25 Authorized Debt Payment (Non-RHS)? If there is, make sure RD has documentation of it in the file and that it is identified in MFIS Servicing Efforts.

☐ Yes ☐ No Is Part I, Line 30 Net Cash or Net Deficit a negative number? It is okay if it is negative for a year but check to make sure it is not a trend by checking the MFIS FIN1700 Budget History report and if it is, address this issue with them.

☐ Yes ☐ No Does the Part I, Line 32 Accrual To Cash Adjustment match the calculations provided in either Attachment K: Independent Accountants' Compilation Report**,** Attachment L: Owner Certified Prescribed Forms**,** or in an audit that was provided. If not, have them provide adjustments so that they do match.

☐ Yes ☐ No Does the MFIS Analysis show that there is Surplus Cash for the Part I, Line 33 Ending Cash Balance? If it does, provide them with the options outlined in HB-2-3560, Chapter 4, Paragraph 4.4 C. Under the current MFH policy, we are not accepting extra payments to the borrower's loan.

☐ Yes ☐ No Is the Part II, Line 20 Management Fee greater than the amount indicated for Total Accrual Fee in the MFIS Management Fees analysis? If it is, request management refund the difference to the property or justify why their figure is correct, providing them a copy of the Printed Mgmt Fee Report from the MFIS Analysis.

☐ Yes ☐ No Does Part II, Line 34 Real Estate Taxes have an amount similar to what was budgeted? If no, review what was indicated on the Borrowers Self Certification of Performance Standards and if the real estate taxes are delinquent, work with them to bring them current.

☐ Yes ☐ No Does Part II, Line 37 Property & Liability Insurance have an amount similar to what was budgeted? If no, review what was indicated on the Borrowers Self Certification of Performance Standards and determine if the property has adequate coverage as outlined in HB-2-3560, Chapter 3, Section 4.

☐ Yes ☐ No Do any of the Part II, Lines 11, 18, 33, 40 Subtotal Expenses and Line 41 Total O & M Expense vary by more than 10% of their budgeted amount? If they do, make sure an adequate explanation is provided.

☐ Part III, Reserve Account, review FIN2100 Project Reserve Account Checkbook:

☐ Yes ☐ No Does the report show that the reserve account is Fully Funded? If it is, then encourage the borrower to complete an Attachment 3-B, Amendment to Loan Agreement/Resolution Reserve Account Requirements, changing only the fully funded amount. If they have recently completed a CNA, then the yearly deposit amount can also be amended.

☐ Yes ☐ No Is the Transfer To Reserve (Part III, Line 2) total equal to or greater than the total Deposits on the report? If it isn't and it isn't Fully Funded, find out why.

☐ Yes ☐ No Are the Actual Deposits (Part III, Line 2) from the report greater than the Budgeted Transfer To Reserve (Part III, Line 2) plus the Actual Interest Income (Part I, Line 5)? If yes, find out why because they shouldn't be making extra deposits without a Capital Needs Assessment unless they were instructed to deposit excess operating account funds into the reserve account or they are catching up on a delinquent reserve account.

☐ Yes ☐ No Does the Transfer From Reserve (Part III, Line 7) match the total Withdrawals from the report? If they don't match investigate why. MFIS Tracked Accounts may need to have an entry made or deleted or the Form RD 3560-7 Actuals may need to be adjusted so that the amounts match.

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☐ Yes ☐ No Is the Reserve Account Status Delinquent on the report? If it is, request that they bring it current within this budget cycle and if they can't, provide them with HB-3-3560, Chapter 10, Sections 3 and 4 to develop a work-out agreement.

☐ Yes ☐ No Does the Part III, Real Estate Tax & Insurance Escrow Account ending balance match the Real Estate Tax and Insurance Escrow figure shown on the MFIS Analysis (see the calculation using the Escrow Calculation link)? If it does not, request that they transfer the difference in amounts to or from the general operating account. If the required balance is larger, the difference should be transferred from the operating account to the escrow account. If the Budget Value is larger, the difference should be transferred from the escrow account to the operating account. Do not ask them to match the balance from the Escrow Calculation because that was the amount needed at the end of their fiscal year.

☐ Part V, Annual Capital Budget, compare actual figures against budget figures. If they budgeted for an item that we have listed as a physical finding and they did not correct it, find out why. They should be doing most of their capital improvements from the reserve account, see Attachment 4-A Capital Expenditures.

☐ Make sure all rows that have "Other", "Miscellaneous" or "List" have comments explaining what the expenses are for. These would include Part I, Lines 7 and 27; Part II, Lines 10, 17, 32 and 39; Part III, Lines 3, 5 and 6; and Part V, Lines with Other or List in them.

Comments on the 3560-7 Year End Actuals:

_____

_____

_____

_____

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FORM 3560-10 MFH BALANCE SHEET REVIEW

☐ Yes ☐ No Line 1 General Operating Account plus Lines 5 and 6 (Other) balances match the Beginning and Ending balances on the Form RD 3560-7, Part III General Operating Account. If they don't, find out what adjustments need to be made so that they do.

☐ Yes ☐ No Line 2 Real Estate Taxes & Insurance Account balances match the Beginning and Ending balances on the Form RD 3560-7, Part III Real Estate Tax And Ins Escrow. If they don't, find out what adjustments need to be made so that they do.

☐ Yes ☐ No Line 3 Reserve Account balances match the Form RD 3560-7, Part III, Line 1 Beginning Balance and Line 8 Ending Balance. If they don't, find out what adjustments need to be made so that they do.

☐ Yes ☐ No Line 4 Security Deposit Account balances match the Beginning and Ending balances on the Form RD 3560-7, Part III Tenant Security Deposit Account. If they don't, find out what adjustments need to be made so that they do.

☐ Yes ☐ No Is the Line 4 Security Deposit Assets equal to or greater than Line 24 Security Deposit Liabilities. If it is not, request that they transfer general operating account funds into the Security Deposit Account so that they are equal.

☐ Yes ☐ No Line 7 Accounts Receivable, did they provide a list of accounts receivable? Compare this list against last year's list to see if items are being carried over each year and address them if they are. Also have them provide an explanation for a large unexplained increase in amounts.

☐ Yes ☐ No Is there a change in Lines 13 Land and 14 Buildings? These normally don't change, if they do make sure the changes are justified. An example would be capital improvements to the building.

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☐ Yes ☐ No Line 22 Accounts Payable, did they provide a list of accounts payable? Compare this list against last year's list to see if items are being carried over each year and address if them if they are. Also have them provide an explanation for a large unexplained increase in amounts.

☐ Yes ☐ No Is there a Line 23 Notes Payable? If there is an amount, make sure we have a record of who it is to and what the terms are and that it is recorded as either a Junior Lien or Subordination in MFIS Servicing Efforts. Note Payable to: _____

☐ Yes ☐ No Does Line 26 Notes Payable RD equal the balance found on the Form RD 3560-54 MFH Annual Statement of Loan Account As Of (Year Being Reviewed), if it doesn't, it will need to be corrected.

☐ Yes ☐ No Is there a Line 27 Other Long Term Liabilities, if there is an amount, make sure we have a record of who it is to and what the terms are and that it is recorded as either a Junior Lien or Subordination in MFIS Servicing Efforts. Liability to: _____

Comments on the 3560-10 Balance Sheet:

_____
_____
_____
_____
_____

FOR PROFIT AUDIT OR NON-PROFIT SINGLE AUDIT

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☐ Yes ☐ N/A If an audit is received, review it using either the Project Financial Audit review guide (Attachment 4-P), for full/limited profit borrowers or the Project Financial Single Audit review guide (Attachment 4-Q) for non-profit, government entity or tribal borrowers.

REVIEWING OTHER ITEMS

☐ Yes ☐ No Were either the **Owner Certified Prescribed Forms** (Attachment 4-L) or the **Independent Accountants' Compilation Report** (Attachment 4-K) provided? One of them is required if an audit or single audit was not provided. If yes:

> ☐ Yes ☐ No Do the figures from the Attachment match the figures on the Forms 3560-7 and 3560-10? If they don't, request adjustments be made so that they do.

☐ Review MFIS Report FIN1700 Budget History – Compare the actual figures against the budgeted figures over the last couple of years. Focus on the Subtotal Categories first and if you see large discrepancies from year after year, take a closer look at the line items. If there are consistent large positive cash flows each year, they are inflating budget expenses, causing rents to be higher than they need to be. Identify where this is happening and address with them.

☐ Yes ☐ No Are Vacancies high for the property size? Look at MFIS Report PRJS4200 Occupancy Trend for the fiscal year being reviewed. Vacancies are considered high and should be addressed with the borrower when they are above 10% for properties with 16 or more units or above 15% for properties with 15 or few units for the fiscal year being reviewed. Compare this year with the three year vacancy rate to see if vacancies are improving or getting worse.

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Vacancy rate for year being reviewed: _____% Three year vacancy rate: _____%

☐ Yes ☐ No Is RA currently unused when it could be used? Review MFIS Report PRJ2000 Project Worksheet. If there is unused RA and they have an overburden tenant listed that doesn't have some other type of subsidy, have them assign the RA to the tenant that has the greatest need.

☐ Yes ☐ No Are there any open findings at the property? Check MFIS Findings and if there are any open items, address them in your letter.

☐ Yes ☐ No Are there any current servicing efforts at the property? Check MFIS Servicing Efforts for any unresolved servicing efforts that need action and if there are any, address them in your letter.

☐ Yes ☐ No Are there any past due or upcoming supervisory activities at the property? Check MFIS Supervisory Activities for any past due, follow-up or that are due in the next couple of months and if there are any, address them in your letter.

☐ Yes ☐ No Are there any outstanding items from the previous year's Annual Financial Review? If all items from last year's letter have not been addressed or if it isn't marked as Final Review in MFIS, follow-up with any outstanding items.

☐ Yes ☐ No Are there any outstanding items from the most recently reviewed Proposed Budget? If there are, follow-up on those items.

Comments on Other Items:

_____
_____
_____
_____

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COMPLETING THE REVIEW

☐ Go through the MFIS Analysis and make sure all items highlighted in red have the Reviewed boxes checked and that there are appropriate, descriptive explanations in the Comments fields. **Do not put nondescriptive comments like "Okay" or "Done", you need to provide an explanation**.

☐ If applicable, borrower has been notified that the Yearend Actuals are not acceptable and has until _____(30 days) to provide a response.

☐ Borrower has been notified that the Yearend Actuals are acceptable.

☐ Complete the Asset Management Survey in SharePoint.

☐ Documents have been saved to ECF.

☐ Update MFIS Supervisory Activities for the Borrower Self Certification, 3560-7 Actuals, 3560-10 Balance Sheet and if needed the Audit or Single Audit:

☐ Due: For Forms RD 3560-7, 3560-10 and for-profit audits, it should be 90 days after the end of their fiscal year, for non-profits/government/tribal audits, they are due 9 months after the end of their fiscal year.

☐ Received: Date item was received by RD except for the 3560-7 Actuals and 3560-10 Balance Sheet, for these enter the date all necessary items were received.

☐ Init Review: If something is missing, isn't correct or RD has questions about the document and the borrower needs to be contacted, enter the date of contact.

☐ Final Review: If the document is acceptable, enter the date you notify the borrower.

☐ Follow-up: If RD needs to contact the borrower for missing information, to correct something or if there are questions that need to be answered, enter the date a response is expected back.

Other General Comments:

_____
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_____
_____

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Attachment 4-P

FOR-PROFIT or LIMITED PROFIT BORROWER FINANCIAL AUDIT – REVIEW GUIDE
$500,000 or More in Federal Financial Assistance – Borrower Threshold
GAGAS (Generally Accepted Government Auditing Standards) Audit

This Borrower received $500,000 or more in Federal financial assistance? Attachment 4-G
__ No – no further action needed
__ Yes – Proceed with GAGAS Compliance Audit requirements and review below

Due: Within 90 days after end of Borrower's fiscal year.

Date Received _____ Date Returned (if applicable) _____ Date Reviewed _____

****

☐ Receive copy of signed Engagement Letter (required prior to releasing information to the CPA). Example – Attachment 4-H

An audit should consist of the following items at a minimum: Example Attachment 4-M

- ☐ Independent Auditor's Report (Auditor's Opinion)
- ☐ Financial Statements (issued in two-year comparative format)
  - ☐ Balance Sheets
  - ☐ Statements of Income (Loss)
  - ☐ Statements of Changes in Partner's Capital (Deficit)
  - ☐ Statements of Cash Flow
- ☐ Notes to Financial Statements
- ☐ Supplemental Information
  - ☐ Management Fee Calculation
  - ☐ Insurance Disclosure
  - ☐ Return to Owner
  - ☐ Changes in Rental Property (Fixed Assets)
  - ☐ Accrual to Cash Schedule (aka Accrual to Cash Adjustment)
  - ☐ Schedule of Expenses (optional)
  - ☐ Multiple-Family Housing Borrower Balance Sheet, Form RD 3560-10
  - ☐ Multiple-Family Housing Project Budget, Form RD 3560-7 and supporting documentation
  - ☐ Independent Auditor's Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards
  - ☐ Independent Auditor's Report on Compliance for Each Major RD Program and on Internal Control Over Compliance
  - ☐ Schedule of Findings, Questioned Costs, and Recommendations (current year and prior year)
  - ☐ Management Letter, if applicable
  - ☐ Schedule of Status of Prior Audit Findings, Questioned Costs, and Recommendations, if applicable
  - ☐ Corrective Action Plan, if applicable

Compliance Requirements and Audit Areas: Suggested audit procedures that RD believes should be performed. Refer to Attachment 4-J.

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A. Auditor's Opinion:

Disclosures are made both on the financial statements themselves and in the footnotes to the financial statements. We accept any of the below auditor opinions, but if it is a qualified or no opinion audit, address the exceptions or problems in the letter to the borrower.

- ☐ Unqualified Opinion – the financial statements are fairly and appropriately presented, without any identified exceptions, and in compliance with generally accepted accounting principles (GAAP)
- ☐ Qualified Opinion – the financial statements are fairly presented, with the exception of a specified area. A qualified opinion is generally still acceptable to lenders. More detailed review may be needed.
- ☐ Adverse Opinion – the financial statements are misrepresented, misstated, and do not accurately reflect the borrower's financial performance. More detailed review is needed.
- ☐ No Opinion (Disclaimer of Opinion) – the financial statements may be lacking, or there is insufficient cooperation from management. More detailed review is needed.

Comments:

_____
_____
_____
_____

B. Financial Statements:

1) Balance Sheets:

- ☐ Assets are fairly stated in comparison to financial data submitted on Form RD 3560-10.
  - ☐ Restricted account(s) (Reserve Account) matches the amount submitted on Form RD 3560-10.
- ☐ Liabilities are fairly stated in comparison to financial data submitted on Form RD 3560-10.
- ☐ Security Deposit Asset account **must** equal or exceed Security Deposit Liability account. If not, the potential liability exceeds the cash amount in the Security Deposit bank account. Address discrepancy with management.
- ☐ Accounts Payables are fairly stated in comparison to financial data submitted on Form RD 3560-10.
- ☐ Notes Payables (current and long-term liabilities) is fairly stated in comparison to financial data submitted on Form RD 3560-10.
- ☐ Any increase in notes payables or new notes payables has been approved by RD.

2) Statements of Income (Loss):

- ☐ Income and expenses should be fairly stated in comparison to financial data submitted on Form RD 3560-7.

3) Statements of Changes in Partner's Capital (Deficit):

- ➢ Or similarly report title based on the type of participating ownership entity. For example, if a limited liability company owns the property, "Statement of Changes in Member's Equity" should be discussed.
- ➢ The allowable distribution is restricted as described in the Loan Agreement / Resolution. Distribution is further discussed in the RTO section of the Agency Review of Annual Financial Statements (Att. 4-O)

4) Statements of Cash Flow:

Helps us understand the inflows and outflows of cash over the 12 months of the financial statements.

Comments:

_____
_____
_____
_____
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Notes to Financial Statements:

The notes to financial statements (footnotes) are:

- ✓ Communication of information necessary for a fair presentation of the financial position and results of operations that are not readily apparent from, or not included in, the financial statements themselves.
- ✓ A synopsis preview of the financial status of property and will point out problems.
- ✓ An easily accessible place for complex definitions or calculations to be explained should a reader desire additional information.
- ✓ Reports the details and additional information that is left out of the main financial statements (balance sheet, income statement, and cash flow statement)
- ✓ An integral part of the overall financial statement review.

☐ Review comments regarding organizational structure. Any changes should be noted on Att 4-F.
☐ Review notes for any financial irregularities
☐ Review notes regarding Reserve Account - transfers and withdrawals should match MFIS tracked accounts
☐ Review notes for unauthorized loans or advances from owner (partners)
☐ Review notes to determine real estate taxes are paid current, if applicable.
☐ Review for changes in ownership. If any change, was it approved by RD? ☐ Yes ☐ No
☐ Was RTO fairly stated and approved by RD? ☐ Yes ☐ No
☐ Was the management fee calculated accurately? ☐ Yes ☐ No
☐ Review Identity of Interest (IOI) comments – has the Agency approved any identified IOI? ☐ Yes ☐ No

Comments:

_____

_____

_____

_____

C. Supplemental Information:

Items 1 through 7 will be provided in the audit.

1) Management Fee Calculation:

☐ Per Occupied Unit Per Month (PUPM) does not exceed rate stated on Management Certification (Form RD 3560-13). [Reference: HB-2-3560, Attachment 3-F]
☐ If reporting "add-on" fees, confirm they do not exceed fees agreed on Management Certification (Form RD 3560-13). [Reference HB-2-3560, Exhibit 3-4]
☐ Management Fee Calculation does not exceed financial data submitted on Form RD 3560-7
☐ Utilize MFIS analysis (Mgmt Fee Report), if needed

2) Insurance Disclosure:

☐ Insurance coverage stated coincides with MFIS / Projects / Details / Insurance for corresponding fiscal year.

3) Return to Owner (RTO):

☐ Coincides with requirements of Loan Agreement / Loan Resolution. Analyzed in more detail in the Agency Review of Annual Financial Reports (Att. 4-O)

4) Changes in Rental Property (Fixed Assets):

☐ Review to determine if any unapproved sale or acquisition occurred during the fiscal year

5) Accrual to Cash Schedule: provides a listing of the auditor's calculation of accrual to cash adjustment

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6) Multiple-Family Housing Borrower Balance Sheet, Form RD 3560-10: matches Form RD 3560-10 financial data transmitted to RD

7) Multiple-Family Housing Project Budget, Form RD 3560-7: matches Form RD 3560-7 financial data transmitted to RD

8) Schedule of Expenses: (optional) Provides a breakdown of expenses to coincide with expenses submitted on Form RD 3560-7

Comments:

_____
_____
_____
_____

D. Independent Auditor's Reports and Schedule of Findings:

1) Independent Auditor's Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards:

☐ Review for noted deficiencies and material weaknesses

List if any deficiencies or weaknesses are noted:

_____
_____
_____
_____

2) Independent Auditor's Report on Compliance for Each Major RD Program and on Internal Control Over Compliance: (Required by the Consolidated Audit Guide for Audits of RD Programs)

☐ A major program is defined as an individual assistance program for which expenditures equaled or exceeded $500,000 during the applicable fiscal year or a project had an outstanding RD direct loan or RD guaranteed loan balance equal to or exceeding $500,000 as of the end of the period under audit.

☐ If a major program is identified, borrower has complied in all material respects with the compliance requirements.

3) Schedule of Findings, Questioned Costs, and Recommendations:

(Comparative - current year and prior year):

☐ Review for noted findings and questioned costs

☐ Note if those identified have been corrected by the borrower

List if any findings or questioned costs not corrected by the borrower:

_____
_____
_____

4) Management Letter, if applicable:

_____
_____
_____

5) Schedule of Status of Prior Audit Findings, Questioned Costs, and Recommendations, if applicable:

_____
_____
_____

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6) Corrective Action Plan, if applicable:

_____
_____
_____
_____

Noted Concerns in Audit:

_____
_____
_____
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****

Update Supervisory Activities in MFIS: (changes are needed to MFIS, the Missing Data Rules, and ECF classifications for these instructions to be accurate.

☐ Audit (For-Profit) – Received date entered in MFIS
☐ Audit (For-Profit) – Reviewed date entered in MFIS
MFIS Message: Click "OK" to schedule the Audit activity for the following year
MFIS Message: Click "Cancel" to process the Audit activity update but NOT schedule the Audit activity for the following year
☐ Audit (For-Profit) – Follow-up date entered in MFIS, if additional information or clarification is needed

****

HELPFUL TERMS:

Corporation (for-profit): A corporation is made up of shareholders or members. They are governed by their articles of incorporation and bylaws. Nearly every corporation has a board of directors, which is charged with managing the business affairs of the corporation as provided in the bylaws. Under limited circumstances, a shareholder agreement can eliminate the board of directors and transfer the exercise of corporate powers directly to the shareholders. Officers are appointed by the board of directors, in accordance with the bylaws, and the same person may hold multiple officers. Officers have the authority to perform the duties described by the bylaws. In all circumstances signature authority is governed by the articles of incorporation and bylaws.

General Partnership: A general partnership is a business arrangement by which two or more individuals agree to share in all assets, profits, and financial and legal liabilities of a jointly owned business. In a general partnership, partners agree to unlimited liability, meaning liabilities are not capped and can be paid through the seizure of an owner's assets. Furthermore, any partner may be sued for the business's debts. Typically, these are "older" formed partnerships.

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Limited Liability Company (LLC): A limited liability company is made up of member(s) and/or manager(s). Management of an LLC is generally vested in managers, as provided by the operating agreement. Non-managers of an LLC are called "members." LLCs are governed by articles of organization, which may provide regulations governing the company's internal affairs, but the LLC may also have an operating agreement, which may further provide limitations or authorizations possessed by the members or managers. Generally, if the articles of organization provide for management of the LLC in the managers, then the managers are the only agents of the LLC for ordinary business purposes, and the members may not act as an agent of the LLC. In an LLC members and managers are not liable for the LLCs debts, and members and managers cannot be held personally liable in court for an obligation of the LLC.

Limited Liability Limited Partnership (LLLP): A limited liability limited partnership (LLLP) is a type of partnership which **combines the limited liability of an LLP with the two-tiered governance of a Limited Partnership**. Regarding the ability to sign documents and bind the partnership, an LLLP is governed just as a Limited Partnership.

Limited Liability Partnership (LLP): A limited liability partnership (LLP) is a type of partnership where all partners have limited liability. All partners can also partake in management activities. This is unlike a limited partnership, where at least one **general partner** must have unlimited liability and **limited partners** cannot be part of management.

Limited Partnership (LP): A limited partnership (LP) is a type of partnership made up of two or more partners (general partner(s) and limited partner(s)). The **general partner** oversees and runs the business while **limited partners** do not partake in managing the business. However, the **general partner** has unlimited liability for the debt, and any **limited partners** have limited liability up to the amount of their investment.

Partnership Asset Management Fee (Asset Management Fee): A fee, stated in the Limited Partnership Agreement or Partnership Agreement, which is paid for managing the affairs of the partnership. As noted in HB-2-3560, Chapter 4.14 B., "Any investor asset management fee, investor service fee, or similar fee may be paid solely from the annual Return to Owner and may not be paid from property operating funds. This is not the same as the Non-Profit Asset Management Fee."

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Attachment 4-Q

NON-PROFIT, STATE and LOCAL GOVERNMENT, OR TRIBES
BORROWER FINANCIAL AUDIT REVIEW GUIDE
$1 million or More of Federal Financial Assistance – Borrower Threshold
In Accordance with 2 CFR part 200 subpart F
(OMB Uniform Guidance: Cost Principles, Audit and Administrative Requirement for Federal Awards)

This Borrower received $1 million or more in Federal financial assistance? Attachment 4-G
__ No – no further action needed
__ Yes – Proceed with Single Audit requirements and review below

Due: Within the earlier of 30 days after receipt of the auditor's report, or 9 months after the end of the Borrower's fiscal year.

Date Received _____ Date Returned (if applicable) _____ Date Reviewed _____

****

Per Uniform Guidance the single audit should also be submitted using the Federal Audit Clearinghouse.

☐ Receive copy of signed Engagement Letter (required prior to releasing information to the CPA).

A Single Audit consists of:
- Financial component - consists of a financial audit, same as the for-profit entity, (audit of financial statements and accompanying notes).
- Compliance component – the auditor must determine whether the auditee (Borrower) has complied with Federal statutes, regulations, and the terms and conditions of the Federal awards that may have a direct and material effect on each of its major programs.

An audit should consist of the following items at a minimum:

☐ Independent Auditor's Report (Auditor's Opinion)
☐ Financial Statements (issued in two-year comparative format)
  ☐ Balance Sheets
  ☐ Statements of Income (Loss)
  ☐ Statements of Changes in Partner's Capital (Deficit)
  ☐ Statements of Cash Flow
☐ Notes to Financial Statements
☐ Supplemental Information
  ☐ Management Fee Calculation
  ☐ Insurance Disclosure
  ☐ Return to Owner
  ☐ Changes in Rental Property (Fixed Assets)
  ☐ Accrual to Cash Schedule (aka Accrual to Cash Adjustment)

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- ☐ Schedule of Expenses (optional)
- ☐ Multiple-Family Housing Borrower Balance Sheet, Form RD 3560-1
- ☐ Multiple-Family Housing Project Budget, Form RD 3560-7 and supporting documentation

☐ Independent Auditor's Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards

☐ Independent Auditor's Report on Compliance for Each Major RD Program and on Internal Control Over Compliance
☐ Schedule of Expenditures of Federal Awards
☐ Schedule of Findings (Schedule of Findings, Questioned Costs, and Recommendations)
☐ Management Letter, if applicable
- ☐ Schedule of Status of Prior Audit Findings, Questioned Costs, and Recommendations, if applicable

☐ Corrective Action Plan, if applicable

E. Auditor's Opinion:

Disclosures are made both on the financial statements themselves and in the footnotes to the financial statements. We accept any of the below auditor opinions, but if it is a qualified or no opinion audit, address the exceptions or problems in the letter to the borrower.

☐ Unqualified Opinion – the financial statements are fairly and appropriately presented, without any identified exceptions, and in compliance with generally accepted accounting principles (GAAP)
☐ Qualified Opinion – the financial statements are fairly presented, with the exception of a specified area. A qualified opinion is generally still acceptable to lenders. More detailed review may be needed.
☐ Adverse Opinion – the financial statements are misrepresented, misstated, and do not accurately reflect the borrower's financial performance. More detailed review is needed.
☐ No Opinion (Disclaimer of Opinion) – the financial statements may be lacking, or there is insufficient cooperation from management. More detailed review is needed.

Comments:

_____
_____
_____
_____

F. Financial Statements:

5) <u>Balance Sheets:</u>
- ☐ Assets are fairly stated in comparison to financial data submitted on Form RD 3560-10.
- ☐ Restricted account(s) (Reserve Account) matches the amount submitted on Form RD 3560-10.
- ☐ Liabilities are fairly stated in comparison to financial data submitted on Form RD 3560-10.

☐ Security Deposit Asset account **<u>must</u>** equal or exceed Security Deposit Liability account. If not, the potential liability exceeds the cash amount in the Security Deposit bank account. Address discrepancy with management.
- ☐ Accounts Payables are fairly stated in comparison to financial data submitted on Form RD 3560-10.

☐ Notes Payables (current and long-term liabilities) is fairly stated in comparison to financial data submitted on Form RD 3560-10.
- ☐ Any increase in notes payables or new notes payables has been approved by RD.

6) <u>Statements of Income (Loss):</u>

☐ Income and expenses should be fairly stated in comparison to financial data submitted on Form RD 3560-7

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7) Statements of Changes in Partner's Capital (Deficit):

- Or similarly report title based on the type of participating ownership entity. For example, if a limited liability company owns the property, "Statement of Changes in Member's Equity" should be discussed.
- The allowable distribution is restricted as described in the Loan Agreement / Resolution. Distribution is further discussed in the RTO section of the Agency Review of Annual Financial Statements (Attachment. 4-O)

8) Statements of Cash Flow:

Helps us understand the inflows and outflows of cash over the 12 months of the financial statements.

Comments:

_____
_____
_____
_____
_____

G. Notes to Financial Statements:

The notes to financial statements (footnotes) are:

- Communication of information necessary for a fair presentation of the financial position and results of operations that are not readily apparent from, or not included in, the financial statements themselves.
- A synopsis preview of the financial status of property and will point out problems.
- An easily accessible place for complex definitions or calculations to be explained should a reader desire additional information.
- Reports the details and additional information that is left out of the main financial statements (balance sheet, income statement, and cash flow statement)
- An integral part of the overall financial statement review.

☐ Review comments regarding organizational structure. Any changes should be noted on Attachment 4-F.
☐ Review notes for any financial irregularities.
☐ Review notes regarding Reserve Account - transfers and withdrawals should match MFIS tracked accounts.
☐ Review notes for unauthorized loans or advances from owner (partners).
☐ Review notes to determine real estate taxes are paid current, if applicable.
☐ Review for changes in ownership. If any change, was it approved by RD? ☐ Yes ☐ No
☐ Was RTO fairly stated and approved by RD? ☐ Yes ☐ No
☐ Was the management fee calculated accurately? ☐ Yes ☐ No
☐ Review Identity of Interest (IOI) comments – has the Agency approved any identified IOI? ☐ Yes ☐ No

Comments:

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H. Independent Auditor's Reports and Schedule of Findings:

7) Independent Auditor's Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards:

☐ Review for noted deficiencies and material weaknesses
List if any deficiencies or weaknesses are noted:

_____
_____
_____
_____

8) Independent Auditor's Report on Compliance for Each Major RD Program and on Internal Control Over Compliance:
(Required by the Consolidated Audit Guide for Audits of RD Programs)

_____

☐ A major program is defined as an individual assistance program for which expenditures equaled or exceeded $500,000 during the applicable fiscal year or a project had an outstanding RD direct loan or RD guaranteed loan balance equal to or exceeding $500,000 as of the end of the period under audit.
☐ If a major program is identified, borrower has complied in all material respects with the compliance requirements.

9) Schedule of Expenditures of Federal Awards: lists the Federal awards expended for each individual Federal program and the CFDA (Catalog of Federal Domestic Assistance) number for each program area. (Examples: CFDA #10.415 – Rural Rental Housing Loans, CFDA #10.427 - Rural Rental Assistance Payments; CFDA #10.437 – Interest Assistance Programs; CFDA #10.438 – Section 538 Rural Rental Housing Guaranteed Loans)

10) Schedule of Findings:
- Findings related to Financial Statements – Auditor's Opinion (unqualified, qualified, adverse, disclaimer of opinion).
- If material weakness identified in internal control of financial statements.
- A statement as to whether the audit disclosed any non-compliance that is material to the financial statements.
- Type of report the auditor issued on compliance for major programs.
- A statement as to whether the audit disclosed any audit findings that the auditor is required to report under § 200.516 (a).
- Identification of major programs by listing each individual major program.
- The dollar threshold used to distinguish between Type A and Type B programs.
- A statement as to whether the auditee (Borrower) qualified as a low-risk auditee under § 200.520.

11) Schedule of Findings, Questioned Costs, and Recommendations:
(Comparative - current year and prior year):

☐ Review for noted findings and questioned costs
☐ Note if those identified have been corrected by the borrower
List if any findings or questioned costs not corrected by the borrower:

_____
_____
_____
_____

_____

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12) Management Letter, if applicable:

13) Schedule of Status of Prior Audit Findings, Questioned Costs, and Recommendations, if applicable:

14) Corrective Action Plan, if applicable:

Noted Concerns in Audit:

****

Update Supervisory Activities in MFIS: (changes are needed to MFIS, the Missing Data Rules, and ECF classifications for these instructions to be accurate.

☐ Single Audit (Non-Profit) – Received date entered in MFIS
☐ Single Audit (Non-Profit) – Reviewed date entered in MFIS
MFIS Message: Click "OK" to schedule the Single Audit activity for the following year
MFIS Message: Click "Cancel" to process the Single Audit activity update but NOT schedule the Single Audit activity for the following year
☐ Single Audit (Non-Profit) – Follow-up date entered in MFIS, if additional information or clarification is needed

Disclaimer: Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

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Attachment 4-R

Agency Review Guide for Proposed Budgets

(This is a guide only – refer to HB-2-3560, Chapter 4, Chapter 7, and 7 CFR 3560)

A guide to assist in the planning and review of a project's financial operation for the coming year.

Property Name: _____ Fiscal Year: _____

Borrower Name: _____ Number of Units: _____

Date Complete Package Received: _____ Revenue Units: _____

Date Initial Review to be Completed By (30 Days): _____ RA Units: _____

I. Borrower Submission for a Complete Package:

- ☐ **Form RD 3560-7**, MFH Project Budget (submitted through MINC if 8 or more units)
- ☐ **Budget narrative** – provides a description of the budget and highlights important elements to aid the Agency with the review of the budget (see HB-2-3560, 4.14 B. *5*. & Exhibit 4-1)
- ☐ **Rent change documentation** – needed if a change in rent (increase or decrease) is proposed. Must be based on a realistic projected budget. (see Exhibit 4-1) The budget narrative must clearly explain the necessity for the change requested.
- ☐ **Tenant notification** - HB Letter 203, Notice to Tenants of Proposed Rent and Utility Allowance Change *(if applicable)*
- ☐ **Utility allowance review** - (if applicable) conducted annually to determine whether any change needs to be made. The budget narrative should indicate change or no change to utility rates. A 12-month sampling for each unit size and type is used for the average calculation (see HB-2-3560, 4.14 C. and Chapter 7)
- ☐ **Other information** – any information the borrower or Agency believes is necessary to justify the proposed rent and/or utility allowance change request and support a reasonable and realistic proposal.

Within 30 days of receipt of the complete budget package, the Agency must take action by approval or denial of the budget or contact the Borrower or Management Agent to request additional information or clarification. (HB-2, 4.14 D. 2. & D. 6 b.)

II. MFIS Reports and Agency Documents helpful for the Review:

- ☐ **MFIS Report FIN1700 Budget History**, run using the "Current" FY when reviewing proposed budgets and select Excel as Report Options. After opening the excel document, Hide columns A through M and column O. To the right of the last column, (column AB) title the column "3-year average", on line 2 create a formula to calculate the 3-year average for the three "Actl Bdgt" columns, for example **=(U2+X2+AA2)/3** copy and paste this formula in all rows of column AB through line 75, "Ttl O@M Exps (11+18+33+40)".
- ☐ **PRJS4200 Occupancy Trend**, run using the most recent 36-month date span and "un-check" the Summaries Report box.

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☐ **Previous year's proposed budget letter/review and previous year's annual financial review -** determine if servicing follow up is needed or if items need to be addressed in this year's proposed budget.

☐ **Loan Agreement(s) or Loan Resolution(s) (including any Amendments)** - determine if the proposed annual transfer to the reserve account and proposed RTO are the correct amounts. If there is an existing SWOP, these proposed amounts may have been modified in the SWOP.

☐ **Promissory Note(s), Re-amortization Agreement(s), Assumption Agreement(s), Interest Credit Agreement(s), or AMAS M1FI screen(s)** for all outstanding loans - determine if the proposed note payment and subsidized payments are correct.)

☐ **Rent Calculation Spreadsheet Tool** – optional, if needed to confirm proposed Basic and Note rents are correct

☐ **504 Self-Evaluation/Transition Plan and/or CNA** (Capital Needs Assessment) - determine if capital budget items are planned and on schedule

III. Preliminary Budget Review (HB-2, 4.14)

a. Are all sections of the budget completed (i.e. Part I, II, III, IV, and V.)? If not, request management agent to correct and retransmit the proposed budget.	Yes ☐ No ☐
b. Does Budget Narrative address all items required by Exhibit 4-1? If not, request missing items from management agent. Depending on missing items, management may need to retransmit the proposed budget.	Yes ☐ No ☐
c. Has the borrower addressed the outstanding findings of the last supervisory visit, site inspection, and compliance review? Review MFIS Findings, if there are any open physical findings, review the latest FRM2100 Report, and compliance review. If items have not been resolved or are not addressed in proposed budget or budget narrative, an explanation may be needed from management.	Yes ☐ No ☐ N/A ☐
d. Has the borrower completed all of the 504 Self-Evaluation & Transition Plan requirements? 1. If no, is the Transition Plan on schedule? 2. If not on schedule, are the past & current year items fully addressed with the current budget? *3.* See UL dated January4, 2022, Section 504 of the Rehabilitation Act of 1973 Compliance in Rural Development Multi-Family Housing Properties.	Yes ☐ No ☐ N/A ☐

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e. In the budget narrative, has the borrower addressed the outstanding issues from the most recent year-end report acceptance letter? Review the last year-end report acceptance letter from RD. If not corrected or addressed in proposed budget narrative, request explanation from management. If the outstanding issues should be addressed in the proposed budget, request management to correct and retransmit the proposed budget.	Yes ☐ No ☐	N/A ☐
f. Review previous year's proposed budget letter to determine if there are any items that need to be addressed in this year's proposed budget.		

IV. Reasonableness Analysis (HB-2, 4.14 D. *4*): Review the MFIS Budget Analysis. The MFIS Budget Analysis is a tool to assist you with the review of the proposed budget, however, a thorough review is still needed. For any "Reason" noted in red you must check the Reviewed box and enter a comment explaining why the noted analysis item is acceptable to the Agency. **Nondescriptive comments, such as "Okay" or "Done" are not acceptable.**

a. (Form RD 3560-7) Review operating subtotals, and income sources utilizing MFIS Analysis tool: If the MFIS Budget Analysis determines a subtotal is greater than 10% different than last year's proposed budget, the **"Reason"** will be red and provide you with the specific percentage of difference from last year's proposed budget. You must enter an explanation in the MFIS Analysis comment box.	>10% difference from last year's proposed budget? Yes ☐ No ☐

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b. Compare the 3 yr historical average (FIN 1700) of actual expenses to the proposed budget: Are the proposed budget subtotals comparable to the 3-year historical actual expenses, considering reasonable inflation? Does the budget narrative provide an explanation? If not, an explanation may be needed from management. Review proposed expenses to ensure they are not artificially inflated.	Yes ☐ No ☐
c. Sub-Total Administrative Expenses (Part II, line 33) Does it exceed 23% of rental income? (see 3560.102 (i) (3)(iii) (A).) If yes, investigate further and review HB-2, Attachment 4-C, *Allowable and Unallowable Project Expenses* to ensure only allowable expenses are proposed. If the % is comparable to the "norm," it may be acceptable, if not, further documentation may be needed from management to determine if administrative expenses are reasonable, considering reasonable inflation. 1. Does management fee PUPM (Part II, line 20) agree with Agency approved Management Certification? If not, it must either be corrected in the proposed budget and retransmitted; or a new Management Certification is needed. (Proposed management fee can be based on 100% occupancy; or based on the % of occupancy proposed in Part I, Line 8.) 2. Review any proposed management fee add-ons (HB-2 3.8 B.) – do conditions exist at the property to necessitate add-on fees? These must be approved by the Agency. 3. Does site manager fee correspond to Management Plan? If not, proposed budget must be corrected and retransmitted.	Yes ☐ No ☐ Yes ☐ No ☐ Yes ☐ No ☐ Yes ☐ No ☐
d. Review Vacancy Allowance for Reasonableness (4.14 B. *1.*) (Form RD 3560-7, Part I, line 8) - The goal is to have a budget with a reasonable projected vacancy, which means the budgeted vacancy may need to exceed the cap. 1. Is the proposed vacancy comparable to the most recent 36-month historical vacancy at the property? (Answer should be yes) If there is a vacancy concern, review PRJS4200 to determine if on-going concern, or showing recent improvement? 2. If vacancy exceeds the cap noted in the right panel - must have an approved SWOP to budget above the cap. IF SWOP will be in force during the majority of the proposed budget year, the budgeted vacancy will be based on the workout plan.	Vacancy Caps: ➢ 15 or fewer units, 15% ➢ more than 15 units, 10% Yes ☐ No ☐ % - 36-month historical vacancy average ____ % - Proposed vacancy allowance

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e. Review Utility Allowance (UA) (4.14 C.) 1. Has required documentation (per 4.14 C.) been provided to justify the proposed tenant utility allowance, if applicable? If no, request additional documentation from management agent. **a.** Does proposed utility allowance noted in HB Letter #203 match the utility allowance in Part IV of the proposed budget, Form RD 3560-7? **b.** Is 12-month average will be used for the calculation: i. Sampling of each size of unit. ii. Summary of calculations is provided. **c.** Utility rate change – provide documentation from utility company, if applicable. 2. Change in utility costs: Existing UA x .1 = 10% change in UA a. 10% or more change – borrower required to make a change. b. Less than 10% - optional for borrower to make change.	Yes ☐ No ☐ N/A ☐ (If N/A, skip this section) Yes ☐ No ☐ Yes ☐ No ☐ Yes ☐ No ☐ N/A ☐

V. Cash Uses - Does the budget reflect:

a. Is correct debt payment proposed? Review all existing loan documents 1. RD debt (Part I, line 17), compare to MFIS Projects /Details screen, if discrepancy then refer to Promissory Note, Assumption Agreement (or Re-amortization Agreement) & Interest Credit Agreement, and/or AMAS screens M1FI and/or M1JI 2. Other authorized non-RHS debt (Part I, Line 25*)*, review MFIS Servicing Efforts for 538 loan, Subordination, Jr Lien, or Loan Advance from Borrower, and/or compare to 3rd party loan documents a. If debt payments do not match, confirm RD has approved the non-RHS debt via ECF or other research using the file or other means. b. If non-RHS debt was not approved by RD, investigate, document and determine course of action. c. If debt payments on budget are incorrect, they must retransmit a corrected proposed budget. d. If not noted in MFIS Servicing Efforts, update MFIS as needed.	Yes ☐ No ☐ Yes ☐ No ☐
b. Is correct owner's return on investment (return to owner – RTO) proposed? (Part I, line 23) (HB-2 4.4 B) Confirm via MFIS – Projects / Details screen, if discrepancy then refer to Loan Agreement/Resolution and correct MFIS, if needed. RTO is not authorized if SWOP is in place for the coming fiscal year– see HB-3, 10.20; and RTO not allowed for non-profit owners.	Yes ☐ No ☐

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c. Is non-profit Asset Management Fee proposed? (Part I, Line 23) (HB-2, 4.14 B. 1) May be requested by non-profit borrowers, up to $7,500 of actual expenses per property for certain organizational costs (i.e. – Errors & Omissions insurance, Board of Director's oversight functions).	Yes ☐ No ☐
d. Is a Miscellaneous cash use proposed in the Cash Flow? (Part I, line 27) If yes, an explanation or comment must be provided to identify the miscellaneous use. This should be rarely used on a proposed budget.	Yes ☐ No ☐

VI. Cash Flow & Ending Cash Balance (HB-2, 4.14 B. *1.*)

The proposed budget ending balance should be a positive cash balance and not cause an unwarranted rent increase, nor should it exceed the total of approximately 20% of Total O&M expenses.

a. Is cash flow negative? (Part I, line 30) 1. A negative cash flow may be acceptable if there is sufficient operating cash, and it does not appear to represent a trend that cannot be corrected; or if surplus O&M cash is used to compensate for the deficit. ▪ This should not happen often. Do not let the property's operating cash continue to be depleted due to negative cash flow. Address the problem, such as a needed rent increase, or address issues at the property, etc. 2. If there is a negative cash flow, does the operating account still have a positive ending balance? If not, review income and expenses to suggest revisions to management for a positive cash flow.	Yes ☐ No ☐ Yes ☐ No ☐
b. Does the ending cash balance project surplus cash? Review MFIS Analysis for calculation of surplus O&M cash. If yes, review prior year's year-end report acceptance letter. If there was surplus O&M cash at the year-end, has management utilized it as recommended in the acceptance letter? If not, follow-up with management on the use of last year's surplus cash. ▪ RD may require a rent decrease.	Yes ☐ No ☐

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VII. Review Reserve Account (HB-2, Chapter 4, Section 3)

Adequate replacement reserves are a critical component of a successful project. The intent of the reserve account is not to be used as an alternative operating budget (i.e. – a habit of operating shortfalls being paid with Reserve Account withdrawals). Rents should reflect and cover the reasonable and customary costs of annual operating expenses of the property in the market. Annual reserve deposit for projects with Agency approved Capital Needs Assessments (CNA) may be adjusted as authorized in the loan, transfer or servicing approval.

a. Is the proposed beginning reserve account cash balance reasonable based on the prior year's ending reserve account cash balance, and the current year's deposits and withdrawals? If not, confirm with management the proposed beginning cash balance is based on the current balance less projected reserve deposits and withdrawals for the remainder of the current fiscal year.	Yes ☐ No ☐
b. Is correct annual transfer to reserve proposed? (Part I, line 22) - Verify via MFIS Tracked Accounts (or Tracked Accounts > Future Funding) reflects the annual budget amount. If a discrepancy, refer to Loan Agreement/Resolution (or Amendment), or SWOP (as SWOP may allow modified transfer amount). If transfer is incorrect, management agent must retransmit a corrected proposed budget.	Yes ☐ No ☐ Yes ☐ No ☐

Has the reserve account reached the fully funded amount? Attachment 4-B, *Amendment to Loan Agreement/Resolution Reserve Account Requirements*, should be utilized to increase the fully funded level. (See HB-2, 4.11)	
c. Are repairs planned that were identified or recommended from the most recent site inspection? If not, an explanation from management agent may be needed. If revision is needed, they must retransmit the proposed budget.	Yes ☐ No ☐ N/A ☐
d. If Borrower has Capital Needs Assessment (CNA) or 504 Transition Plan are they budgeting for capital improvements on schedule with the CNA and 504 Transition Plan? If not, request explanation from management agent. If revision is needed, they must retransmit the proposed budget.	Yes ☐ No ☐ N/A ☐
e. Is transfer from reserve account included in capital budget (Part V.) and described in narrative? If not, an explanation from management agent may be needed.	Yes ☐ No ☐ N/A ☐

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VIII. Review Rent Change (HB-2, 4.14 C. and Exhibit 4-3): Agency recommendation is for a borrower to propose a % rent increase every year instead of a large % rent increase every several years. Changes in rental rates will apply to all units in a property. (HB-2, 7.12)

a. As a guide, how do the proposed Basic rents compare to the HUD FMR rents? 1. If they exceed HUD FMR rent, will the proposed rents adversely affect the marketability of the property? 2. If yes, review with management to determine if expenses can be reduced. 3. If expenses cannot be reduced the proposed budget may not be acceptable.	Yes ☐ No ☐
b. Is this a project-based HUD Section 8/515 property? (HB-2, 7.14, Exhibit 7-9 and Exhibit 4-5) 1. RD has the responsibility to review and approve project budgets on an annual basis based on need to meet cash flow and expense requirements. 2. RD will not take into account HUD's automatic annual OCAF adjustment for Section 8 contract rents when reviewing the budget.	Yes ☐ No ☐
c. Is the rent spread between the different unit sizes consistent with the amount Management states the rent change will be? This is either: 1. The same dollar amount for all unit sizes (bedroom sizes), OR 2. The same percentage of rent change for the various unit sizes, OR 3. Is based on the square footage of the various unit sizes, OR 4. Is based on the approved CRCU rents at the time of a transfer, or MPR deal.	Yes ☐ No ☐
d. Is the rent difference between Basic and Note Rate rent correct? 1. If MPR tools exist at the property (i.e. -deferred loan, soft-second loan, etc.) see the MPR Rent Structure Tool to ensure the correct loan payments are used to calculate Note Rate Rents. 2. The difference between Basic Rent and Note Rent is that Note rent is calculated using the same operating expenses as Basic Rent, EXCEPT the debt payment is using the interest rate shown on the Promissory Note(s), Assumption Agreement(s), or Re-amortization Agreements(s), instead of the Interest Credit Agreement. 3. Rent Calculation Tools are provided as an SOP Job Aid.	Yes ☐ No ☐

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IX. Special Servicing Actions (HB-3, Chapter 10, Section 3 & 4)

a. Is a Workout Agreement in place and up to date? If yes, does the proposed budget continue to implement the goals of the Workout Agreement? If no, see item b.	Yes ☐ No ☐
b. Is a Workout Agreement expired, expiring or needs renegotiated; or is a Workout Agreement needed? (If there are financial or physical findings, such as underfunded reserve, underfunded T&I, delinquency, vacancy, deferred maintenance, etc., a Workout Agreement is needed if the finding cannot be corrected. (Recommended format - HB-3, Chapter 10, Exhibit 10-3.)	Yes ☐ No ☐
c. Does project have a Special Note Rate (SNR)? If yes, it must be reviewed annually at the time of budget review, see HB 3, 10.31. If the local market conditions have not changed (may be provided by the borrower or management agent) since the SNR was implemented, then no change is made to the SNR. (The SNR rent is based on an interest rate less than Note, but not lower than 2%)	Yes ☐ No ☐

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X. Budget Approval / Denial (HB-2, 4.14 D. *6.* & Exhibit 4-3):

Tenants have 20-calendar days from the date of Notice to provide comments to the Agency. Budgets

Date of RD Review	Approved:	Action To Be Taken:
1st Review Date: _____	☐ Yes ☐ No	**If Budget is approved:** • Send letter (or email) to the borrower acknowledging budget approval, include any due or past due items found in MFIS Supervisory Activities. AND: • If approved rent change was increased or utility allowance was decreased from the original Notice, MFH Servicing Official must send HB Letter 204 to the Borrower to deliver to tenants. • If approved rent is same or less than the original Notice, or approved utility allowance is more than original Notice, no additional Notice is needed from the Agency. **If Budget is not approved:** • Send Review Letter Requesting Additional Information. 10-day Follow-up date: _____ • Post 10-day Follow-up date in MFIS, Supervisory Activities, Proposed Budget • If Borrower responds to 1st Review Letter, conduct 2nd Review • If Borrower does not respond to 1st Review Letter, discuss with Team Lead for denial of budget after 10 days and give appeal rights (Attachment 1-B). o Post "Denied" date in MFIS, Supervisory Activities, Proposed Budget o After 30-day appeal rights expire, send Servicing Letter (SL) #1. Enter "Servicing Letter" task in MFIS – Servicing Efforts. Associate Finding 0096, Unacceptable Proposed Budget, to the SL#1. Continue servicing (HB-3,
2nd Review Date:	☐ Yes ☐ No	**If Budget is approved, follow the steps noted above in 1st Review.** **If Budget is not approved, follow the steps noted above in 1st Review.**
3rd Review Date: _____	☐ Yes ☐ No	**If Budget is approved, follow the steps noted above in 1st Review.** **If Budget is not approved (discuss with Team Lead):** • Send Letter Denying Proposed Budget and give appeal rights (Attachment 1- B). o Post "Denied" date in MFIS, Supervisory Activities, Proposed Budget o After 30-day appeal rights expire, send Servicing Letter #1. Enter "Servicing Letter" task in MFIS – Servicing Efforts. Associate Finding 0096, Unacceptable Proposed Budget, to the SL#1. Continue servicing (HB-3, 10.10).

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CAN be reviewed during the 20-day comment period, but they CANNOT be approved or denied during this 20-day period.

XI. Completing the Review:

- ☐ MFIS Analysis – all items in red must be reviewed, the box "checked", and explanation comments entered and updated.
- ☐ Update MFIS Supervisory Activities for the Proposed Budget:
- ☐ Received: date complete proposed budget information was received.
- ☐ Approved: date MFH Servicing Official approves budget
- ☐ Denied: if applicable – date MFH Servicing Official denies budget (must give appeal rights)
- ☐ Follow-up: as needed, enter requested response date for any requested documentation, information, and clarification items. Remove follow-up date once budget is approved.
- ☐ Combine budget and all supporting documents in to **one pdf** and upload to ECF.
- ☐ If SWOP received, enter Servicing Effort in MFIS with appropriate approval and follow-up dates and associate Servicing Effort with Finding(s)
- ☐ If SNR annual review was conducted, extend follow-up date for the next annual review on the Servicing Effort – Special Note Rent in MFIS
- ☐ If prior Management Certification, Form RD 3560-13, has expired, or will expire at the end of the current fiscal year, or if new fees are proposed in accordance with Attachment 3-F, a new management certification is needed for RD's review and approval. If Management Certification is received, update MFIS Supervisory Activity - Management Certification:
- ☐ If there is an open Due Date entry, enter Received date, Effective date, Approved date, and Expiration date (if applicable)
- ☐ If there is no open Due Date entry, Add the Supervisory Activity – Management Certification and enter Received date, Effective date, Approved date, and Expiration date (if applicable)

Notes/Comments:

RD Reviewer's Signature & Date: _____

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CHAPTER 5: PROJECT PHYSICAL CONDITIONS

5.1 INTRODUCTION

The existing portfolio of multi-family housing projects constitutes a major asset of the Government and the Agency, but the value of this asset depends upon the quality of its upkeep. This chapter describes the responsibilities of borrowers to maintain the physical condition of the project and of the Agency to exercise appropriate oversight of these responsibilities. The chapter describes the components of adequate physical maintenance, the role of the management plan, and the performance of a physical inspection of the project.

SECTION 1: PROJECT MAINTENANCE *[7 CFR 3560. 103]*

5.2 PURPOSE

The Agency has issued performance standards that describe the physical condition of a properly managed project. The Agency's interest in protecting the physical condition of projects that it has financed includes:

Providing decent, safe, and sanitary affordable housing to the occupants;

- Protecting and enhancing the security of its investment; and
- Assuring compliance with all applicable State and local laws.

5.3 MAINTENANCE REQUIREMENTS AND STANDARDS OF PHYSICAL CONDITIONS

A. Standards of Physical Conditions

Borrowers are responsible for the long-term, cost-effective preservation of the housing project. The Agency has specified two types of requirements borrowers must meet:

- Performance standards for the project; and
- Procedures and systems that property managers must design and follow.

B. Performance Standards

The regulations in 7 CFR 3560.103(a)(3) specify the performance standards for meeting acceptable physical conditions. The performance standards describe the characteristics the Agency expects to see in a particular component or system, for example:

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> "The housing project must have a foundation that is free of evidence of structural failure, such as uneven settlement indicated by horizontal cracks or severe bowing of the foundation wall. Structural members must not have evidence of rot or insect or rodent infestation.
>
> The housing project must have a roof that is free of leaks, defective covering, curled or missing shingles and which is not sagging or buckling."

The performance standards have been incorporated into a physical inspection form to be completed by Agency staff during a site visit. They also have been incorporated into the certifications that accompany the management agreement for the project.

The standards include the following major categories:

- Standards that apply to the site on which the project is located;
- Standards that apply to the exterior maintenance of the building and of the common areas;
- Standards that apply to the interior of the building or buildings; and
- Standards that apply to common areas, such as hallways or elevators.

C. Maintenance Systems and Procedures

Effective maintenance is partly the result of regular routines and partly the result of promptly fixing small problems before they become major ones. Proper maintenance has a direct effect on the tenants' perception of the quality of the housing project. Therefore, the Agency requires borrowers to institute a number of systems and procedures that the borrower must describe in the project's management plan. The requirements for a management plan are described in Chapter 3.

Several systems are part of a sound management program:

- **Preventive maintenance.** Most maintenance work can be predicted and scheduled—this is typically described as preventive maintenance. The Agency requires managers to spell out procedures for scheduling routine tasks, such as garbage and trash removal, snow and ice removal, grounds upkeep, routine painting, and minor repairs. Procedures are also required for the routine maintenance of equipment consistent with service information provided by the manufacturer—biweekly or monthly routine oiling, adjusting, replacement of filters, safety checks of alarms, and outside lighting, etc.
- **Response to calls.** Good upkeep requires a speedy response to complaints or unforeseen problems. The Agency requires managers to establish a system for

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responding to tenant complaints or to unexpected malfunctions or damage, such as leaks, broken windows, etc.

- **Work orders.** Managers must know what has happened from the time a complaint has been received or a problem has been noted, to an inspection confirming the condition has been corrected. The Agency requires the project to have a work-order system that tracks the date a complaint is received, the inspection to verify the complaint, a report describing the required repair or corrective action, the assignment of the repair, the completion report, and final inspection noting satisfactory completion of the work.

- **Inspections.** Frequent, regular inspections are a major component of an effective maintenance system. The Agency requires management, at a minimum, to perform an annual inspection of each occupied unit and to inspect each unit at move-in and move-out. Inspecting a unit with the tenant at move-in and move-out establishes the condition of the unit at the time the tenant takes possession, and may help clarify responsibility for any damages that have occurred in the unit during the occupancy period.

- **Energy conservation.** Energy conservation efforts are an ongoing responsibility of project management. The Agency requires managers to establish effective systems to reduce energy consumption. These may include energy audits to determine cost-effective techniques of energy conservation, energy-efficient lighting, water-saving fixtures, low-flow toilets, energy-efficient appliances, insulation, caulking and weather-stripping, storm doors and windows, and regular cleaning and replacement of filters and other equipment.

- **Tenant damages.** The Agency requires management to establish a policy and implement a system to obtain reimbursement for damage caused by the tenant to the property beyond normal wear and tear. The policy is to be stated in the tenant's lease as described in Chapter 6 of this Handbook.

- **Accessibility issues**. The Agency requires the borrower and/or management to establish a policy regarding project and unit accessibility for applicants, tenants, and employees in accordance with applicable civil rights legislation.

  In projects that were ready for occupancy <u>on or before January 26, 1993</u>, when public areas are altered, they must be altered to Americans with Disabilities Act Accessibility Guidelines (ADA/AG) standards. (Public areas are those areas used by individuals other than tenants and their guests. This includes offices used to pay bills or to inquire about service or employment, public restrooms, and buildings used for voting or public meetings.)

  In projects that were ready for occupancy <u>after January 26, 1993</u>, public areas must be designed and constructed to ADA/AG standards.

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In accordance with the Fair Housing Act, in Multi-Family Housing projects that were ready for occupancy on or before March 31, 1991, FHA/AG architectural requirements do not apply, even during project rehabilitation.

In Accordance with the Fair Housing Act, in multi-family housing projects that were ready for occupancy after March 11, 1991:

All ground floor units in buildings with four or more dwelling units must be designed and constructed in a manner that is adaptable to individuals with disabilities.

All units must be adaptable if there is an elevator.

Covered Multi-Family Housing projects must have:

An accessible entrance on an accessible route;

Accessible public and common-use areas;

Usable doors;

Accessible routes into and through the dwelling unit;

Accessible light switches, electrical outlets, and environmental controls;

Reinforced bathroom walls; and

Usable kitchens and bathrooms.

Projects that were constructed (or which had substantial alterations) after June 11, 1982 must be constructed in accordance with the UFAS standards.

- 5 percent of the units or one unit whichever is greater must be fully accessible
- The mix of units are to be comparable to the variety of other project (i.e., 1,2,3 bedrooms
- All common area must be accessible per UFAS

The electronic Multi-Family Housing Project Management and Occupancy Review Form available in Multi-Family Information System (MFIS) includes space for MFH Servicing Officials to comment on the adequacy of the maintenance systems adopted by project management.

D. Requirements for Labor Housing

There are no separate performance standards for year-round labor housing and rental or cooperative housing. Seasonal labor housing must meet conventional performance standards and must have insulation as necessary to protect the facility during the off-season period.

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5.4 CORRECTING DEFICIENCIES

There are a number of ways in which the need for maintenance is identified:

- Management staff may uncover, anticipate, or expect such maintenance;
- Tenants may make complaints; and
- Agency staff may identify defects in the course of a site visit.

No matter how the problem was identified, the borrower is responsible for correcting it.

The borrower is responsible for adequate maintenance and upkeep of the project that complies with Agency performance standards. The Agency understands, however, that property maintenance is an ongoing process and that there may be instances when diligent borrowers are temporarily unable to achieve 100 percent compliance with Agency standards. In such instances, the Agency will not penalize borrowers—as long as it is evident that the borrower is actively striving to return to full compliance, as soon as possible (see the standards listed in 7 CFR 3560.103).

This flexibility is not extended to projects where the deficiencies are so extensive that the property would be declared in substantial noncompliance. In these instances, the projects' viability is called into question, as well as the effectiveness of the management's maintenance program. The Agency should coordinate with and or report to State and local inspection authorities, where applicable, when health and safety issues exist at a property.

The borrower shall immediately inform the Agency of any deficiency for which correction requires repairs that cannot be paid out of project operating funds and immediately initiate procedures to access project reserves (see Chapter 4 of this Handbook). The Agency will in turn provide the borrower with a timeframe for completing the repairs. If the borrower cannot meet the Agency required timeframe, then they must provide documentation and justification why they cannot meet such a timeframe.

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5.5 PAYING FOR MAINTENANCE EXPENSES

MAINTENANCE IS PAID FOR IN TWO WAYS:

- Routine physical maintenance, such as repainting an empty unit, replacing a broken window, snow removal or grounds upkeep, is part of the operating budget and paid for out of annual operating income.

- Major capital expenditures are paid for by withdrawals from the reserve account. Capital expenditures are addressed as long-term improvements on the front of the operating budget.

> **Rule-of-Thumb**
>
> A capital expenditure is typically defined as an expenditure on an item for which the useful life is greater than one year. For example:
>
> - Repaving the parking lot is a capital cost; fixing a pothole is an operating cost.
> - Repainting the exterior of the entire project is a capital expenditure; repainting units on a routine basis is considered routine maintenance.

Chapter 4 of this Handbook describes the process for accessing the reserve account to pay for major capital improvements.

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SECTION 2: CAPITAL PLANNING

5.6 OVERVIEW

This section describes how borrowers, with assistance from Agency staff, can plan for major capital expenses and how to pay for them. This type of planning can take many forms. The two most common forms used by the Agency are an annual capital expenditure budget and a capital needs assessment. Refer to Chapter 4 of this Handbook for preparation of an annual capital expenditure budget.

5.7 CAPITAL NEEDS ASSESSMENT

A. Overview

A capital needs assessment (CNA) identifies the immediate and future capital needs of a project. It is based on a physical inspection and a life-cycle analysis of a project's major building components systems, equipment, and exterior amenities, such as the site lighting and parking lots. The CNA includes a replacement schedule that anticipates the useful life of each item, and estimates when they will need to be replaced and the cost. Preparation of a CNA is an eligible project expense.

B. General Criteria:

- A capital needs assessment should be prepared at a reasonable cost by an individual or firm with professional experience in multi-family housing design, construction, cost estimating or similar qualification.

- The CNA should be prepared in accordance with generally accepted industry practices.

- The assessment should include the detailed items listed on the *Form RD 3560-11* Multi-family Housing Physical Inspection Report. The assessment time period should be between 10 and 20 years.

- The estimated repair and replacement costs and estimated useful life spans for the components should be based on data from a nationally recognized source, such as RS Means "Repair and Remodeling Cost Data" and Marshall and Swift "Residential Cost Handbook".

C. Determining a Project's Capital Needs

The amount required for deposit into the replacement reserve account is established for new projects during the loan origination phase, based in part on a life-cycle cost analysis of selected materials going into the project (see 7 CFR 3560.65). For information on conducting life-cycle analyses, refer to Chapter 3 of HB-1-3560.

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For existing projects, the Agency may require the development of a capital needs assessment in the following circumstances:

- When ownership of the project is transferred;
- When the loan is reamortized;
- When there is a writedown of the project loan; or
- At the borrower's request.

D. Agency Review

Capital needs assessments and a proposed, updated annual operating budget, including a revised capital plan and any proposed increase in contributions to replacement reserves and project rents, are submitted to the Agency for review. MFH Servicing Officials should review the requests based on Agency guidance and the budget review procedures in Chapter 4.

SECTION 3: AGENCY OVERSIGHT OF BORROWER PERFORMANCE

5.8 OVERSIGHT DURING DESIGN AND CONSTRUCTION

Agency oversight of the borrower's capacity to maintain the physical project in compliance with its standards and requirements begins during the loan origination phase. As part of its design review, the Agency examines plans and working drawings to see whether the project has been designed for easy maintenance and long-term durability.

Borrowers must describe the systems and procedures that will be used to maintain the project during the occupancy period in the management plan. Agency staff reviews the proposed management plan for compliance in accordance with procedures described in Chapter 3. Agency staff should analyze the description of the maintenance systems in the management plan, noting any points that appear unrealistic, incomplete, or incorrect.

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CHAPTER 6: PROJECT OCCUPANCY

6.1 INTRODUCTION

The purpose of this chapter is to present the occupancy rules for multi-family housing projects and the Agency's procedures for determining borrower compliance. Agency procedures for ensuring borrower compliance are summarized at the end of the chapter.

SECTION 1: TENANT ELIGIBILITY REQUIREMENTS *[7 CFR 3560.152]*

6.2 GENERAL ELIGIBILITY—INCOME ELIGIBILITY

To be admitted to multi-family housing, applicants must meet basic requirements.

Have income that does not exceed the limits defined by the Agency;

- Meet the program definition of an eligible household.

A borrower may determine an applicant ineligible for occupancy based on screening criteria other than those required by the Agency only if such criteria are included in the project's management plan. The screening criteria may not contain arbitrary or discriminatory rejection criteria but may consider an applicant's past rental and credit history and relations with other tenants.

6.3 INCOME REQUIREMENTS

Three different income limits are used to establish eligibility for Multi-Family Housing programs. The Agency determines the income limits and updates the limits whenever they are revised. Adjusted income should be compared with the below-listed income limits to determine the category in which each household falls:

- The very low-income limit is established at the Department of Housing and Urban Development (HUD) very low-income limit (generally 50 percent of the median income for the area, adjusted for household size);

- The low-income limit is established at the HUD low-income limit (generally 80 percent of the median income for the area, adjusted for household size); and

- The moderate-income limit is greater than the HUD established low-income limit but does not exceed the low-income limit by more than $5,500 for each household size.

The borrower has the right to determine a minimum income level for households of various sizes for applicants who will not be receiving rental assistance. These guidelines must be administered consistently for all potential applicants.

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6.4 [RESERVED]

6.5 DETERMINING AN ELIGIBLE HOUSEHOLD

Deciding who is a part of an applicant's household is an important, but not always simple, task. The word "household" applies to individuals and family members who intend to live in a unit.

A. Defining a Household

A household is defined as the tenant or co-tenant and the persons or dependents living with a tenant or co-tenant but not including a resident assistant (or live in aide). Deciding who can be considered a household member affects many decisions the borrower must make, including:

- The number of bedrooms the family needs;
- The members' income that must be counted and the income limits that should be used;
- The extent to which the family qualifies for certain income deductions and certain preferences; and
- The household member who can sign legal documents.

B. Who Can Be Counted as a Household Member?

A household may be made up of a variety of members and may have a specific definition. If a household member cannot be included when making the determination of household size for income limit purposes or for unit size determination, it will be noted below in the definitions. The following are definitions of members and types:

- **Dependent:** A dependent is a member of the family (which excludes foster children and foster adults) other than the family head or spouse who is under 18 years of age, or is a person with a disability, or is a full-time student.
- **Elderly household:** A household where the tenant or co-tenant (for cooperative housing the member or co-member) is at least 62 years old, or a person with disabilities, as defined below. An elderly family may include a person younger than 62 years of age. To receive an elderly family deduction, the person who is elderly, or disabled must be the tenant or co-tenant (for cooperative housing the member or co-member).

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- **Foster adult.** A foster adult is 18 years of age or older and meets the definition of a foster adult under State law. They are generally unable to live independently due to a debilitating physical or mental condition.

  - Foster adults are included as household members to determine the appropriate unit size.

  - Foster adults are not included as household members for the purposes of determining income, deductions from income (disability expenses or medical expenses), or to determine household size for income limit eligibility.

- **Foster children, or State or Tribal kinship.** Eligible families may include foster children, or State or Tribal kinship living in the household, as long as they do not cause overcrowding.

  - Foster children, State or Tribal kinship are included as household members to determine the appropriate unit size.

  - Anticipated expenses for childcare for foster children under age 13 may be deducted from annual income if all other criteria for childcare deduction are met.

  - Foster children, State or Tribal kinship are not included as household members for the purposes of determining income, or deductions from income (disability expenses or medical expenses), or to determine household size for income limit eligibility.

  - When a member of the household is temporarily placed in foster care (as confirmed by the state child welfare agency) the member is still counted as a household member in the unit from which they are removed.

- **Person with Disabilities:** The term disability is considered equivalent to the term handicap. A person is considered to have a disability if either of the following two situations occur:

  (1) As defined in section 501(b) of the Housing Act of 1949. The person is the head of household (or his or her spouse) and is determined to have an impairment which:

  (i) Is expected to be of long continued and indefinite duration;

  (ii) Substantially impedes the person's ability to live independently; and

  (iii) Is of such a nature that such ability could be improved by more suitable housing conditions, or if such person has a developmental disability as defined in section 102(7) of the Developmental Disability and Bill of Rights Act (42 U.S.C. 6001(7)).

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(2) As defined in the Fair Housing Act; the Americans with Disabilities Act; and section 504 of the Rehabilitation Act of 1973. The person has a physical or mental impairment which substantially limits one or more of such person's major life activities; a record of such impairment; or being regarded as having such an impairment. The term does not include current, illegal use of or addiction to a controlled substance. As used in this definition, physical or mental impairment includes:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine;

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance), and alcoholism;

(iii) Major life activities means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

(iv) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities;

(v) Is regarded as having an impairment means:

(A) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by the borrower or management agent as constituting such a limitation;

(B) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

(C) Has none of the impairments described in this definition but is treated by another person as having such an impairment.

Remaining family members. Remaining members of resident families are family members who stay in a unit after other members of the household leave. These

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members will be reevaluated for eligibility in accordance with Section 7 of this chapter. Agency regulations may require remaining tenants to move to a unit of appropriate size or exit the project.

Resident assistant (or live-in aide). A person residing in a tenant's housing unit who is essential to the well-being and care of the persons who are elderly or have disabilities residing in the unit but is not obligated for the person's financial support and would not be living in the unit except to provide the needed support services. While the resident assistant may be a family member, the resident assistant may not be a dependent of the household for tax purposes and is not subject to the eligibility requirements of a tenant or member. A resident assistant may function in any type of housing affected by this section. A resident assistant's income is not included in the household's determination of annual income. The resident assistant is counted as an occupant to determine unit size.

Student. A student may be considered an eligible tenant when all of the following conditions are met:

- The student is of legal age in accordance with the applicable state law or is otherwise legally able to enter into a binding contract under state law;

- The person seeking occupancy:

  (1) must meet the U.S. Department of Education's definition of an independent or must have established a household separate from the person's parents or legal guardians (for at least one year prior to application for occupancy), and is no longer claimed as a dependent by the person's parents or legal guardians pursuant to Internal Revenue Service regulations, and evidence (most recently filed tax return) is provided to this effect; or

  (2) is claimed as a dependent by the person's parents or legal guardians and the student is eligible because the entire household is income eligible.

If eligible under item (1) above, the applicant must sign a written statement indicating whether or not the person's parents, legal guardians, or others provide any financial assistance, and this financial assistance is considered as part of current annual income and is verified in writing by the borrower.

Unborn child(ren). An unborn child(ren) is included as a household member for determining unit size and household size for income limit purposes. However, a household cannot receive a dependent deduction for an unborn child. The same rules apply for a household that has been approved to adopt a child(ren).

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6.6 ADDITIONAL REQUIREMENTS FOR ELDERLY HOUSING, CONGREGATE HOUSING, AND GROUP HOMES

In addition to the requirements listed in Paragraph 6.2, applicants for elderly housing, congregate housing, or group homes must meet the additional requirements described below.

A. Elderly Housing and Congregate Housing

To be admitted to elderly housing or congregate housing:

- Applicants and tenants must qualify as elderly or disabled.
- Nonelderly persons are eligible for occupancy as long as they are members of an elderly household and live in the same unit.
- Priority can be given to tenants who agree to participate in the services provided by a congregate housing facility.

B. Group Homes

To be admitted to a group home:

- Applicants/tenants must need the special services provided by the group home.
- Applicants must demonstrate a need for such housing and cannot be required to be a part of an ongoing training or rehabilitation program.
- Applicants must be selected from the market area prior to considering applicants from other areas.

A group home may limit occupancy to a specific group of tenants (e.g., eligible elderly tenants, developmentally disabled or mentally impaired tenants) if it is outlined in the borrower's management plan.

6.7 INELIGIBLE TENANT WAIVERS

The Agency may authorize the borrower in writing, upon receiving the borrower's written request with the necessary documentation, to rent vacant units to ineligible persons for temporary periods to protect the financial interest of the Government. Such ineligible tenant waiver(s) could include households that are over income, over housed or under housed (this list is not all inclusive). Likewise, this provision may extend to a cooperative. This authority will be for the entire project for periods not to exceed one year. Within the period of the lease, the tenant may not be required to move to allow an eligible applicant to obtain occupancy, should one become available. Age restrictions may not be waived. The Agency must make the following determinations:

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- There are no eligible persons on a waiting list.

The borrower provided documentation that a diligent but unsuccessful effort to rent any vacant units to an eligible tenant household has been made. Such documentation may consist of advertisements in appropriate publications, posting notices in public places, and in other places where persons seeking rental housing would likely make contact; holding open houses; and making appropriate contacts with public housing agencies and organizations, Chambers of Commerce, and real estate agencies. The borrower agrees to continue with aggressive efforts to locate eligible tenants and retain documentation of all marketing.

The borrower agrees to publish a notice in the local newspaper to inform the public of the borrower's intent to temporarily rent apartments to all persons without regard to income restrictions.

The borrower is temporarily unable to achieve or maintain a level of occupancy sufficient to prevent financial default and foreclosure and the Agency's approval of the waiver will be for a limited duration.

That the lease agreement will not be more than 12 months and at its expiration will convert to a month-to-month lease. The monthly lease will require that the unit be vacated upon 30 days' notice when an eligible applicant is available.

Tenants residing in Rural Rental Housing (RRH) units who are ineligible because their adjusted annual income exceeds the maximum for the RRH projects will be charged the RHS approved note rate rental rate for the size of unit occupied in a Plan II RRH project. In projects operated under Plan I, ineligible tenants will be charged rental surcharge of 25 percent of the approved note rate rental rate. Plan I and Plan II projects are defined in 7 CFR 3560.11. Agency staff can refer to the Multi-Family Information Systems Project Details screen to determine Plan type.

SECTION 2: CALCULATING INCOME AND INITIAL CERTIFICATION

6.8 BORROWER AND APPLICANT/TENANT RESPONSIBILITY

Borrowers of all Rural Rental Housing properties must verify and document in the tenant's file all income, assets, expenses, deductions, family characteristics, and any other factors that affect family eligibility or level of assistance. This requirement excludes those residents of On Farm Labor Housing who are living in housing provided on a non-rental basis. With USDA guidance the borrower should develop verification and documentation procedures for the properties they manage and ensure that on-site property staff responsible for these functions are trained to understand and properly implement these procedures. Effective and efficient borrower, management agent, and property staff performance in this area is fundamental to obtaining the correct information needed for accurate rent determinations and assistance payments. The following are essential procedures to reduce the incidence of improper reporting.

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- Applicants/tenants and their adult family members must sign consent forms to authorize the borrower to collect information to verify eligibility, income, assets, expenses, and deductions. Applicants and tenants who do not sign required consent forms will not receive assistance.

- Family members 6 years of age and older must provide the borrower with a complete and accurate social security number. For any members of the family who do not have a social security number, the applicant or family member must certify that the individual has never received a social security number.

MINC Tip:
For eligible household members without a social security number, management should submit the tenant data to MINC using all zeros. MINC will assign a system generated number to the household member, and management must use the assigned number on future transactions or until a valid social security number is available.

- Information received via third party verification should be reviewed and interpreted, and allowable deductions applied to determine the income used to calculate rent and rental assistance.

- The borrower must develop tracking and monitoring procedures to ensure that the required re-certifications are initiated and completed on time.

- The borrower must handle any information obtained to verify eligibility or income in accordance with the Privacy Act.

6.9 CALCULATION OF TENANT INCOME

Household income determinations will be calculated in accordance with 7 CFR 3560.153. Borrowers use tenant income information to: (1) help determine whether a household is eligible to reside in multi-family housing; (2) calculate the household's ability to pay rent; and (3) determine the amount of rental assistance the household is eligible to receive. This section provides guidance for calculating and verifying income for each of these purposes.

Form RD 3560-8 (Rev. 04-25) reflects income and asset calculation changes as a result of the Housing Opportunity Through Modernization Act (HOTMA). All tenant certifications effective July 1, 2025, or later must use the Form RD 3560-8 (Rev. 04-25) version of the form. The previous form was renamed Form RD 3560-8A (Rev 08-11) and must be used for tenant certifications effective prior to July 1, 2025.

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A. Key Concepts for Income Determinations

1. Income Definitions

Two income definitions are used: annual income and adjusted income. Whenever income determinations are made, it is essential that borrowers use the correct income definition and consider income from the appropriate household members.

- **Annual income.** Annual income is used as the base for computing adjusted income. Income of all household members should be considered when computing annual income. Annual income includes all amounts, not specifically excluded in Attachment 6-A, received from all sources by each member of the household who is 18 years of age or older or is the head of household or spouse of the head of household, plus unearned income by or on behalf of each dependent who is under 18 years of age. *Form RD 3560-8, Tenant Certification* illustrates the calculation of annual income. Paragraph 6.9 B in this section provides additional information on calculating annual income.

    - **Earned income.** Earned income is income or earnings from wages, tips, salaries, other employee compensation, and net income from self-employment. Earned income does not include any pension or annuity, transfer payments (meaning payments made or income received in which no goods or services are being paid for, such as welfare, social security, and governmental subsidies for certain benefits), or any such cash or in-kind benefits.

    - **Unearned income.** Unearned income is any annual income, as calculated under 24 CFR 5.609, that is not earned income.

- **Adjusted income.** Adjusted income is used to determine whether an applicant is income eligible to reside in multi-family rental housing or to receive rental subsidies. For guidance on calculating adjusted income, see Paragraph 6.9 C in this section.

2. Projecting Income for a 12-Month Period

Current income and family circumstances may be used to estimate the household's income over the next 12 months, unless there is verifiable evidence of a likely change in circumstances. Historical information may be used to estimate income that is anticipated to be received for 12 months.

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Example – Calculating Seasonal Income (Options should be discussed with Tenant)	
Option #1	**Option #2**
Assume a family member who currently has no income historically has seasonal income during the summer months and earns on an average of $4,000 during that time. Confirm with the applicant that the same seasonal pattern is expected and use historical data to project income for the coming 12 months, which in this case would be $4000 projected annual income. Gross Tenant Contribution (GTC): $4000/12 months x 30% = $100/month for 12 months	Assume a family member currently has seasonal income of $1000 per month and is expected to last 4 months. Annualizing this income would be $1000 x 12 months = $12,000. Once the seasonal income ends, it is the tenant's responsibility to notify management and request a recertification of income. Note: this method would require at least two recertifications each year. Gross Tenant Contribution (GTC): $12,000/12 months x 30% = $300 month during the months of earning seasonal income.

3. Income of Temporarily Absent Household Members

Example—Temporarily Absent Member

James Brown and his wife have applied for a unit. At the moment, James is working on a construction job on the other side of the state and comes home every other weekend. He earns $600 per week and uses approximately one-third of that amount for temporary living expenses. The full amount of the income earned would be counted for annual income.

Members may be temporarily absent from the household for a variety of reasons, such as temporary military duty activation, temporary employment, or students who live away from home during the school year. The income of these household members is considered when computing annual income. Households with a member permanently confined to a hospital or nursing home may choose to either include annual income attributable to such person, less deductions for which the person would qualify, or exclude the annual income attributable to such person and not take any deductions for which the person would qualify.

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4. ***Zero Income.***

It is the policy of Rural Development not to accept a tenant certification for an applicant or tenant with zero income unless all income is specifically exempted. Third party verifications may be obtained from the employer. If the tenant or applicant typically receives unemployment during periods of layoff, the unemployment income is included in the income calculation.

In cases where an applicant or tenant is claiming they have no household income, nor can the tenant or applicant anticipate a source of income, it will be necessary for the applicant or tenant to demonstrate financial capability to meet basic living expenses and the rental charge. This amount must include income for essential living expenses such as, food, clothing, diapers, transportation and any nonessentials items being paid such as telephone, television service, internet service, etc. The basis for this income must be documented in the file. Suggested guidance for the verification of zero income is found in Attachment 6-B.

The borrower must review the circumstances of the tenant quarterly to determine if circumstances have changed and document the tenant file. The borrower must remind the tenant that the lease specifically states that it is the tenant's responsibility to immediately report changes in income to management.

5. ***Student Financial Assistance.***

For tenants/households receiving HUD Section 8 assistance (project based or Housing Choice Vouchers), the borrower must adhere to the specific Section 8 student financial assistance guidance for these tenants.

For all other tenants/households (non-Section 8) the borrower must adhere to the following guidance for including student financial assistance as household income.

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All student financial assistance, not covered under section 479B of the Higher Education Act (HEA), that exceeds the actual covered costs of attending school must be included as income. This applies to both full-time and part-time students.

Actual Covered Costs
Includes: tuition, books, supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, and fees required and charged to a student by an institution of higher education.
For a student who is not the head of household, co-head, or spouse, actual covered costs also include the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

Types of HEA assistance include, but is not limited to:

- Federal Pell Grants
- Teach Grants
- Federal Work Study Programs
- Federal Perkins Loans
- Student financial assistance received under the Bureau of Indian Education
- Higher Education Tribal Grant
- Tribally Controlled Colleges or Universities Grant Program
- Employment training program under section 134 of the Workforce Innovation and Opportunity Act (WIOA).

Utilize the following two step method to determine the amount of student financial assistance to include in the household's annual income, if any:

Step 1: Actual Covered Costs – HEA Assistance = Net Costs

Step 2: Non-HEA Assistance – Net Costs (from Step 1) = Amount to Include in Household's Annual Income Calculation (if the amount is negative, use $0)

The following is not considered student financial assistance:

- Gifts, including gifts from family or friends; or
- Financial support provided to the student in the form of a fee for services performed (i.e. – work study or teaching fellowship that is not excluded under HEA).

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B. Calculating Annual Income

All income is included that is received from all sources by each member of the household who is 18 years of age or older or is the head of household or spouse of the head of household, plus unearned income by or on behalf of each dependent who is under 18 years of age, unless it is specifically excluded in 24 CFR 5.609(b).

Attachment 6-A, Annual Income Exclusions provides a list income sources that are excluded from annual income. Furthermore, item (1) of Attachment 6-A indicates HUD is required by federal statute to exclude certain items from annual income. HUD will publish a notice in the Federal Register to identify the benefits that qualify for this exclusion. Updates will be published when necessary. (As of June 2025, the HUD published exclusions are found here: Federal Register, Vol 89, No. 21, published January 31, 2024.)

Annual income includes "all amounts received," not the amount that a family may be legally entitled to receive but did not receive. For example, a family's child-support or alimony income must be based on payments received, not the amounts the family is entitled to receive based on any court or agency order.

Refer to Attachment 6-H for acceptable forms of verification.

C. Calculating Adjusted Income

Adjusted income is used to determine eligibility for Multi-Family Housing programs, as well as eligibility for and the amount of payment subsidies under rental assistance.

Adjusted income is calculated by subtracting from annual income any of five deductions that apply to the household. Not all households are eligible for all deductions. Exhibit 6-1 summarizes these deductions. Attachment 6-C, Allowable Deductions, provides detail concerning allowable deductions. The remainder of this paragraph provides guidance on determining whether a family is eligible for each deduction and verifying and calculating these amounts.

Exhibit 6-1

Annual Income Allowable Deductions/Expenses

Deduction/Expense	Elderly/Disabled Households	Nonelderly Households
Dependent deduction	Yes	Yes
Childcare expenses	Yes	Yes
Disability assistance expenses	Yes	Yes
Elderly/Disabled household deduction	Yes	No
Health and Medical Care expenses	Yes	No

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1. Dependent Deduction

A deduction from annual income of $480 (this amount may be adjusted annually by HUD) is made for each household member who qualifies as a dependent. Dependents are household members who are not the head or spouse and who are under 18 years of age, or is a person with a disability, or is a full-time student. If an applicant requests a deduction for dependents attending school full time, the applicant must provide documentation from the school that the dependent is enrolled as a full-time student.

Unborn children, foster children, foster adults, and State or Tribal kinship household members do NOT qualify for the dependent deduction.

2. Deductions for Childcare Expenses

Reasonable unreimbursed childcare expenses for the care of children under 13 years of age are deducted from annual income if: (1) the care enables a household member to work or go to school; (2) no other adult household member is available to care for the children; and (3) in the case of childcare that enables a household member to work, the expenses deducted do not exceed the income generated by that household member. If the childcare provider is a household member, the cost of the children's care cannot be deducted.

To qualify for the deduction, the applicant must:

- Identify the children who are receiving the childcare and the household member who can work, look for work, or attend school (full or part-time) as a result of the care;
- Demonstrate that there is no adult household member available or able to care for the children;
- Identify the childcare provider, the costs, and the hours of childcare provided (must coincide with the hours the household member works or goes to school); and
- If the expenses enable a household member to go to school, identify the educational institution. The household member need not be a full-time student.

A household may qualify for a childcare hardship exemption. See item (D) of this paragraph.

Refer to Attachment 6-H for acceptable forms of verification.

3. Elderly/Disabled Household Deduction

A single $525 deduction (this amount may be adjusted annually by HUD) is made from annual income for any elderly household. (Refer to 7 CFR 3560.11 for definition of elderly household.)

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In the case of a family where the deceased tenant or spouse was at least 62 years old or a person with disabilities, the surviving household members may continue to reside in a housing project after the death of the tenant or co-tenant, provided that the requirements in Paragraph 6.28 item E are met. Nonelderly or nondisabled surviving members of an elderly or disabled household are not entitled to the elderly household adjustment to income.

4. Deductions for Disability Assistance Expenses (also referred to as Reasonable Attendant Care and Auxiliary Apparatus Expenses)

Disability assistance expenses, for the care of a person with disabilities, in excess of ten percent of annual income may be deducted from annual income (unless the household qualifies for Phased-In Relief or General Relief as defined in item D of this paragraph).

Disability assistance expense is defined as reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a disabled family member and that are necessary to enable a family member (including the disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source. The disability assistance expenses cannot exceed the amount of income earned by the person who is able to work as a result of the expenses.

Typical Disability Assistance Expenses

- Care attendant to assist a person with disabilities with activities of daily living directly related to permitting the person with disabilities or another household member to work.
- Special apparatus, such as wheelchairs, ramps, and adaptations to vehicles or workplace equipment, if directly related to permitting the person with disabilities or another household member to work.

Along with other forms of documentation, to qualify for this deduction applicants must identify the person with a disability on the application. Refer to Attachment 6-H for acceptable forms of verification.

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5. Deduction for Health and Medical Care Expenses (for elderly/disabled households only)

Health and medical care expenses may be deducted from annual income for elderly households if the expenses (1) will not be reimbursed by insurance or another source; and (2) when combined with any disability assistance expenses are in excess of ten percent of annual income (unless the household qualifies for Phased-In Relief or General Relief as defined in item D of this paragraph).

Typical Medical Expenses

- Services of physicians and other healthcare providers
- Services of hospitals and other healthcare facilities
- Medical premiums
- Prescription medicine
- Dental expenses
- Eyeglasses and eye examinations
- Medical or health products or apparatus (hearing aids, wheelchairs, etc.)
- Live-in or periodic medical care (e.g., visiting nurses or care attendants)
- Costs for an assistance animal and its upkeep
- Nonprescription medicine, bandages, syringes, continence shields, and other nonprescription items recommended by a physician
- Periodic payments on accumulated medical bills

Health and medical care expenses include costs incurred for the diagnosis, cure, mitigation, treatment or prevention of disease or payments for treatments affecting any structure or function of the body. Health and medical care expenses include medical insurance premiums and long-term care premiums that are paid or anticipated during the period for which annual income is computed. Refer to Attachment 6-H for acceptable forms of verification.

If the household qualifies for the health and medical care expense deduction, expenses of all members are eligible. For example, if a household includes the head (grandmother, age 64), her son (age 37), and her granddaughter (age 6), the medical expenses of all three household members will be eligible.

One of the most challenging aspects of determining allowable health and medical care expenses is estimating a household's health and medical care expenses for the coming year. While some anticipated expenses can be documented easily (for example, Medicare or other health insurance premiums and ongoing prescriptions), others need to be estimated. The borrower should use historical information about

Example – Calculating the Health and Medical Care Expense Deduction

The Jensons are an elderly household with annual income of $25,000 and anticipated medical expenses of $3,000 that are not covered by insurance or another source. The allowable medical expenses would be:

Total medical expenses	$3,000
(*less*) 10% annual income ($25,000 x 0.10)	-$2,500
Allowable medical expenses	$500

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medical bills to estimate future expenses. However, the estimates should be realistic. For example, if the household has a significant medical bill, the borrower will count only that portion of the bill that is likely to be paid during the coming year.

D. Temporary Relief and Hardship exemptions

1. ***Financial hardship exemptions for Health and Medical care expense and disability assistance expense***. Effective with the implementation of the Housing Opportunity Through Modernization Act (HOTMA), the threshold to deduct health and medical care expenses and disability assistance expenses has been increased from an excess of 3 percent to an excess of 10 percent of annual income. Families may be eligible for relief under one of two categories; phased-in relief or general relief, as defined below. A family receiving phased-in relief may request to receive general hardship relief instead; **once a family chooses to obtain general relief, a family may no longer receive the phased-in relief.**

   Phased-in Relief

   All households who received a deduction for unreimbursed health and medical care and/or disability assistance expenses based on their most recent tenant certification prior to July 1, 2025, will begin receiving the 24-month phased-in relief at their next annual recertification or interim recertification, whichever occurs first on or after July 1, 2025. Households who receive phased-in relief will have eligible expenses deducted that exceed 5 percent of annual income for 12 months. Twelve months after the 5 percent phase-in began, households will have eligible expenses deducted that exceed 7.5 percent of annual income for the immediately following 12 months. After the household has completed the 24 months phase-in at the lower thresholds as described above, the household will remain at the 10 percent threshold, unless the household qualifies for relief under the general hardship relief provision.

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Example – Phased-In Relief

Ms. Bell's annual recertification is due on August 1, 2025. Her last annual recertification was effective August 1, 2024, and she received a deduction for unreimbursed health and medical expenses. She did not have any interim recertifications after her annual recertification was completed. For her annual recertification effective August 1, 2025, management determines that Ms. Bell's annual income is $10,000 and her unreimbursed health and medical expenses are $1100 (11 percent of her annual income). Since Ms. Bell was receiving a deduction for unreimbursed health and medical expenses on July 1, 2025, Ms. Bell is automatically eligible for the deduction pursuant to the phased-in relief provision. Management will apply the phased-in relief threshold to deduct the expenses that exceed 5 percent of her annual income which is $600 ($1100 - $500) for this recertification.

Ms. Bell will receive the benefit of the unreimbursed health and medical expense deduction until August 1, 2026, when the threshold will be increased to 7.5 percent. Assuming her annual income remains $10,000 and her medical expenses are still $1100, she will be able to deduct $350 ($1100 - $750).

Effective date of recertification	Annual income	Unreimbursed health & medical expenses	Phased-In percentage calculation	Allowable deduction amount for unreimbursed health and medical expenses
8/1/2025	$10,000	$1,100	5% x $10,000 = $500	$1100 - $500 = **$600**
8/1/2026	$10,000	$1,100	7.5% x $10,000 = $750	$1100 - $750 = **$350**
8/1/2027	$10,000	$1,100	10% x $10,000 = $1,000	$1100 - $1000 =**$100**

Regardless of if an interim recertification is completed during the 24-month phased-in period, each phase will be for a period of 12 months. Verifications are valid for 120 days. If verifications are over 120 days old at the time of an interim recertification or the scheduled annual certification, all household information must be verified.

MFH owners and management agents **must** track the 24-month phased-in period for each eligible household, even if a household's expenses go below the appropriate phased-in percentage, during the first or second 12-month phased-in period.

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The phased-in relief must continue for households that transfer internally to another unit within the same MFH property. If a family moves from one RD property to another RD property, the phased-in relief may continue. Owners must establish their own policy if they choose to continue the phased-in hardship relief for households who were eligible for relief as of July 1, 2025, and who are treated as new admissions at their property(s).

General Relief

A household may be eligible for general relief related to health and medical care expense and/or disability assistance expense deductions. To receive general relief, a household must demonstrate that the household's unreimbursed health and medical care expenses or unreimbursed disability assistance expenses increased, or the household's financial hardship is a result of a change in circumstances that would not otherwise trigger a recertification.

General relief is available regardless of whether the household previously received an unreimbursed health and medical expense deduction or disability assistance expense deduction, are currently receiving phased-in hardship relief, or were previously eligible for either the general relief or phased-in relief.

Examples of circumstances constituting a financial hardship:

- The family is awaiting an eligibility determination for a federal, state, or local assistance program, such as a determination for unemployment compensation or disability benefits.
- The family's income decreased because of a loss of employment, death of a family member, or due to a natural or federal/state declared disaster.
- Other circumstances as determined by the housing provider.

If a household is eligible for general relief, the household will receive a deduction for the sum of eligible expenses that exceed 5 percent of annual income. The household's general relief hardship ends when the circumstances that made the household eligible for the relief are no longer applicable or after 90 days, whichever comes earlier. Owners may, at their discretion, extend the general relief for one or more additional 90-day periods while the household's hardship condition continues.

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2. Childcare hardship exemption

When a household is no longer eligible to claim childcare expenses, but the household is unable to pay their rent because of the loss of the deduction, the household may apply for the childcare hardship exemption. A household may request a hardship exemption to continue receiving a child-care expense deduction in certain circumstances when the household no longer has a member that is working, looking for work, or seeking to further their education, and the deduction is necessary because the household is unable to pay their rent.

Examples of scenarios where a childcare hardship exemption may be granted:

- A household member loses their employment income and will be a full-time student within the next 90 days. They may need to pay childcare in order to keep their spot at the childcare center.
- Household member, or care of a family member, who has medical, or health treatments and childcare is needed.

When a household requests a hardship exemption to continue receiving a child-care expense deduction that is ending, management must recalculate the household's adjusted income and continue the child-care deduction if the family demonstrates to management's satisfaction that the household is unable to pay their rent because of the loss of the child-care expense deduction and the child-care expense is still necessary even though the family member is no longer working, looking for work, or furthering their education. The hardship exemption and the resulting alternative adjusted income calculation must remain in place for a period of up to 90 days. Management must develop policies requiring households to report if the circumstances that made the household eligible for the hardship exemption are no longer applicable. Management, at their discretion, may extend such hardship exemptions for additional 90-day periods based on household circumstances.

Reminder

Tenants must request an interim recertification whenever a change in household income of $100 or more per month occurs.
Borrowers must recertify for household income changes of $50 per month, if the tenant requests that such a change be made.

3. Hardship policy requirements for general relief and childcare expense

Management must establish policies for the purpose of determining eligibility for general hardship relief for the health and medical care expense deduction and for the child-care expense hardship exemption (i.e., when a family is unable to pay rent, triggering eligibility for a hardship exemption). Management must describe these policies in their Management Plan or Tenant Selection Plan, as applicable.

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Some factors to consider when determining if the household is unable to pay rent may include determining that the rent, utility payment, and applicable expenses (child-care expenses or health and medical expenses) are more than 45 percent (for example) of the household's adjusted income, or verifying whether the household has experienced unanticipated expenses, such as large medical bills, that have affected their ability to pay their rent. Management may use different percentage thresholds or methods for determining a household's inability to pay rent.

Management may extend hardship exemptions for additional 90-day periods if the hardship continues pursuant to management's hardship policies. This provision applies to families receiving hardship exemptions for the child-care expense deduction and general hardship relief for health and medical care expenses and disability assistance expenses. Policies for extending hardship relief for additional 90-day periods must be established in the property's Management Plan or Tenant Selection Plan.

Management is encouraged to communicate the availability of hardship exemptions and how to request a hardship to all applicants and households prior to complying with HOTMA. Additional notification requirements include:

- Management must promptly notify households in writing of the change in the determination of adjusted income and the household's rent resulting from the application of the hardship exemption. The written notice must inform the household of the dates that the hardship exemption will begin and expire and the requirement for the family to report to management if the circumstances that made the household eligible for relief are no longer applicable. The notice must also state that the household's adjusted income and tenant rent will be recalculated upon expiration of the hardship exemption.

- Management must promptly notify households in writing if they are denied either an initial hardship exemption or an additional 90-day extension of the exemption. The notification must specify the reason(s) for the denial.

- Management must notify the household if the hardship exemption is no longer necessary and will be terminated because the circumstances that made the household eligible for the exemption are no longer applicable. The notice must state the termination date and provide 30 days' notice of rent increase, if applicable.

6.10 EVALUATING APPLICANTS' ASSETS

Assets can affect an applicant's ability to be qualified as an eligible tenant. Many types of assets generate income that must be included in the calculations of annual income. Attachment 6-D identifies certain types of assets that are excluded from net family assets.

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Rural Development does not have an asset limitation or restriction on owning real property for household eligibility or rental assistance eligibility.

A. Reporting Assets

Applicants must provide information about household assets at the time of application and whenever income is reverified. Applicants must provide sufficient information to enable the borrower to verify the asset information and compute the market and cash value of the asset.

Refer to Attachment 6-H for acceptable forms of verification.

B. Asset Definitions

All assets are categorized as either real property or personal property. Personal property is further categorized as necessary personal property or non-necessary personal property.

Net family assets is the net cash value of all assets (non-necessary property and real property) owned by the family.

1. Real property

Real property has the same meaning as that provided under the state law in which the real property is located. Examples include a home or a piece of land.

Real property is not an asset if the household does not have effective legal authority to sell it. Examples include co-ownership situations where one party cannot unilaterally sell the real property, property that is tied up in litigation, or inherited property that is in dispute.

If real property, owned by the family, does not generate income or the income amount cannot be computed, the imputed asset income must be calculated. This applies if net family assets exceed $51,600, adjusted annually for inflation.

2. Personal property

Personal property are asset items that are not real property. Personal property is separated into two categories:

- Necessary personal property. Necessary personal property is excluded from net family assets and are items essential to the family for the maintenance, use, and occupancy of the premises as a home; or they are necessary for employment, education, or health and wellness or assist a household member with a disability.

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Items classified as necessary personal property are excluded from net family assets and any income from necessary personal property is excluded from household income.

Determining what is a necessary item of personal property is a highly fact-specific determination, and therefore it is incumbent on management to gather enough facts to qualify whether an asset is necessary or non-necessary personal property.

- Non-necessary personal property. Non-necessary personal property are items of personal property that do not qualify as necessary personal property. Examples of non-necessary personal property can be found in Exhibit 6-2.

Unless specifically excluded from non-necessary personal property (see Attachment 6-D), items classified as non-necessary personal property are included in net family assets. Any income from non-necessary personal property is included in household income.

Exhibit 6-2 **Examples of non-necessary personal property. This is not an all-inclusive list.**
• Bank accounts or other financial investments (i.e. – checking account, savings account, stocks/bonds)
• Recreational car/vehicle not needed for day-to-day transportation (campers, motorhomes, travel trailers, all-terrain vehicles (ATVs), utility terrain vehicles (UTVs)
• Recreational boat/watercraft
• Expensive jewelry without religious or cultural value, or which does not hold family significance (this does NOT include wedding or engagement rings)
• Collectibles
• Equipment/machinery that is not used to generate income for a business
• Items such as gems/precious metals, antique cars, artwork, etc.

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C. Calculating Market and Net Cash Value

The market value of an asset is simply its dollar value on the open market. For example, the market value of $2,000 in a savings account is $2,000 and the market value of real estate is its appraised value. The net cash value of an asset is the market value, less reasonable expenses to convert the asset to cash. For example, the net cash value of stock worth $5,000 would be $5,000 less any broker's fee.

Example – Calculating the net cash value of an asset

Ms. Smith owns a home with an estimated market value of $90,000. To determine the net cash value of the home, management must subtract the reasonable costs incurred to sell the property. The cash value would be:

	$90,000	Market Value
-	$10,000	Mortgage balance
-	$ 5,400	6% real estate agent fee
-	$ 2,000	Settlement costs
	$72,600	Net Cash value

The increase in market value of an asset is relevant to the net cash value of the asset for the purpose of determining total net family assets and imputed income. An increase in market value is not considered as actual income for the asset.

D. Retirement Assets

Retirement assets are savings and investments that have been specifically designated as retirement funds. Not all retirement assets are considered. The value of any account under a retirement plan recognized as such by the Internal Revenue Service, including Individual Retirement Accounts (IRAs), employer retirement plans (e.g., 401(k), 403(b)), and retirement plans for self-employed individuals are excluded from net family assets.

E. Calculating Income from Assets

For the purpose of computing annual income, the assets of all household members are considered. In addition, if any household member has disposed of assets for less than fair market value during the two years preceding the effective date of certification or recertification, the asset must be considered when calculating income from assets for annual income.

Income from assets is no longer determined based on the greater of actual or imputed income from the assets. Instead, both actual income and imputed income must be considered. (See Exhibit 6-3.)

1. Actual income from assets and imputed income from assets

Actual income from assets is always included in a family's annual income, regardless of the total value of net family assets.

Imputed income must be calculated for specific assets when three conditions are met:

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- The value of net family assets exceeds the annual HUD published Inflationary Adjusted Value;
- The specific asset is included in net family assets; and
- Actual asset income cannot be calculated/determined for the specific asset.

In cases where a household has net family assets that exceeds the annual HUD published Inflationary Adjusted Value, if the actual income from assets can be computed for some assets but not all assets, then management must add up the actual income from the assets, where actual income can be calculated, then calculate the imputed income for the assets where actual income could not be calculated. After management has calculated both the actual income and imputed income, management must combine both amounts to account for income on net family assets.

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Exhibit 6-3

Income from Assets Determination

Net Family Assets Value	Actual Income	Imputed Income	Asset Income included in Annual Income Calculation
Total Net Family Assets ≤ HUD published Inflationary Adjusted Value	Include	Not Applicable	Include Actual Income
Total Net Family Assets > HUD published Inflationary Adjusted Value & actual income can be determined for ALL assets	Include	Not Applicable	Include Actual Income
Total Net Family Assets > HUD published Inflationary Adjusted Value & actual income can be determined for SOME of the assets	Determine amount of actual income from those assets where actual income can be determined	Calculate amount of imputed income for all remaining assets (those where actual income cannot be determined)	Include Actual Income + Imputed Income
Total Net Family Assets > HUD published Inflationary Adjusted Value & actual income cannot be determined from any of the assets	Not Applicable	Calculate amount of imputed income for all assets	Include Imputed Income

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Example 1 —Income from Assets for Annual Income Calculation

The Brown household has the following assets.

A savings account valued at $4,000 earning 4 percent interest annually.

The current balance* in the checking account is $300 (non-interest-bearing account).

The net cash value of the Browns' non-necessary personal property is $4,300 ($4,000 + $300).

The non-necessary personal property assets do not exceed the 2025 HUD published Inflationary Adjusted Asset Value ($51,600), and is therefore excluded from net family assets, but the actual income of $160 is included as actual asset income that contributes towards determining household income.

	Net Cash Value	**Actual Income Earned** ***(Form RD 3560-8, Line 16)***	**Imputed Income (based on 0.45% Passbook Savings Rate** ***Form RD 3560-8, Line 17)***
Checking Account current balance*	$300	$0	Imputed income is not calculated since the total non-necessary personal property is less than the HUD published Inflation-Adjusted Asset Value**.**
Savings	$4,000	$160 ($4,000 x 0.04)	
Total	**$4,300**	**$160**	**$0**
Net Family Assets (reported on ***Form RD 3560-8, Line 15)*** Non-necessary personal property that does not exceed the HUD published Inflationary Adjusted Asset Value is excluded from Net Family Assets.	**$0**		

* Effective with HOTMA implementation, the current balance of a checking account is adequate verification.

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Example 2 —Income from Assets for Annual Income Calculation

The Cross family has a savings account valued at $5,000 earning 1 percent annually.

The current balance* in the checking account is $500 (non-interest-bearing account).

Mrs. Cross' wedding ring valued at $3,000

The net value of real property owned is $60,000.

The net cash value of the Cross's non-necessary personal property is $5,500 ($5,000 + $500). The wedding ring is necessary personal property, therefore excluded from net family assets.

The non-necessary personal property assets do not exceed the 2025 HUD published Inflationary Adjusted Asset Value $51,600), and is therefore excluded from net family assets, but the actual income of $50 is included as actual asset income that contributes towards determining household income.

The net value of the real property is included in net family assets and exceeds the 2025 HUD published Inflationary Adjusted Asset Value ($51,600). This real property has no actual income, therefore an imputed income for the asset must be determined.

	Net Cash Value	**Actual Income Earned** ***Form RD 3560-8, Line 16***	**Imputed Income (based on 0.45% Passbook Savings Rate** ***Form RD 3560-8, Line 17***
Checking Account current balance*	$500	$0	Imputed income is not calculated since the total non-necessary personal property is less than the HUD published Inflation-Adjusted Asset Value**.**
Savings	$5,000	$50 ($5,000 x 0.01)	
Real Property	$60,000		$60,000 x .0045 = $270
Total	**$65,500**	**$50**	**$270**
Net Family Assets (reported on *Form RD 3560-8, Line 15)* Non-necessary personal property that does not exceed the HUD published Inflationary Adjusted Asset Value is excluded from Net Family Assets.	**$60,000**		

* Effective with HOTMA implementation, the current balance of a checking account is adequate verification.

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2. Assets Disposed of for Less than Fair Market Value

Applicants who dispose of assets for less than fair market value have, in essence, voluntarily reduced their ability to afford housing. Therefore, assets disposed of for less than fair market value during the two years preceding a determination of annual income must be used in the annual income calculation. Assets disposed of for less than fair market value as a result of foreclosure, bankruptcy, divorce, or separation are not included in this calculation.

The amount of asset to be included in net family assets is the difference between the market value of the asset and the amount that was actually received (if any) in the disposition of the asset.

Example—Valuing a Disposed Asset

An applicant sold a property to a relative for $15,000 on July 1, 2024. The property was valued at $30,000 and had no loans against it.

Market value	$30,000
(*Less*) Settlement costs	$2,000
(*Less*) Sales price	$15,000
Cash value of disposed asset	$13,000

The $13,000 would be counted as an asset for any annual income determination conducted until July 1, 2026. Even though there would be no actual income from this asset, the $13,000 would be used to establish net family assets to determine the amount to be counted as annual income.

6.11 VERIFICATION REQUIREMENTS

Management must verify all income, assets, expenses, deductions, family characteristics, and circumstances that affect family eligibility or level of assistance. Management must establish a verification procedure to review applicant information. The procedure must ensure accurate determinations of eligibility and respect the confidentiality of all information on applicants and residents.

Attachment 6-H provides acceptable forms of verification. Attachment 6-I, Eligibility, Income, and Deduction Checklist, provides a sample checklist.

Each applicant must provide the household information needed to enable management to make income and eligibility determinations. Most of this information should be provided on the application, but some additional follow-up with the applicant may be required. Management must verify information provided by the applicant prior to admission and prior to submission of *Form RD 3560-8 Tenant Certification* to the Agency.

A. Authorization to Release Information

Each applicant must provide an authorization to release information so management can verify required household information. By signing an authorization to release information form, the applicant or resident gives permission to management to ask questions about and verify information related to the household that affect eligibility and the amount the household must pay. Applicants must sign the form as a condition of admission and continued occupancy.

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A form must be signed by the household head and all other household members whose income, assets, or other circumstances require verification. The borrower must ask applicants/residents to execute the form even in cases where the person has not reported any income. As long as management retains the form with original signatures in its file, a photocopy of the authorization may be provided to verification sources.

B. Third-Party Verifications

Verifications are valid for 120 days from the date of receipt.

When it is not immediately possible to obtain the written verification from the income source, other reliable third-party data the person possesses which indicates gross income may be used.

Third-party verification of income is required whenever it is possible or available. This may include tenant-provided documentation (generated by a third-party source), including but not limited to, pay stubs, payroll summary reports, employer notice/letter of hire/termination, Social Security benefit award letter, child support pay stubs, child support summary reports, welfare benefit letters and/or printouts, and unemployment monetary benefit notices. Owners must consider if the documentation is current, complete, and unaltered by the tenant.

Income verification is required for tenants of Off-Farm Labor Housing—domestic laborers including year-round, seasonal, or migrant farmworkers. Income verification is not required for tenants of On-Farm Labor Housing.

Refer to Attachment 6-H for acceptable forms of verification.

C. Social Security Numbers

Prospective tenants must provide the borrower with Social Security Numbers for every tenant or co-tenant in the household. The borrower may use Social Security Numbers to verify income information that is provided. Social Security Numbers must be collected only once for each resident. Refer to Attachment 6-H for acceptable documentation of Social Security Numbers.

D. Wage Matching Requirement

If permitted by State law, the Agency may implement and utilize income matching of tenants. See Chapter 9 of the HB-2-3560 for more information.

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E. Tenant File Documentation

Borrowers must retain executed tenant certification forms and any supporting documentation in the tenant file for at least 3 years or until the next Agency monitoring visit or compliance review, whichever is longer. See Attachment 6-J, Required Tenant File Documentation, for a list of required documentation that must be retained in each tenant file.

6.12 THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940

Rural Housing Service is required to provide tenants the benefits of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended.

The Soldiers' and Sailors' Relief Act of 1940 was established to protect those who serve the United States in the Armed Forces. The Act applies to all persons on active duty including reserve component service members called to active duty.

A tenant, co-tenant or spouse may terminate a lease covering premises occupied as a dwelling at any time following the date of the beginning of the period of the military service. The termination will be in writing and delivered to the property manager or the management firm in person or by mail; following the date of the beginning of the military service (a set of appropriate military orders should accompany the termination letter). However, the lease termination will not be effective until 30 days after the first date on which the next rental payment is due. Example: next rent payment date is March 1; termination will be effective March 30.

Guardians who were not originally listed as tenants, but are so designated by the tenant or co-tenant, will be permitted to reside in the unit to care for minors while the tenant or co-tenant is absent due to military service. The term "guardian" means immediate family member, relative or friend.

The Act does not relieve the recently activated military person or that persons' household from meeting financial obligations. However, the Act does protect the soldier's dependent(s) left behind (occupying family dwellings) from undue eviction or distress.

A. Should eviction be necessary for violation of lease requirements, the Act provides opportunity for a stay of eviction for up to three consecutive months. Under no circumstance are borrowers entitled to take eviction matters into their own hands or to inform tenants that they must move because they no longer can afford the rent. The borrower may give the tenant notice of lease violation and termination for repeated late payment or nonpayment of rent in normal fashion, but evictions require court action. Evictions, three-month stays and relief actions are within the discretion of the court. Borrowers may not evict affected tenants without prior court approval.

B. All tenants affected by the Soldiers' and Sailors' Civil Relief act are to be recertified (upon receipt of their military orders) in accordance with 7 CFR Part 3560, in order to reflect their true rent contribution. Recertification should include all income such

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as severance pay, salary, reservist pay, housing allowance, etc. Hazard duty pay is not counted. Upon completion of tenant recertification, rents will be increased or decreased. Tenant recertification may be processed by the co-tenant, spouse or guardian during the period of military service.

Example: If a tenant was contributing $275.00 (basic rent) per month towards rent, and their salary has decreased or increased due to leaving a previous position for military service, the new contribution towards rent may be significantly decreased or increased. If a tenant's salary decreased so low that their rent contribution falls below basic rent, the Rental Assistance (RA) allowance will increase. If no RA is available for the unit, the tenant, like other tenants without RA, will pay the basic rent.

C. Single soldiers should be encouraged to place their personal belongings and furnishings in storage for safekeeping. Monthly rents would be due as scheduled. However, if a single tenant elects to leave their belongings in the apartment, they should be encouraged to grant a power of attorney to a competent person and provide the manager with pertinent information concerning this person. If a single person does leave their furniture on the premises and rent is delinquent, the borrower should make application to the court for authorization to act.

SECTION 3: OCCUPANCY POLICIES *[7 CFR 3560.155]* AND OCCUPANCY RULES *[7 CFR 3560.157]*

6.13 OCCUPANCY POLICIES [7 CFR 3560.155]

The purpose of the occupancy policy in a multi-family property is to establish:

- Unit density standards; and
- Procedures for assigning units.

The Agency must concur with the borrower's occupancy policies prior to initial occupancy of the project and in all future modifications. In reviewing the policies, the Agency must assure that the standards follow state and local laws and that they appear reasonable based on the unit size and type. The Agency will review compliance with the policies during the compliance review. In a situation where the MFH Servicing Official believes management is in violation of the occupancy policies, the Agency must state the violation as a finding and require the borrower to resolve the problem in a specified time frame. If a household is residing in the property and is out of compliance with the occupancy policy, the borrower must follow procedures outlined in Paragraph 6.30 for tenants in violation of occupancy policies.

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A. Unit Density Standards

Occupancy policies set standards regarding the number of people that can be adequately housed in a unit of a particular size. In developing the occupancy policy for each unit, the borrower must take into account the following:

- State and local codes regarding the number of persons permitted to dwell in a unit of a particular size;
- The size of the rooms in the particular unit;
- Procedures for sizing households for different unit types (how to consider temporarily absent household members); and
- The order in which the property will house eligible applicants and rehouse existing tenants.
- A tenant who is disabled will not be considered over housed if the tenant requests an additional room for a live-in aide or an apparatus related to the tenant's disability.

For some properties, state and local codes regarding occupancy standards may not exist. In these cases, the borrower should make a judgment as to how many people may be adequately housed, basing it on the square foot size and layout of the unit. For example, some properties may have several sizes of two-bedroom units. If one size is 600 square feet and the second size is 900 square feet, the borrower may have different occupancy policies for the different unit sizes.

Number of Bedrooms	Occupancy Density Range	
	Minimum	Maximum
0	1	1
1	1	2
2	2	4
3	3	6
4	4	8
5	5	10

B. Procedures for Assigning Units

Occupancy policies also establish the order in which eligible applicants and existing tenants will be housed or rehoused.

Borrowers are required to comply with Section 5 of this chapter in selecting and assigning applicants to new units or relocating over- or under- housed existing tenants. However, it is important that these requirements are detailed in the borrower's occupancy

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policies, so that it is clear to new applicants and existing tenants how a vacant unit will be assigned.

6.14 OCCUPANCY RULES [7 CFR 3560.157]

The purpose of the occupancy rules is to establish the basis for the tenant and management relationship. Prior to Agency approval of occupancy rules, borrowers must provide written certification from their attorney that the housing project's occupancy rules are consistent with applicable Federal, state, and local laws, as well as Agency requirements, and the requirements of all programs participating in the housing project.

In situations where the tenant is in violation of the occupancy rules and the tenant fails to correct the problem, the borrower should proceed to evict the tenant for material noncompliance with the lease. In the event that an eviction action is filed with the court, the tenant should set up an escrow account for the rent.

A. Basic Rules

Exhibit 6-4 lists the basic items that borrowers must address in the occupancy rules for their projects.

Occupancy rules for each project will be in writing, attached to each tenant’s lease upon initial occupancy, and posted in a central location (such as a central mail location) so that tenants may easily access the information. The Agency must concur with any modification to these rules prior to implementation. Proper notice must be provided to the tenant at least 30 days prior to implementation and in accordance with the requirements of Section 8 of this chapter.

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Exhibit 6-4

Required Items for Multi-Family Housing Occupancy Rules

At minimum, the occupancy rules must address:

* An explanation of the tenant's rights and responsibilities under the lease or occupancy agreement;
* An explanation of the tenant's rights, protections, and responsibilities under VAWA (See Attachment 6-K, Section I)
* The rent payment or occupancy charge policies;
* The policies regarding periodic inspection of units;
* The system for responding to tenant complaints;
* The maintenance request and work-order procedures;
* The project services and facilities available to tenants or members;
* The office locations, hours, and emergency telephone numbers;
* The restrictions on storage and prohibitions on abandoning vehicles in the project area;
* The policies regarding guests that become household members;
* Other requirements related to the subsidy provided to the tenant from non–Agency sources; and
* The procedures tenants must follow to request reasonable accommodations.

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B. Pets

For each elderly designated multi-family housing project the borrower must have established project rules permitting elderly or disabled tenants to keep commonly accepted household pets.

Borrowers must not prohibit elderly households from keeping domestic animals in their unit; however, the borrower may require the household to pay a pet deposit.

Pet rules must not:

Prohibit, prevent, restrict, or discriminate against any tenant who owns or keeps a pet in their apartment unit, with respect to continued occupancy in the project unless the approved project pet rules are violated;

Prohibit, prevent, restrict, or discriminate against any applicant who owns a pet with respect to obtaining occupancy in the project; and

Charge an extra monthly rental charge for pets.

Borrowers with existing projects must consult with the tenants of the project when revising pet rules and retain documentation on how the consultation process was conducted.

Borrowers with new projects will establish pet rules prior to occupancy but may revise those rules based on tenant comments and suggestions received after rent-up begins.

Pet rules will be reasonable and will be written to consider at least the following factors:

Limit on number of pets based on unit size;

Pet size;

Type of pet;

Potential financial obligations of tenants who own or keep pets;

Standards of pet care;

Pet exercise areas;

State and local animal laws or ordinances; and

Liability insurance.

Pet rules must allow the borrower or project manager authorization to remove from the project any pet whose conduct or condition is duly determined to constitute a nuisance or

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threat to the health or safety of other tenants or members in the project or persons in the surrounding community.

Regardless of the occupancy rules established for the project, the borrower must adhere to the following:

- Borrowers must not prohibit animals that provide assistance to the disabled from residing in the unit with the person to whom the animal is providing assistance.

- Borrower may not require the household to pay a pet deposit for a service/assistance/companion animal.

C. Tenant Organizations

In developing and implementing the occupancy rules, borrowers must not infringe on the rights of tenants to organize an association of tenants. The project manager (or designated management representative) should be available and willing to work with a tenant organization.

Borrowers may not unreasonably withhold the use of community rooms or other available space within the project when requested by:

- A resident organization in connection with the representational functions of the organization; or

- Residents seeking to organize or to collectively consider any matter pertaining to the operation of the project.

D. Community Rooms

In developing the occupancy rules, borrowers must not place unreasonable restrictions on tenants that desire to use community rooms for their enjoyment.

SECTION 4: MARKETING AND APPLICATION PROCESSING
[7 CFR 3560.104 and 7 CFR 3560.154]

6.15 [RESERVED]

6.16 APPLICATION REQUIREMENTS AND PROCESSING

The purpose of the tenant application process is to collect enough information regarding the household status to determine applicant eligibility for the specific property. This information should also be comprehensive enough for the borrower to make a determination about waiting list placement.

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A. Application Forms

Borrowers may develop their own application form in accordance with the requirements of Exhibit 6-5. The borrower must retain application forms for at least three years or until the next Agency supervisory visit or compliance review, whichever is longer.

Exhibit 6-5

Minimum Requirements for a Tenant Application

* Name and present address;

* Household income information, including all information from sources that would be counted in calculating annual income, adjusted income, and assets; and consent to release wage matching data to RHS and the borrower;

* Number of household members, including all members who would live in the dwelling unit, even those who would only live there on a part-time basis, and their birthdates;

* Indication of a need for a handicap accessible unit and/or disability adjustments to income;

* Applicant certification that the unit will serve as the household's primary residence;

* Social Security Number for all members of the household;
* Signature and date;
* Race, ethnicity, and sex; and
* Disclosure notice.

Borrowers using application forms must establish a section at the end of the form, below the signature and date block, to collect race/national origin/sex information. Properties with layered financing may have additional program requirements when gathering demographic information. To meet the requirements of Federal Register Vol. 62 No. 210, Revision to the Standards for the Classification of Federal Data on Race and Ethnicity, the data collection needs to appear as follows:

"The information regarding race, ethnicity, and sex designation solicited on this application is requested in order to assure the Federal Government, acting through the Rural Housing Service, that the Federal laws prohibiting discrimination against tenant applications on the basis of race, color, national origin, religion, sex, familial status, age, and disability are complied with. You are not required to furnish this information, but are encouraged to do so. This information will not be used in evaluating your application or to discriminate against you in any way. However, if you choose not to furnish it, the

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owner is required to note the race, ethnicity, and sex of individual applicants on the basis of visual observation or surname."

Ethnicity:

Hispanic or Latino____

Not Hispanic or Latino____

Race: (Mark one or more)

1 American Indian/Alaska Native____

2 Asian____

3 Black or African American_____

4 Native Hawaiian or Other Pacific Islander____

5 White_____

Sex: Male_____ Female_____

The race and the ethnicity of each applicant shall be recorded on the waiting list. This information shall be collected for statistical purposes only and must not be used when making eligibility determinations or in any other discriminatory manner. The information shall be recorded using the race and ethnicity codes that are utilized on Form RD 3560-8 Tenant Certification.

Borrowers must establish and maintain a specific place and time where applications will be accepted. This information should be posted in a central location on the property. It must also be documented in the Management Plan and to the greatest extent possible communicated through outreach and marketing efforts.

Applicants are to be provided a list of any additional information that must be submitted with the application for the application to be considered complete (an application will be considered complete without verification of the applicant information). The list of information must be restricted to the same items for all Agency-assisted properties of a particular type, such as a family or elderly complex.

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B. Application Fees

Application fees are discouraged, but when used, any fee charged to an applicant must be limited to the cost of actual services incurred for obtaining necessary information associated with completing applicant eligibility.

C. Maintaining Waiting Lists

When an applicant has submitted an application form the borrower must place the applicant on the waiting list. All applications, incomplete, complete, eligible, or ineligible, will be placed on the list. The waiting list will document the final disposition of all applications (rejected, withdrawn, or placed in a unit).

The date and time a complete application was submitted will be recorded on the waiting list and will establish priority for selection from the list. If an applicant submits an incomplete application, they must be notified in writing within 10 days of the items that are needed for the application to be considered complete, and that priority will not be established until the additional items are received.

1. Electronic Waiting Lists

Electronic waiting lists must have a mechanism for maintaining the date and time of each applicant's placement on and selection from the waiting list and a way to document changes made to the list. If an electronic waiting list is used, borrowers must periodically print out electronic waiting lists or preserve backup copies showing how the waiting list appeared before and after the removal of each name. The following are examples of methods that borrowers might use to track inputs to the electronic waiting list and changes to it:

Use a data backup function to record the time and date of entry of new applications and changes to existing records in the electronic waiting list.

Print a record of the appearance of the waiting list as often as necessary to show each applicant's placement on and selection from the list. The time and the date of the printout should appear on the report. The owner can file this information in the tenant file and in a central waiting list file.

Whenever status changes occur, such as changes in family composition and unit size, record the change with an explanation, and print the re-sorted list.

To the extent possible, the borrower should use electronic safeguards, such as assigning waiting list password access only to individuals responsible for maintaining the system. Ideally, a system should record the username, and the time, date, and action entered whenever a record is changed or entered in the electronic waiting list.

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2. Selecting Applications from the Waiting List

Once an applicant has submitted a complete application, the date and time must be recorded on the waiting list to establish priority for selection. Selection from the waiting list will be made according to date and time in the following order:

- Very low-income applicants;
- Low-income applicants; and
- Moderate-income applicants.

See paragraph 6.3 for information regarding how to determine the specific income level of an applicant.

Within 10 calendar days of receipt of a complete application, the borrower must notify the applicant in writing that they have been selected for immediate occupancy, placed on a waiting list, or rejected.

The procedures used by the borrower to purge the project's waiting list must be described in the project's management plan. These procedures must be based on the length of the waiting list or the extent of time the applicant will be expected to wait for housing.

6.17 REJECTION OF APPLICATIONS

Borrowers will deny admission for criminal activity or alcohol abuse by household members as detailed in 24 CFR 5.854, 5.855, 5.856, and 5.857.

The Direct Result provision prohibits Borrowers from rejecting admission to an applicant based on an adverse factor, if the adverse factor is determined to be a direct result of the fact that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. (See VAWA Attachment 6-K Section F.)

Borrowers are required to notify all applicants in writing of their ineligibility. If applicants are determined to be ineligible, the rejection letter must outline the reason for rejection of the application and their right to respond to such decision in accordance with 7 CFR 3560.154 and 7 CFR 3560.160. The rejection letter must advise the applicants of their right to respond to the decision within 10 calendar days, as well as the right to a hearing in accordance with 7 CFR 3560.160, which must be made available to the applicant upon request. If the project is located in an area with a high concentration of non–English-speaking individuals, the letter must be in English and the non–English language that is prevalent in the area. When an applicant is rejected due to credit bureau reporting information, the source of the credit bureau must be revealed to the applicant in accordance with the Fair Credit Reporting Act. Forms HUD-5380 and HUD-5382 will be provided to adult applicants whose applications are rejected.

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6.18 AGENCY REVIEW AND MONITORING OF APPLICATION PROCESSING

In reviewing the application process used by the borrower, the Agency should review the following:

- Is adequate documentation available to determine compliance with applicant processing requirements?

- Are applicants properly informed of where and when applications may be obtained and submitted?

- Are applicants properly notified of their rights and protections under VAWA (VAWA Lease Addendum, HUD-5380 and HUD 5382 forms distribution)?

- Does the application provide the borrower with adequate information to determine the applicant's place on the waiting list?

- Is there an element in the application process that discourages targeted populations from submitting an application? If so, will modifying the application process encourage targeted, but underserved populations to apply?

- Are applications processed in a timely manner?

- Are ineligible applicants adequately notified of their rights to a review under Section 8 of this chapter?

MFH Servicing Officials will review the application during the supervisory visit and/or compliance review to ensure that adequate information is being obtained and that the above-listed questions are answered to the satisfaction of the Agency.

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SECTION 5: TENANT SELECTION AND UNIT ASSIGNMENT
[7 CFR 3560.154 and 7 CFR 3560.155]

6.19 ASSIGNING AN AVAILABLE UNIT

Once a unit becomes available, the borrower must decide who is entitled to that unit based on a variety of factors.

Eligible tenants residing in the property who are either under- or over-housed receive priority over new applicants if relocating them into the newly vacant unit would bring the household into compliance with the occupancy policy for the property. If there are no such over- or under-housed existing tenants, the borrower must select a new applicant from the waiting list to fill the newly vacant unit. The borrower must use the project's occupancy policy to review applicants on the waiting list who are eligible based on the unit size. From that universe, the borrower must then determine, based on income levels and priorities, which applicant is entitled to the unit. The order in which applicant households are entitled to housing depends on two factors:

- The income level of the household; and
- The priorities for which the household may qualify.

When an applicant first submitted an application, the borrower made an initial determination as to whether the household was very low-, low-, or moderate-income. Based on this assessment, the applicant was assigned to the very low-, low-, or moderate-income waiting list. When looking for the next eligible tenant for the vacant unit, the borrower must first go to the very-low income waiting list. If there are no applicants on the very low-income waiting list who qualify for the vacant unit based on the property's occupancy policy, then the borrower may go to the low-income waiting list. Only if there are no eligible applicants for the unit on the low-income waiting list may the borrower select an eligible applicant from the moderate-income waiting list.

6.20 PRIORITIES FOR UNITS

A. Exceptions to Income Standard Assignment Policies

While the basic standard is to house all very low-income applicants prior to low- and then moderate-income applicants, there are situations where this process may be bypassed. However, an individual in one of the situations identified below would not be eligible for housing before applicants on the waiting list for a lower income category.

- If the unit is a handicapped accessible unit, then an eligible household that needs the features of that unit will receive priority over all other applicants, regardless of income. If more than one applicant needs the features of the handicapped accessible

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unit, then applicants who are very low-income would have priority, followed by low- and then moderate-income households.

- In congregate housing facilities, applicants who qualify for and agree to utilize the services provided by the facility will be housed over all other applicants on the waiting list. Where there is more than one applicant that meets this criterion, the applicants meeting this condition will be ranked by very low-, low-, and moderate-income and housed in accordance with the occupancy policies established at the property.

- Borrowers with projects receiving low-income housing tax credits (LIHTCs), may leave a housing unit vacant if they are required to rent the available unit to an LIHTC-eligible applicant, and none of the applicants on the waiting list meet the applicable LIHTC eligibility requirements.

Example— Exceptions

Project B has two handicap-accessible units. There are three disabled individuals who need the features of the handicap-accessible units on the waiting list: one moderate income and two low-income. The property has a waiting list of 20 very low-income applicants. The borrower must rent the two handicap-accessible units to the two low-income applicants.

Project Z is a congregate housing facility and has a vacant one-bedroom unit. There are three individuals eligible for a one-bedroom unit on the waiting list: two very low-income applicants and one low-income applicant. All qualify for congregate care services. Only one of the very low-income applicants, however, would agree to use the congregate care facilities. The borrower would have to offer one of the vacant units to the very low-income applicant who agrees to use the services and the other unit to the low-income applicant who agrees to use the services.

- Letter of Priority Entitlement (LOPE), *Handbook Letter 201.* A letter issued by the Agency providing a tenant with priority entitlement to rental units in other Agency-financed housing projects for 120 days from the date of the LOPE. Persons receiving a VAWA LOPE, displaced by Agency action, or displaced persons in a Federally declared disaster area have priority over all other applicants of the individual applicant's income group.

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Example

Project C has a vacant three-bedroom apartment. There are no applicants eligible for a three-bedroom unit on the very low-income waiting list. There are 20 applicants eligible for a three-bedroom unit on the low-income waiting list. A holder of a LOPE applies for occupancy at the project. The applicant is low-income and qualifies for a two-bedroom unit. Despite the number of applicants on the waiting list, the borrower must offer the available unit to the LOPE holder, and the LOPE holder agrees to move to the appropriate-size unit when one becomes available.

- Borrowers who have adopted an admission or waiting list priority for victims of domestic violence, dating violence, sexual assault, or stalking who are non-RD tenants referred by other federal, state, or local housing agencies, or a partnering service organization. Such victims may receive priority over all other applicants of the individual applicant's income group. (See Attachment 6-K Section Q.)

B. Assignment of Rental Units Accessible to Individuals with Disabilities

Eligibility requirements for fully accessible units are contained in 7 CFR 3560.154(g)(1)(i) and 3560.155(b). If a rental unit accessible to individuals with disabilities is available and there are no applicants that require the features of the unit, the borrower may rent the unit to a non-disabled tenant under the following conditions:

- The borrower must include a provision in the lease requiring the tenant to vacate the unit within 30 days of notification to an appropriately sized vacant unit within the project. Additionally, the lease clause must ensure that the household may remain in the rental unit with accessibility features until an appropriately sized vacant unit within the project becomes available and then must move or vacate within 30 days of notification from borrower;

- The unit has been marketed as an accessible unit;

- Outreach has been made to organizations representing the disabled; and

- Marketing of the unit as an accessible unit continues after it is rented to a tenant who is not in need of the special design features.

C. Set-aside Unit Preferences at properties with other funding sources

Recapitalization and rehabilitation for an aging affordable housing property often requires locally awarded funding sources such as Low-Income Housing Tax Credits (LIHTC). To receive consideration for these funding sources, owners must often commit

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to setting aside a small number of units with a preference for a certain population, for example, residents with disabilities or residents coming from homelessness.

Given the prevalence of set-asides and preferences in state and locally awarded funding, RD will allow owners and management agents to include a set-aside or preference for a specific population in their occupancy policy and management plan, under the following conditions:

- The set-aside or preference must be part of the owner's effort to recapitalize and perform needed rehabilitation with the goal of long-term preservation of affordable housing in rural communities, either as part of a state's Qualified Allocation Plan (QAP) so the property can compete and receive a LIHTC award, or as a requirement imposed by other third-party funding sources.

- The set-aside or preference must not violate any provisions of the Fair Housing Act and must not violate any state or local discrimination laws.

- The set-aside or preference units shall consist of no more than 20% of the units at the property.

- The set-aside or preference must not result in unreasonable vacancies at the project. If set-aside units are vacant for longer than 90 days, owners must request an exception to rent the units to Agency qualified tenants, if allowed by third-party funding sources.

- The set-aside or preference must be clearly documented in the property's management plan and occupancy policy, the edits to which must be approved by the Agency.

- With prior RD review and concurrence, a Use Agreement that restricts a certain number of units may be executed.

- A separate waiting list may be utilized for the set-aside or preferences, in accordance with the third-party funding source or the set-aside governing Agency.

- The Housing and Urban Development (HUD) lease may be used for the set-aside or preference units/tenants if required by the third-party funding source or set-aside governing Agency. The HUD lease cannot be used for non-set-aside or non-preference units/tenants.

- Owners must continue to meet all RD reporting requirements.

- Participants must continue to use the RD budget-based rent structure on ALL units. Borrowers are responsible for funding any gap between basic rent and any restricted

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set-aside or preference rent collected from the tenant when basic rent exceeds the restricted rent.

If the number of set-asides or preferences change, the owner must advise the RD servicing specialist of the change.

Borrowers receiving HUD Section 8 project-based assistance may establish preferences in accordance with HUD regulations. The use of such preferences must be documented in the project's management plan.

6.21 AGENCY MONITORING AND REVIEW OF UNIT ASSIGNMENT

The selection and assignment of units is one of the most important aspects to managing a property. Borrowers and management agents must assure onsite management staff are well versed in Agency policy and guidance regarding this subject or require the borrower to modify the management plan to reflect increased training in this area. The MFH Servicing Official will review the waiting lists and completed applications to ensure that:

- Units which are not needed to relocate existing tenants are first offered to eligible very low-income families; and

- Units are offered to households in accordance with the borrower's occupancy policy.

If the MFH Servicing Official finds that the borrower or the agent is failing to follow Agency policy in assigning available units, the MFH Servicing Official may require the borrower to modify the management plan to clearly reflect Agency policy and/or enhance the training of management staff responsible for assigning units.

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SECTION 6: DWELLING LEASES *[7 CFR 3560.156]*

6.22 OVERVIEW OF DWELLING LEASES

A lease between the borrower and the tenant is required to be executed before any tenant occupies a unit in a multi-family housing project. This section will provide information regarding how the borrower will develop that lease and what action is needed by the Agency before the lease may be used. The Agency must approve the lease before the borrower enters into a lease agreement with any tenant.

6.23 DEVELOPMENT OF A LEASE

The borrower is responsible for the development of the tenant lease that will be used at the property. This lease must contain the required items, provisions and clauses outlined in **Attachment 6-E** and must be free of prohibited clauses listed in **Attachment 6-F**. It must also be in compliance with state and local laws. If there are conflicting requirements between Federal, state, and local laws, the borrower must notify the Agency of the conflict and request guidance. Once a lease is developed by the borrower, the borrower's attorney must certify that the lease is in compliance with the requirements of 7 CFR 3560.156 and **Attachments 6-E** and **6-F** prior to submission of the lease to the Agency for approval. The Agency must approve with all leases proposed for use at an Agency-related property, prior to the use of that lease.

6.24 EXECUTION OF THE LEASE WITH THE TENANT

Prior to the occupancy of any unit by an applicant, the applicant and the borrower must execute a lease that has been approved by the Agency. Once a lease has been executed with the applicant, they are entitled to occupy the unit so long as they remain eligible and comply with lease renewal requirements. Expiration of the lease is not of itself grounds for a termination of tenancy.

6.25 AGENCY REVIEW AND MONITORING OF LEASE REQUIREMENTS

The management agent must review and monitor the implementation of the lease with the applicant/tenant to ensure that they are properly informed of their rights and responsibilities under the lease. During the compliance review process, the Agency will assure:

- The occupancy rules are attached to the initial lease;
- The applicant understands their rights to the tenant grievance process under HUD Section 8 and 7 CFR 3560.160; and
- The applicant understands the process for relaying information such as maintenance requests and income information to management and the responsibility to do so in a timely manner.

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- The adult applicants understand their rights, protections, and responsibilities under the VAWA Lease Addendum and have received Forms HUD-5380 and HUD-5382. (See Attachment 6-K Section I, paragraph 5.)

If the MFH Servicing Official determines the borrower is failing to provide adequate information regarding the rights and responsibilities of the tenant and the management agent, the MFH Servicing Official will require the borrower to improve the management plan and training of onsite staff.

SECTION 7: TENANT RECERTIFICATION AND CHANGES IN ELIGIBILITY *[7 CFR 3560.152 and 7 CFR 3560.158]*

The recertification process developed in this section is designed to ensure a tenant remains eligible to reside in multi-family housing. As household status changes, the size of the unit needed by the household or the amount of rent that they are obligated to pay may change. This section discusses when a recertification is required and what action the borrower is required to take if a household is determined ineligible to continue residing at the property.

6.26 REQUIREMENTS TO RECERTIFY TENANTS

A. The Annual Recertification Process

Each time a resident is recertified, the certification is good for one year, unless Paragraph B Interim Recertification Process requires a recertification to be completed more frequently. At the end of the year the certification will expire, and the borrower is required to recertify the household. In most cases, the effective date of the recertification is the first day of the month following the expiration of the current certification. If the owner/management agent or tenant fail to recertify timely, the effective date will be the first of the month after the recertification has been executed by the owner/management agent and the tenant.

Using the procedures outlined in Section 1 of this chapter, the borrower will complete a new certification. The key steps to this process include:

1. Notifying the tenant of the recertification requirement

At least 75 to 90 days prior to the date that the certification expires, the borrower must notify the tenant in writing that they must be recertified to remain eligible to continue residence at the property. This letter will also include what information the borrower needs from the household to complete the recertification process.

If the household fails to respond to the letter, the borrower should issue a second letter 30 days prior to the date which the certification expires informing the tenant of:

- The information needed to recertify;
- The time frame in which the new certification must be submitted to the Agency; and

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- The consequences for failure to comply with the recertification process.

2. Execution of the annual recertification

Upon receiving the information regarding household size and income from the tenant, the borrower will verify the information and the borrower and the tenant will complete a new *Form RD 3560-8*. This form will document the calculation of annual income and adjusted income (in accordance with Section 1 of this chapter) and the calculation of the tenant payment (in accordance with Chapters 7 and 8). Management agents must give each adult household member the VAWA Form HUD-5380, "Notice of Occupancy Rights" and the Form HUD-5382, "Certification of Domestic Violence" with acknowledgement of receipt. (See Attachment 6-K Section I.)

B. Interim Recertification Process

Tenants and borrowers must execute *Form RD 3560-8*, Tenant Certification form establishing the tenant's eligibility prior to occupancy. In addition, tenant households must be recertified and must execute a tenant certification form at least annually or whenever a change in household income of $100 or more per month occurs. Borrowers must recertify for household income changes of $50 per month, if the tenant requests that such a change be made.

1. Tenant Requirements

Tenants must provide borrowers with the necessary income and other household information required by the Agency to determine eligibility.

Tenants must authorize borrowers to verify information provided to establish their eligibility or determination of tenant contribution.

Tenants must report all changes in household status that may affect their eligibility to borrowers.

Tenants who fail to comply with tenant certification and recertification requirements will be considered ineligible for occupancy and will be subject to unauthorized assistance claims, if applicable, as specified in 7 CFR part 3560, subpart O.

2. Borrower Requirements

Borrowers must verify household income and other information necessary to establish tenant eligibility for the requested rental unit type, in a format approved by the Agency, prior to a tenant's initial occupancy and prior to annual or other recertifications.

Borrowers must review all reported changes in household status and assess the impact of these changes on the tenant's eligibility or net tenant contribution.

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Borrowers must submit initial or updated tenant certification forms to the Agency within 10 days of the effective date of an initial certification or any changes in a tenant's status. The effective date of an initial or updated tenant certification form will always be a first day of the month.

Since tenant certifications are used to document interest credit and rental assistance eligibility and are a basic responsibility of the borrower under the loan documents, borrowers who fail to submit annual or updated tenant certification forms within the time period specified in this paragraph, will be charged overage, as specified in 7 CFR 3560.203(c) and lost rental assistance. Unauthorized assistance, if any, will be handled in accordance with 7 CFR part 3560, subpart O.

Borrowers must give each adult household member the VAWA Form HUD-5380, "Notice of Occupancy Rights" and the Form HUD-5382, "Certification of Domestic Violence" at every recertification, with acknowledgement of receipt. (See Attachment 6-K Section I.)

Borrowers must submit tenant certification forms to the Agency using a format approved by the Agency.

Borrowers must retain executed tenant certification forms and any supporting documentation in the tenant file for at least 3 years or until the next Agency supervisory visit or compliance review, whichever is longer.

The Agency maintains the right to independently verify tenant eligibility information.

Tenants will remain ineligible to receive RA when they are delinquent on their Unauthorized Assistance Repayment Agreement until such time as the delinquency is cured.

C. Submission of the Certification to the Agency

Once the borrower and the tenant execute a certification, it must be submitted to the Agency within 10 days of the effective date of the certification. In order for a certification to be valid, it must be signed and dated by all parties on or before the effective date and maintained in the tenant file. If a borrower fails to submit an executed certification within 10 days of the effective date, it will result in monetary penalties (overage) to the borrower as established in Chapter 7.

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6.27 AGENCY REVIEW AND MONITORING OF THE RECERTIFICATION PROCESS

A. Agency Review

The recertification process is designed to ensure that Agency programs are serving income-eligible households on an ongoing basis. MFH Servicing Officials review of the recertification process should be designed to ensure that recertifications are executed in a timely manner. The MFH Servicing Officials will make the following assessments:

- Are tenants receiving the proper notice—at least 75-90 days in advance of the expiration of the current certification?
- Are adult household members acknowledging receipt of the forms HUD-5380 and HUD-5382? (See Attachment 6-K Section R.)
- Does the recertification notice provide the tenant with a list of the information needed for the completion of the recertification process?
- Are borrowers accurately determining when an interim recertification is needed?
- Are interim recertifications being executed on a timely basis (i.e., no later than 30 days from the time the information is provided to the borrower)?
- Is the borrower completing the verification of information on a timely basis?

If the MFH Servicing Official concludes that the borrower is deficient in recertifying existing tenants, the Agency must require the borrower and the management agent to modify existing practices and procedures to ensure a timelier delivery of recertifications to the Agency. This could include:

- Modification of the management plan to incorporate stronger or more specific procedures with regard to recertifications.
- Enhanced training for onsite staff in processing Agency certifications.
- Stronger enforcement of the penalties for tenants who fail to comply with the recertification process.
- Requiring the borrower to replace the management agent.

B. Management Agent Interactive Network Connection (MINC)

MINC is the mechanism by which borrowers submit tenant certifications to the Agency electronically on a monthly basis.

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For projects with eight units or more, all borrowers will be required to submit tenant certifications through MINC. The Agency may make an exception to this requirement if the borrower submits documentation that the costs associated with electronic submission of tenant certifications would pose a financial hardship to the project.

If the borrower is using MINC, certifications must be submitted by the tenth of the month for which they are due. For instance, if the borrower is submitting certification due in May with an effective date of May 1, the certifications must be electronically transmitted to the Agency by May 10. If for any reason the borrower is unable to transmit the certifications electronically during a given month, the borrower must submit the hard copies of the certifications to the Agency for receipt by the tenth of the month.

If the Agency approved a MINC waiver for a project with less than 8 units, borrowers must submit hard copies of certifications to the Agency for receipt by the tenth of the month.

Regardless of the transmission method used—MINC or hard copies—if the Agency does not receive certifications by the tenth of the month in which they are due and the borrower has not submitted an overage waiver for Agency consideration, the borrower will be subject to overage penalty.

Attachment 6-G provides guidance on acquiring automation support/software for MINC or other automation needs, along with a listing of software providers who have an interest in interfacing with MINC.

6.28 INELIGIBLE TENANTS

Ineligible tenants are those who, upon recertification, fail to meet either the income or the occupancy requirements for the unit and property that they currently occupy. Regulations require that tenants who are no longer eligible to reside at the property be given notice that they must vacate the property within 30 days or at the end of their lease, whichever is longer.

In two specific situations, borrowers may permit ineligible households to reside at the project with prior Agency approval:

- The waiting list for the specific unit type has no eligible tenants; or
- The required time period for vacating the unit would create a hardship on the household.

A. Continuation of Tenancy—Tenants Who Fail to Comply with the Occupancy Policy

In some situations, a tenant may be ineligible based on the size of the unit currently occupied but could become eligible if they relocated to a unit of a different size (either

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larger or smaller) within the property. In this situation, a tenant may continue tenancy as an ineligible tenant, but the borrower should relocate the household to the proper unit size as soon as a unit of that size becomes available.

In some cases, a household may require a unit size that is unavailable at the property. In this situation the tenant would be considered ineligible and required to vacate the property within 30 days or at the end of their lease, whichever is longer.

B. Continuation of Tenancy—Tenants Who Fail to Comply with the Income Requirements for the Property

In most cases, if tenant certifications indicate that they no longer comply with the income limits set for the property, tenants must be notified about vacating the property in 30 days or at the end of their lease, whichever is longer.

Elderly households with incomes above the moderate-income level may occupy projects with an Agency loan approved prior to 1968 with a loan agreement that does not restrict occupancy by income.

Households who are elderly, disabled, and living in a full-profit plan development are not required to move or pay an increased rent if household income increases above moderate income.

C. Cooperative Members

Any persons who are eligible members of a cooperative will not be considered ineligible or subsequently deprived of their membership by reason of no longer meeting the income-eligibility requirements as defined in 7 CFR 3560.152.

D. Remaining Household Members

Members of a household residing in a multi-family housing project may continue to occupy the unit after the departure of the original tenant, regardless of age, provided that:

- They are eligible with respect to income;
- They were either a cotenant or member of the household, have the legal capacity to sign the lease, and are U.S. citizens or qualified aliens*;

*__Effective date note:__ At 70 FR 8503, February 22, 2005, in 7 CFR 3560.152(a)(1), implementation of the words “Be a United States citizen or qualified alien, and” was delayed indefinitely.

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- They occupied the unit with the original tenant at the time the original tenant died or departed;

- They sign a new tenant certification establishing their own tenancy; and

- They have the legal ability to sign a lease for the rental unit, except where a legal guardian may sign when the tenant or member is otherwise eligible.

Remaining household members that are over housed must move to a suitably sized rental unit within 30 days of its availability. If a suitably sized unit does not exist at the property, the tenant will be required to vacate the property in accordance with Paragraph 6.28 A.

E. Surviving Household Members

Members of an elderly household residing in an elderly project may continue to occupy the unit after the death of the original tenant, regardless of age, provided that:

- They are eligible with respect to income;

- They were either a co-tenant or member of the household and have the legal capacity to sign the lease;

- They occupied the unit with the original tenant at the time the original tenant died or departed;

- They sign a new tenant certification establishing their own tenancy; and

- They have the legal ability to sign a lease for the rental unit, except where a legal guardian may sign when the tenant or member is otherwise eligible.

Nonelderly or nondisabled surviving members of an elderly or disabled household are not entitled to the elderly household adjustment to income.

Surviving household members who are over housed may remain in the unit but must move to a suitably sized rental unit within 30 days of its availability, unless with prior approval of the Agency, the required time period for vacating the rental unit would create a hardship on the household. If a suitably sized unit is not available, surviving household members may remain in the rental unit according to the housing project's occupancy policies. Continued occupancy of the rental unit will not be allowed when:

- The rental unit has accessibility features for individuals with disabilities;
- The household no longer has a need for such accessibility features; and
- The housing project has a tenant application from an individual with a need for the accessibility features.

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- If the housing project does not have a tenant application from an individual with a need for the accessibility features, the household may remain in the rental unit until the housing project receives an application from an individual in need of the accessibility features, at which point, the household will be required to move within 30 days; and

- If a suitably sized unit is not available in the project within 30 days, the tenant may remain in the unit with accessibility features until a unit becomes available and must then move within 30 days.

F. Agency Review and Monitoring of Ineligible Tenants

For an ineligible tenant to remain at the property beyond the allowable time frame of 30 days or the end of the lease, whichever is longer, the borrower must obtain written permission from the Agency. In granting such permission, the Agency should assure that one of two criteria exist:

- The waiting list for the specific unit type has no eligible tenants; or

- The required time period for vacating the unit would create a hardship for the household.

In reviewing whether the borrower is following the requirements to remove ineligible tenants the Agency should check to ensure:

- The borrower is requesting approval for ineligible tenants to remain on the property in a timely manner.

- The borrower is properly documenting any reason for which an ineligible tenant is being allowed to continue to reside in the property (i.e. Agency approval, surviving member of elderly household, income eligible and waiting for appropriate-size unit).

- The borrower is providing proper notice to tenants regarding the time frames for vacating the property.

6.29 LEASE VIOLATIONS

Borrowers may require tenants in violation of occupancy policies or rules or the terms of their lease to vacate the property in accordance with the terms of their lease agreement. However, borrowers must provide notice to such tenant in a format that is in compliance with state and local laws and is approved by the Agency.

6.30 TERMINATION OF OCCUPANCY

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A. Tenants in Violation of the Lease

In accordance with the lease, a borrower may terminate or refuse to renew a tenant's lease for material noncompliance with the lease or occupancy policies or rules or for other good cause.

Borrowers must not terminate occupancy solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of the household or any guest or other person under the control of the tenant, if the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking. Good cause for purposes of occupancy terminations does not include an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking where the tenant or affiliated individual of the tenant is a victim or threatened victim of such incident. The Direct Result provision prohibits Borrowers from terminating tenancy based on an adverse factor, if the adverse factor is determined to be a direct result of the fact that the tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. (See Attachment 6-K Section F)

Material noncompliance with lease provisions or occupancy rules includes actions such as:

- Violations of lease provisions or occupancy rules that are substantial and repeated;
- Nonpayment or repeated late payment of rent or other financial obligations due to the borrower; and
- Admission to or conviction for use, attempted use, possession, manufacture, sale or distribution of an illegal controlled substance. Such activity must have occurred on the project's premises by the tenant, a member of the tenant household, or any other person under the tenant's control at the time of the activity.

For purposes of terminating a tenant's occupancy, good cause includes actions by the tenant or member of the tenant's household that:

- Threaten the health and safety of other persons or the right of other persons to peaceful enjoyment of their dwelling;
- Result in substantial physical damage causing an adverse financial effect on the housing or other persons' property; and
- Are actions prohibited by state or local law.

If the borrower terminates the tenant's lease, the borrower must document in writing in the tenant's file:

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- The incidences related to the lease; and

- That the tenant was given notice prior to the termination that the tenant's activities would result in occupancy termination.

Prior to terminating a lease, the borrower must give the tenant written notice of the violation and give the tenant an opportunity to correct the violation. Subsequently, termination may only occur when the incidences related to the termination are documented and there is documentation that the tenant was given notice prior to the initiation of the termination action that their activities would result in occupancy termination. Forms HUD-5380 and HUD-5382 will be provided to adult tenants when occupancy is terminated.

B. Other Lease Terminations

A landlord may terminate occupancy for conditions beyond the tenant's control, such as:

- Required repair or rehabilitation of the building; or

- Natural disaster prior to the expiration of the disaster declaration.

Under these circumstances, the affected tenants may request a LOPE from the Agency. The LOPE will provide the tenant with priority entitlement to rental units in other Agency-financed projects for 120 days from the date of the LOPE. If a tenant needs additional time to secure replacement housing, the Agency may, at the tenant's request, extend the LOPE entitlement period. Tenants that are displaced due to circumstances beyond their control are entitled to benefits under the Uniform Relocation Act.

SECTION 8: TENANT GRIEVANCE PROCEDURES *[7 CFR 3560.160]*

This section presents the process for resolving tenant grievances. Every step of the process will be explained with the responsibilities of each party involved. Topics covered in this section include when to file a complaint, the hearing process, requirements governing the hearing, and the hearing decision. It is important to note that a resolution that is in the best interest of everyone should have gone through the entire grievance process before a final decision was made.

Tenants or prospective tenants may file a grievance in writing with the borrower in response to a borrower action, or failure to act, in accordance with the lease or Agency regulations that results in a denial, significant reduction, or termination of benefits or when a tenant or prospective tenant contests a borrower's notice of proposed adverse action.

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6.31 NOTICE OF ADVERSE ACTION

In the case of a proposed action that may have adverse consequences for tenants or prospective tenants such as denial of admission to occupancy and changes in the occupancy rules or lease, the borrower must notify the tenant or prospective tenant in writing. The notice must give specific reasons for the proposed action. The notice must also advise the tenant or prospective tenant of "the right to respond to the notice within 10 calendar days after date of the notice" and of "the right to a hearing in accordance with 7 CFR 3560.160 (f), which is available upon request." The notice must contain the information specified in 7 CFR 3560.160 (a)(2). For housing projects in areas with a concentration of non-English-speaking individuals, the notice must be in English and the non-English language.

6.32 OVERVIEW OF THE PROCESS

The grievance process should always begin with an informal meeting between the grieved party and the borrower/management agent. It is the Agency's belief that the best way to resolve grievances is through an informal meeting between the two parties.

Borrowers must offer to meet with tenants or prospective tenants to discuss the grievance within 10 calendar days of receiving the grievance. If an informal meeting is held, the borrower must provide a summary of the meeting to the tenant within 10 calendar days of the meeting date. The Agency encourages borrowers and tenants or prospective tenants to make an effort to reach a mutually satisfactory resolution to the grievance at the meeting.

Within 10 calendar days after receipt of the summary of any informal meeting, if the tenant or prospective tenant desires a hearing, a written request for a hearing must be submitted to the borrower. The parties will select a hearing panel or hearing officer to govern the hearing. Within 10 calendar days after the hearing, all parties are informed of the decision. Exhibit 6-6 provides an example of the grievance process.

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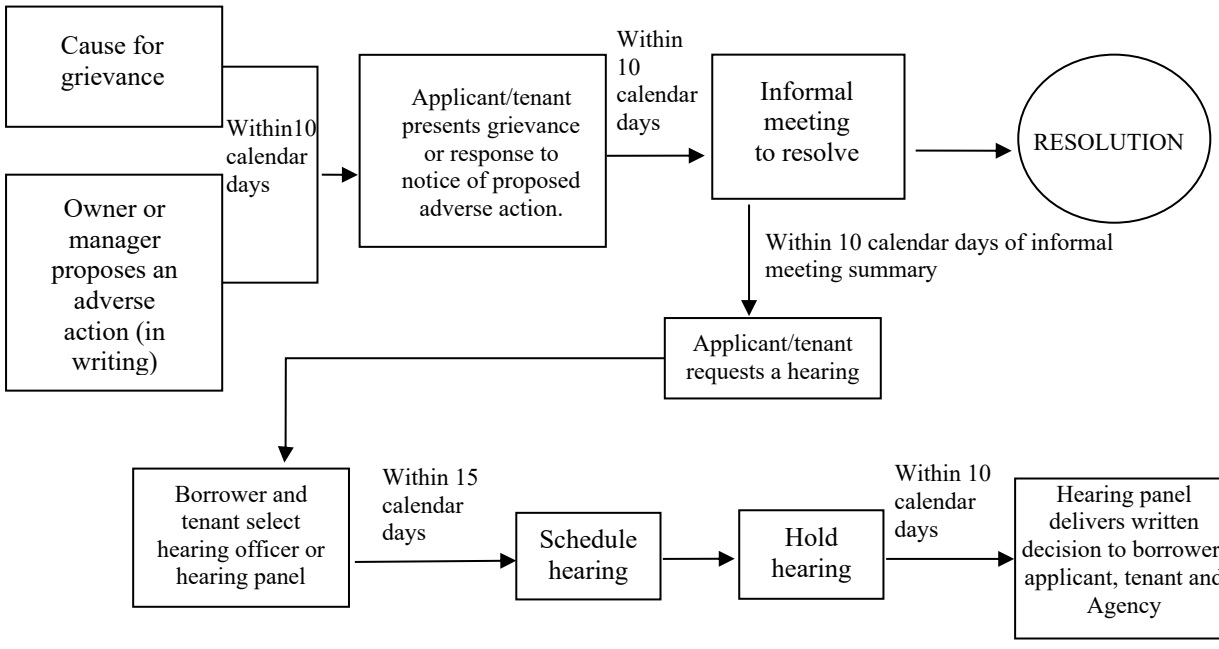
Exhibit 6-6
The Grievance and Appeals Process



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6.33 WHEN IS A TENANT GRIEVANCE LEGITIMATE?

It is important for the management agent to determine if a tenant or prospective tenant's grievance is within the requirements established for the program. For example, "I want to file a complaint because the manager does not speak to me," is not a legitimate grievance. On the other hand, a complaint that the building manager fails to maintain the property according to the Agency guidelines would be a legitimate grievance. Exhibit 6-7 lists the circumstances in which a tenant may or may not be able to file a complaint.

Exhibit 6-7

Tenant Complaints—Allowable Circumstances

A complaint may NOT be filed if:	***A complaint MAY be filed if:***
* There is a proposed rent change that is authorized by the Agency. * A tenant or prospective tenant believes that they have been discriminated against. If a person believes that discrimination has occurred, they should file a complaint with the USDA's Office of Civil Rights or the Secretary of HUD. * A project has formed a tenant's association, and all parties involved have agreed to use this association as a method of settling grievances. * There are changes in the rules that are required by the Agency and proper notice has been given. * The tenant is in violation of the lease and those violations result in termination of tenancy. * Disputes between tenants that do not involve the borrower/management agent. * Displacement or other effects as a result of prepayment.	* There is a modification of the lease, change in the rules, or changes in the rent that are not authorized by the Agency. * The borrower/management agent fails to maintain the property in a manner that is decent, safe, and sanitary. * The borrower violates a lease provision or occupancy rule. * Denial of admission to the project by a prospective tenant.

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6.34 BORROWER/MANAGEMENT AGENT RESPONSIBILITIES

The borrower/management agent is responsible for providing all tenants and prospective tenants with decent, safe, and sanitary housing. The following is a list of grievance responsibilities of the borrower/agent:

- Post in a conspicuous place in a common area: "Justice for All" poster, HUD equal housing opportunity poster including the Spanish version if there are Hispanic Limited English Proficiency tenants or applicants, current affirmative fair housing marketing plan, the tenant grievance and appeal procedure, housing project occupancy rules, office hours and phone number, and emergency hours and phone number.

- Maintain copies of the tenant grievance procedures at the housing project's management office.

- Provide all tenants with a summary of their rights at the time the lease is signed.

- If a tenant has limited English proficient (LEP), the borrower/agent must provide the summary of their rights, grievance procedures, and any other documents that pertain to the tenant's rights, in the non–English language. As well as a notice to include the telephone number and address of USDA's Office of Civil Rights and the appropriate Regional Fair Housing and Enforcement Agency.

6.35 THE HEARING PROCESS

A. Request for a Hearing

- Each hearing process must begin with the request for a hearing. The tenant or prospective tenant must present their request to the borrower in writing within 10 calendar days after the receipt of the summary of the informal meeting. The request must contain the following information:

  - The reason for the grievance or contest of the borrower/management agent's proposed action;

  - The action relief sought; and

  - Additional information.

- If the tenant or prospective tenant's request for a hearing is not received within the given time, the borrower or management agent's decision will become final.

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B. Scheduling the Hearing

The hearing must be scheduled within 15 calendar days after the receipt of the tenant's request for a hearing. If a hearing officer or hearing panel must be selected, the hearing will be scheduled within 15 calendar days after the selection or appointment of a hearing officer or hearing panel. It is the responsibility of the two parties to agree upon a place and time that is mutually convenient to hold the hearing. If the two parties cannot agree on a place and time, it will become the responsibility of the hearing officer or hearing panel to make the decision.

C. Selection of the Hearing Officer or Hearing Panel

The two parties must select a hearing officer. If the hearing officer cannot be agreed upon, the two parties will choose members to serve on the hearing panel. The hearing panel should consist of three members. The tenant and the borrower/management agent will each select one person to the panel. It is then the responsibility of the two chosen members to select a third member to the panel. If within 30 days from the time the request for the hearing was submitted a hearing officer or hearing panel has not been selected, the borrower/management agent must inform the Agency. The Agency will select a hearing officer. The selected hearing officer or panel may contact the Agency for guidance on their responsibilities for conducting the hearing.

Some helpful information that should be remembered by all parties involved in the process when selecting a hearing officer or hearing panel includes:

- Hearing panel members should be impartial, disinterested persons.
- The hearing officer cannot be a person previously considered by the tenant or borrower/management agent.
- The hearing officer cannot be an Agency staff member.
- The hearing officer may not receive any payment unless that payment is made by the Agency.

To minimize time and the level of effort, a borrower/management agent may ask the Agency to have a standing hearing panel for each project that they manage. If a standing panel is chosen, the above-listed process will have to be forfeited in lieu of the following process.

- A hearing panel consists of three members: one tenant panelist, one borrower/management agent panelist, and a chair.
- Tenants will get to nominate and vote for their panel members. A meeting must be held to allow the tenants the opportunity to choose two members to serve on the standing panel; one member will serve as the alternate. All residents should be notified of the time, date, and place where the election is going to take place. The

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borrower is responsible for ensuring that the notice is placed in a conspicuous place, within 2 weeks of the time the person is expected to start serving as a panel member. The meeting must also be held in a place that is convenient and accessible to the tenants.

- The borrower/management agent is responsible for selecting one or two members to serve on the standing panel. If two members are chosen, one will serve as the alternate.

- The third and "mutual" member of the panel will serve as the chair for the panel. The other two interested parties will elect the chairperson. Each party will only have the opportunity to give one vote, even if two people were elected to serve on the panel.

- Each member will serve on the panel for one year, with the opportunity for reelection. All members of the standing panel must be willing to render their services without compensation.

D. Examination of Records

At a reasonable time before the hearing, the borrower/management agent must allow the tenant the opportunity to examine all files that are going to be used during the hearing. Documents can be examined and copied if:

- The tenant is willing to cover any expenses that may be incurred;

- The document, record, or policy is one that will be used during the hearing process; and

- The document, record, or policy is not subject to any laws or confidentiality agreements that prohibit reproduction.

Documents That May Not Be Copied

1. Credit reports;
2. Project budgets; and
3. Supervisory findings.

E. Escrow Deposits

Tenants may establish escrow accounts if a grievance involves a rent increase not authorized by the Agency or if the borrower/management agent is not maintaining the property in a decent, safe, and sanitary manner. The escrow account will allow the tenant the opportunity to make timely rent payments without having the borrower/management agent receive the payment until the grievance has been settled. To maintain an escrow account, tenants must adhere to the following rules:

- All deposits must continue until the grievance is resolved;

- The institution that the escrow account is established in must be a Federally insured institution;

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- All deposits must be made on time—failure to do so will terminate the entire grievance process and all sums will be due immediately; and

- Tenants must make all receipts of deposit available for examination by the borrower/management agent.

6.36 REQUIREMENTS GOVERNING THE HEARING

The hearing is an informal proceeding at which evidence is presented to a hearing officer or hearing panel. The hearing must be designed to ensure that the rights of all parties involved are protected. The hearing must protect:

- The right of both parties to be represented by counsel or another person(s) chosen as their representative;

- The right of the tenant or prospective tenant to a private hearing unless a public one is requested;

- The right of the tenant or prospective tenant to present oral and written evidence and arguments in support of their grievance, and to cross-examine and refute the evidence of all witnesses on whose testimony or information the borrower or management agent relies; and

- The right of the borrower or management agent to present oral and written evidence and arguments in support of the decision, to refute evidence relied upon by the tenant or prospective tenant, and to confront and cross-examine all witnesses in whose testimony or information the tenant or prospective tenant relies.

During the hearing, each party must present evidence to support their position. All participants at the hearing must conduct themselves in an orderly manner. Participants that cannot conduct themselves in an orderly manner may be excluded from the proceedings or may cause the hearing panel or hearing officer to make a decision that is not in favor of the disorderly party.

If the tenant or prospective tenant or borrower/management agent fails to appear at a scheduled hearing, the hearing officer or hearing panel may choose to postpone the hearing for no more than 5 days or may determine that the absent party has waived their right to a hearing under this subpart. If the determination is made that the absent party has waived their rights, the hearing officer or hearing panel will make a decision on the grievance. All parties involved in the hearing must be informed in writing of the hearing panel's decision.

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6.37 THE HEARING DECISION

It is the responsibility of the hearing officer or hearing panel to prepare and submit a written decision to both parties within 10 calendar days after the hearing. The hearing officer or hearing panel must provide a copy of the decision to the Agency and the reasons for making that decision. The decision should be based on the facts that were presented during the hearing. The decision is final unless the tenant or prospective tenant and the borrower/management agent are notified within 10 calendar days by the Agency that the decision is not in compliance with Agency regulations. This contingent form of approval should be noted in the decision letter. Upon receipt of the letter, the borrower and the tenant must comply with the directives specified in the decision.

SECTION 9: SPECIAL REQUIREMENTS FOR LABOR HOUSING
[7 CFR 3560 SUBPART L AND M]

While the Agency-sponsored Labor Housing programs have similar requirements in many respects to the Rural Rental Housing programs, because the target populations that these programs serve vary, there are some differences in program rules.

This section is designed to highlight these differences with regard to the occupancy rules. Unless otherwise noted below, the requirements throughout this chapter also apply to Labor Housing projects.

6.38 OFF-FARM LABOR HOUSING

A. Eligible Tenants

Labor Housing tenants must meet all of the following criteria in order to be defined as an eligible tenant for the purposes of residing in labor housing:

- **Occupational.** An eligible household must include a tenant or co-tenant who is a domestic farm laborer, a retired or disabled domestic farm laborer, or must be a surviving household of a deceased domestic farm laborer.

  A domestic farm laborer is a person who, consistent with the requirements in 7 CFR 3560.576(b)(2), receives a substantial portion of his or her income from farm labor employment (not self-employed) in the United States, Puerto Rico, or the Virgin Islands and either is a citizen of the United States or resides in the United States, Puerto Rico, or the Virgin Islands after being legally admitted for permanent residence, or a person legally admitted to the United States and authorized to work in agriculture. This definition may include the immediate family members residing with such a person.

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- **Income.** The household must meet the definition of income eligibility as defined in Section 1 of this chapter and receive a substantial portion of income from farm labor employment. To determine if a substantial portion of income is from farm labor employment, the following measures will be used.

  - For housing rented to farm laborers and owned by public bodies, public or private nonprofit organizations, and limited partnerships charging rent:

    - Actual dollars earned from farm labor by domestic farm laborers other than migrant farmworkers must equal at least 65 percent of the annual income limits indicated for the Standard Federal regions.

    - For migrant farmworkers living in seasonal housing, actual dollars earned from farm labor by a domestic farm laborer must equal at least 50 percent of annual income limits indicated for the Standard Federal regions.

    - An alternate measure for determining substantial portion of income when actual earnings are not available may be the duration of time a farm laborer worked on a farm or other farming enterprise as a domestic farmworker during the preceding 12 months. To be considered as substantial the farm laborer must have worked at least 110 whole days in farm work. For purposes of this section one whole day is the equivalent of at least 7 hours. When using a period of more than 1 year, a yearly average must amount to at least 110 days per year.

  - For housing owned by a farmer, family-farm partnership, family-farm corporation, or an association of farmers which was initially provided on a non-rental basis, a substantial portion of income is earned when housing is provided by the owner as part of employment compensation for farm labor.

  - When a natural disaster has occurred, such as a drought, flood, freeze, etc., figures for the 12 months preceding such disaster will be used to determine substantial portion of income.

  - The tenant who qualifies as a domestic farm laborer residing in a property with a nonrestrictive farm labor clause in the mortgage covenants must not have adjusted income which exceeds the moderate-income limit for the appropriate household size and appropriate geographical area.

- **Occupancy.** The household must remain in compliance with the borrower's occupancy policy as established in Section 3 of this chapter.

If a household, upon recertification, is not in compliance with any of the above criteria, then it will be defined as an ineligible tenant and will be covered by Section 7.

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B. Occupancy Priorities

When a borrower of a labor housing project is selecting the appropriate applicant for a vacant unit from the waiting list, the selection will be regulated by the following priorities:

- **First priority** must be given to eligible active farm laborer households, with first priority going to very low-income households, next to low-income households, and last to moderate-income households.

- **Second priority** must be given to retired or disabled domestic farm laborer households who were active in the local farm labor market area at the time of retirement or becoming disabled, with first priority going to very low-income households, next to low-income households, and last to moderate-income households.

- **Third priority** must be given to other retired or disabled domestic farm laborer households who were not active in the local farm labor market at the time of retiring or becoming disabled. Occupancy priority will be given first to very low-income households, next to low-income households, and last to moderate-income households.

Example

A Farm Labor Housing property has a vacant two-bedroom unit. On the waiting list, there are seven applicants eligible for a two-bedroom unit.

A. One applicant is a very low-income disabled farm laborer household from the local farm market area;

B. One applicant is a low-income active farm labor household;

C. One applicant is a low-income retired farm laborer household from another state;

D. One applicant is a very low-income retired farm laborer household from the local farm market area;

E. One applicant is a very low-income disabled farm laborer household from another county; and

F. One applicant is a very low-income active farm labor household.

The borrower must offer the vacant unit to these applicants in the following order.

1. First to the very low-income active farm labor applicant (F);
2. Second to the low-income active farm labor applicant (B);
3. Third to the very low-income disabled farm laborer household from the local farm market area (A);

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4. Fourth to the low-income retired farm laborer household from the local farm market area (D);
5. Fifth to the very low-income disabled farm laborer household from outside the local farm market area (E); and
6. Sixth to the low-income retired farm laborer household from another state (C).

C. Projects with Diminished Need

When there is a diminished need for housing by persons or families who are eligible to reside in labor housing, units may be made available to persons or families eligible for occupancy under Section 1 of this chapter. Tenants admitted under this exception may occupy the labor housing until such time the units are again needed by persons or families eligible under Paragraph 6.38A of this section. As the basis for Agency approval or disapproval of the borrower's determination of diminished need, the borrower must submit a current analysis of need and demand to the Agency, identical to the market analysis that is required of loan applicants in the loan origination process. The borrower's determination and the MFH Servicing Official's recommendation should be forwarded to the appropriate Leadership Designee for approval.

6.39 ON-FARM LABOR HOUSING

A. Eligible Tenants

The income restrictions and occupancy priorities listed throughout this chapter do not affect the occupancy of on-farm labor housing. This housing is owned by farm owners and is for the purpose of providing decent, safe, and sanitary housing to the specific farmer's employees. Occupancy of on-farm labor housing owned by farm owners is restricted to employees of the farmer or is governed by an employment contract with the farmer.

B. Ineligible Tenants

For on-farm labor housing, ineligible occupants will include:

- The immediate relatives of the borrower(s); and
- Anyone who is not employed in domestic farm labor.

Ineligible tenants may occupy housing owned by farm owners, on a short-term basis, with the permission of the Agency. The permission of the Agency must be for a limited duration.

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Attachment 6-A

ANNUAL INCOME EXCLUSIONS

Annual income is defined in 24 CFR 5.609(a) and (b). Annual income includes all amounts received from all sources by each member of the household who is 18 years of age or older or is the head of household or spouse of the head of household, plus unearned income by or on behalf of each dependent who is under 18 years of age.

Annual income does not include the following:

(1) All amounts that HUD is required by Federal statute to exclude from annual income. HUD will publish a notice in the Federal Register to identify the benefits that qualify for this exclusion. Updates will be published when necessary. (As of May 1, 2025, the HUD published exclusions are found here: Federal Register, Vol 89, No. 21, published January 31, 2024.)

(2) Any imputed income on an asset when net family assets total $51,600 or less (adjusted annually – HUD published Inflationary Adjusted Value) and no actual income from the net family asset can be determined. (See Attachment 6-D for Net Family Assets.)

(3) Non-recurring income. Income that will not be repeated in the coming year is considered nonrecurring income and is excluded from annual income. However, income received as an independent contractor, day laborer, or seasonal worker (as defined in 24 CFR 5.603) is not excluded from income under 24 CFR 5.609(b)(24), even if the source, date, or amount of the income varies.
Income amounts excluded under this category may include, but are not limited to, nonrecurring payments made to the family or to a third party on behalf of the family to assist with utilities, eviction prevention, security deposits to secure housing, payments for participation in research studies depending on the duration, and general one-time payments received by or on behalf of the family.

The following list of exclusions is codified at 24 CFR 5.609(b)(24) as nonrecurring income. Please note that the list is not all inclusive:

i. Payments from the U.S. Census Bureau for employment lasting no longer than 180 days and not culminating in permanent employment.
ii. Direct Federal or State economic stimulus payments.
iii. Amounts directly received by the family as a result of State refundable tax credits or State tax refunds at the time they are received.
iv. Amounts directly received by the family as a result of Federal refundable tax credits or Federal tax refunds at the time they are received.

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v. Gifts for holidays, birthdays, or other significant life events or milestones (e.g., wedding, baby shower, or anniversary gifts).
vi. In-kind donations (e.g., food, clothing, or toiletries received from a food bank or similar organization).
vii. Lump-sum additions to net family assets (e.g., lottery winnings, contest winnings, etc.).

(4) Gross income a family member receives through self-employment or operation of a business. Gross income is all income amounts received into the business, prior to the deduction of business expenses. The net income from self-employment or the operation of a business is considered income. Net income is the "gross income amount minus business expenses" that allows the business to operate.

i. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations; and
ii. Any withdrawal of cash or assets from the operation of a business is income except to the extent that such withdrawal is to reimburse the family member for cash or assets that the family has invested in the operation of the business.

(5) Earned income of children under 18 years of age, including foster children.

(6) Adoption assistance payments for a child in excess of the amount of the dependent deduction.

(7) Earned income of dependent full-time students in excess of the amount of the dependent deduction. Full-time students must be dependent family members for this exclusion to apply. This exclusion does not apply to the head of household, spouse, or co-head. This means that the first $480 of the income (subject to change annually based on the HUD published Inflationary Adjusted Value) earned by dependent full-time students will be included in the family's calculation of annual income.

(8) (Non-Section 8 Programs)
Any student financial assistance, not covered under section 479B of the Higher Education Act (HEA), that exceeds the actual costs of attending school must be included as income. Student financial assistance may be paid directly to the student or the educational institution on the student's behalf. The student financial assistance rules apply to both full-time and part-time students.

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HUD regulation 24 CFR 5.609(b) specifically excludes HEA student financial assistance from a family's income. The types of financial assistance listed below are considered HEA student financial assistance programs; however, this is not an all-inclusive list.

i. Federal Pell Grants.
ii. Teach Grants.
iii. Federal Work Study Programs.
iv. Federal Perkins Loans.
v. Student financial assistance received under the Bureau of Indian Education.
vi. Higher Education Tribal Grant.
vii. Tribally Controlled Colleges or Universities Grant Program.
viii. Employment training program under section 134 of the Workforce Innovation and Opportunity Act (WIOA).

Actual covered costs include tuition, books, supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, and fees required and charged to a student by an institution of higher education. For a student who is not the head of household, co-head, or spouse, actual covered costs also include the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

The formula for calculating the amount of other student financial assistance that is excluded from income always begins with deducting the assistance received under 479B of the HEA from the total actual covered costs, because the 479B assistance is intended to pay the student's actual covered costs. This formula can be stated in a 2-step process.

Step 1: Subtract the amount of HEA assistance from the actual covered costs to determine the amount of actual covered costs that exceeds the HEA assistance.

Step 2: Subtract the amount determined in Step 1 from the amount of non-HEA assistance to determine the amount of student financial assistance to include as income.

- If the resulting number in Step 2 is zero or a negative amount, then there will be no student financial assistance included in income (i.e., all student financial assistance is excluded from annual income).
- If the resulting number in Step 2 is a positive amount, then that is the amount that should be included in the family's income.

(9) Income and distributions from any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under section 529 of such Code; and income earned by government contributions to, and distributions from, ''baby bond'' accounts created, authorized, or funded by Federal, State, or local government.

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(10) Payments received for the care of foster children or foster adults, or State or Tribal kinship or guardianship care payments. This income exclusion also applies to Kinship Guardian Assistance Payments (Kin-GAP), kinship care payments, and other state-based kinship or guardianship payments that are alternatives to traditional foster care programs.

(11) Income of a live-in aide, foster child, or foster adult as defined in 24 CFR 5.403 and 5.603, respectively.

(12) Any amount in an Achieving Better Life Experience (ABLE) account, distributions from and certain contributions to an ABLE account. (See HUD Notice PIH 2019-09/H 2019-06 or subsequent or superseding notice.)

(13) Payments to allow individuals with disabilities to live at home. These payments must be made by a State Medicaid managed care system (or other State agency or authorized entity) to a family to enable a family member who has a disability to reside in the family's assisted unit.

(14) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS).

(15) Amounts received by the family that are specifically for, or in reimbursement of, the cost of health and medical care expenses for any family member.

(16) Irrevocable trust or revocable trust outside the control of the family or household excluded from the definition of net family assets under 24 CFR 5.603(b):

i. Distributions of the principal, or corpus, of the trust; and

ii. Distributions of income from the trust used to pay the costs of health and medical care expenses of a minor.

Any distribution from a revocable trust or a trust under the control of the family or household, except that any actual income earned by the trust, regardless of whether it is distributed, shall be considered income to the family at the time it is received by the trust. *Given that the corpus (or principal) of a trust is not new money coming in for the family, any distributions of a trust's principal, regardless of the form of the trust, are excluded.*

(17) Insurance payments and settlements for personal or property loss, including but not limited to payments through health insurance, motor vehicle insurance, and workers' compensation. (Any worker's compensation is always excluded from annual income, regardless of the frequency or length of the payments.)

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(18) Income received from any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals. However, any distribution of periodic payments from such accounts shall be income at the time they are received by the family.

(19) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.

(20) Payments to veterans in need of regular aid and attendance, under 38 U.S.C. 1521, who is permanently and totally disabled from non-service-connected disability not the result of the veteran's willful misconduct. This income exclusion applies only to veterans in need of regular aid and attendance and not to other beneficiaries of the payments, such as a surviving spouse.

Certain veterans are eligible for “aid and attendance” payments from the Veterans Affairs (VA) Administration. These payments are distinct from payments made to veterans under other VA programs, including the Veterans Pension program. Many types of VA income, including the Veterans Pension and the VA Survivors Pension, are included in annual income.

(21) Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of the law that resulted in a member of the family becoming a person with disabilities. (Any amounts recovered are excluded regardless of whether they are received periodically or in a lump sum payment.)

(22) Reparation payments paid by a foreign government for claims by people persecuted during the Nazi era.

(23) Payments received by Tribal members for claims relating to the mismanagement of assets held in trust by the United States, to the extent such payments are also excluded from gross income under the Internal Revenue Code (IRC) or other Federal law.

(24) Civil rights settlements or judgments, including settlements or judgments for back pay. (Such payment(s) may be made as a lump-sum or may have a payment schedule.)

(25) Amounts received by a participant in other publicly assisted programs for or in reimbursement of out-of-pocket expenses to allow program participation (e.g., special equipment, clothing, transportation, childcare, etc.).

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(26) Amounts received under a resident service stipend of $200 or less per month for performing a part-time service for the owner that enhances the quality of life in the development.

(27) Incremental earnings and benefits from participation in training programs funded by HUD and qualifying Federal, State, Tribal, or local employment training programs and training of a family member as resident management staff.

(28) Income earned on amounts placed in a family's Family Self-Sufficiency (FSS) account.

(29) Replacement housing "gap" payments that offset increased rent and utility costs to families that are displaced from one Federally subsidized housing unit and move into another Federally subsidized housing unit. If the gap is reduced or eliminated because of a subsequent move by the tenant or change in the subsidy, and the tenant continues to receive the payment, the payment that is no longer needed to close the gap should be counted as income.

(30) Deferred periodic amounts from Supplement Security Income (SSI) and Social Security or Veterans Affairs (VA) disability benefits that are received in a lump sum or prospective monthly amounts.

(31) Refunds or rebates under State or local law for property taxes paid on the dwelling unit.

(32) Loan proceeds (the net amount disbursed by a lender to a borrower under the terms of a loan agreement) received by the family or a third party (e.g., educational institution or car dealership). The loan borrower or co-borrower must be a member of the household.

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ATTACHMENT 6-B
ZERO INCOME VERIFICATION CHECKLIST

Part I:

(A) EXPENSE	(B) RECURRING EXPENSE?	(C) PAYMENT SOURCE	(D) EXEMPT {If no, Col. E}	(E) AMOUNT
FOOD	☐Yes ☐No			
		Food Stamps		
		WIC		
		Food Bank		
		Cash Contributions	☐Yes ☐No	
		In Kind Donations	☐Yes ☐No	
		Other	☐Yes ☐No	
SHELTER COSTS				
Housing	☐Yes ☐No			
		Cash Contributions	☐Yes ☐No	
		Other	☐Yes ☐No	
Electricity	☐Yes ☐No			
		Cash Contributions	☐Yes ☐No	
		Other	☐Yes ☐No	
Gas	☐Yes ☐No			
		Cash Contributions	☐Yes ☐No	
		Other	☐Yes ☐No	
Water	☐Yes ☐No			
		Cash Contributions	☐Yes ☐No	
		Other	☐Yes ☐No	
CLEANING/GROOMING	☐Yes ☐No	In kind Donation	☐Yes ☐No	
		Cash Contribution	☐Yes ☐No	
		Other	☐Yes ☐No	
TRANSPORTATION	☐Yes ☐No			
		In kind Donation	☐Yes ☐No	

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(A) EXPENSE	(B) RECURRING EXPENSE?	(C) PAYMENT SOURCE	(D) EXEMPT {If no, Col. E}	(E) AMOUNT
		Cash Contribution	☐Yes ☐No	
		Other	☐Yes ☐No	
Automobile Payment	☐Yes ☐No			
		In kind Donation	☐Yes ☐No	
		Cash Contribution	☐Yes ☐No	
		Other	☐Yes ☐No	
Automobile Insurance	☐Yes ☐No			
		Cash Contribution	☐Yes ☐No	
		Other	☐Yes ☐No	
Gas	☐Yes ☐No			
		Cash Contribution	☐Yes ☐No	
		Other	☐Yes ☐No	
Automobile Maintenance	☐Yes ☐No			
		Cash Contribution	☐Yes ☐No	
		Other	☐Yes ☐No	
ENTERTAINMENT	☐Yes ☐No			
Cable/Satellite		Cash Contribution	☐Yes ☐No	
		Other	☐Yes ☐No	
Video Rentals/Streaming	☐Yes ☐No			
		Cash Contribution	☐Yes ☐No	
		Other	☐Yes ☐No	
Sporting Events	☐Yes ☐No			
		Cash Contribution	☐Yes ☐No	
		Other	☐Yes ☐No	
Other Entertainment	☐Yes ☐No			
		Cash Contribution	☐Yes ☐No	
		Other	☐Yes ☐No	
CLOTHING EXPENSES				
Clothes/Shoes	☐Yes ☐No	Cash Contributions	☐Yes ☐No	

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		In Kind Donations		
(A) EXPENSE	**(B) RECURRING EXPENSE?**	**(C) PAYMENT SOURCE**	**(D) EXEMPT {If no, Col. E}**	**(E) AMOUNT**
		Other	☐Yes ☐No	
Laundry	☐Yes ☐No			
		Cash Contributions	☐Yes ☐No	
		In Kind Donations	☐Yes ☐No	
		Other	☐Yes ☐No	
COMMUNICATIONS				
Telephone	☐Yes ☐No			
		Cash Contributions	☐Yes ☐No	
		In Kind Donations	☐Yes ☐No	
		Other	☐Yes ☐No	
Cellular Telephone	☐Yes ☐No			
		Cash Contributions	☐Yes ☐No	
		In Kind Donations	☐Yes ☐No	
		Other	☐Yes ☐No	
Pager/Beeper	☐Yes ☐No			
		Cash Contributions	☐Yes ☐No	
		In Kind Donations	☐Yes ☐No	
		Other	☐Yes ☐No	
Internet	☐Yes ☐No			
		Cash Contributions	☐Yes ☐No	
		In Kind Donations	☐Yes ☐No	
		Other	☐Yes ☐No	
MISCELLANEOUS EXPENSES				
Non-reimbursable Education	☐Yes ☐No		☐Yes ☐No	
Non-reimbursable Childcare	☐Yes ☐No		☐Yes ☐No	

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Non-reimbursable Job Expenses	☐Yes ☐No		☐Yes ☐No	

Part II

(A) **BENEFIT SOURCE**	(B) **ELIGIBLE** **{If yes, Col. C}**	(C) **APPLIED** **{If yes, Col. D}**	(D) **STATUS**
SOCIAL SECURITY	☐Yes ☐No	☐Yes ☐No	
UNEMPLOYMENT	☐Yes ☐No	☐Yes ☐No	
HEALTH AND WELFARE	☐Yes ☐No	☐Yes ☐No	
VETERANS ADMINISTRATION	☐Yes ☐No	☐Yes ☐No	
OTHER	☐Yes ☐No	☐Yes ☐No	

Attach receipts, applications and other documentation to the completed checklist and retain in application or tenant file.

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ATTACHMENT 6-C

Allowable Deductions

Allowable deductions or allowances include:

Mandatory deductions:

(1) $480 for each dependent. This amount may be adjusted annually by HUD.

(i) The definition of "dependent" under 24 CFR 5.603 was revised to explicitly exclude foster children and foster adults. Owners may not provide a dependent deduction under 24 CFR 5.611(a) for a foster child or foster adult.

(2) $525 for any elderly family or disabled family. This amount may be adjusted annually by HUD.

(3) The sum of the following, to the extent the sum exceeds ten percent of annual income:

(i) Unreimbursed health and medical care expenses of any elderly family or disabled family; and

(ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with a disability, to the extent necessary to enable any member of the family (including the member who is a person with a disability) to be employed. This deduction may not exceed the combined earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus.

(4) Any reasonable child-care expenses necessary to enable a member of the family to be employed or to further his or her education.

(i) Reasonable unreimbursed child-care expenses (as defined in 24 CFR 5.603) for foster children under 13 years of age may be deducted from annual income if those expenses are necessary to enable a member of the family to work, look for work, or to further their education, but only if the unreimbursed child-care expense for the care of the foster child is paid from the family's annual income (and not another source, such as a stipend from a child welfare agency).

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ATTACHMENT 6-D

NET FAMILY ASSETS - EXCLUSIONS

[24 CFR 5.603]

Net family assets are defined as the net cash value of all assets (real property and non-necessary personal property) owned by the household, after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of investment, except as excluded below.

The following are excluded from the calculation of net family assets:

- The value of necessary personal property.

- The value of all non-necessary personal property with a total combined value of $51,600 or less (adjusted annually by the HUD published Inflationary Adjusted Value).

    - The value of any account under a retirement plan recognized as such by the Internal Revenue Service (IRS), including individual retirement accounts (IRAs), employer retirement plans (e.g., 401(k), 403(b)), and retirement plans for self-employed individuals.

- The value of real property that the family does not have the effective legal authority to sell in the jurisdiction in which the property is located. Examples of this may include co-ownership situations (including situations where one owner is a victim of domestic violence) where one party cannot unilaterally sell the real property, property that is tied up in litigation, or inherited property in dispute.

- Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member, for an incident resulting in a disability.

- The value of any Coverdell Education Savings Account under section 530 of the Internal Revenue Code of 1986; the value of any qualified tuition program under section 529 of the Internal Revenue Code.

- The value of any Achieving a Better Life Experience (ABLE) account authorized under section 529A of the Internal Revenue Code.

- The value of any "baby bond" account created, authorized, or funded by the Federal, State, or local government (money held in trust by the government for children until they are adults).

- Interests in Indian Trust Land.

- Equity in a manufactured home where the family receives assistance under 24 CFR Part 982 (Housing Choice Voucher Program). Equity in property under the Homeownership Option for which a family receives assistance under 24 CFR Part 982 (Housing Choice Voucher Program).

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- Family Self-Sufficiency accounts.

- Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family. The Federal tax refund must be subtracted from the total value of net family assets.

- The full amount of assets held in an irrevocable trust.

- The full amount of assets held in a revocable trust where a member of the family is the beneficiary, but the grantor/owner and trustee of the trust is not a member of the participant family or household.

- Assets disposed of for less than fair market value as a result of foreclosure, bankruptcy, divorce, or separation. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives consideration not measurable in dollar terms.

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ATTACHMENT 6-E
LEASE REQUIREMENTS

[7 CFR 3560.156]

A. Lease Structure

1. All leases must be in writing.
2. Initial leases must cover a one-year period.
3. If the tenant is not subject to occupancy termination according to 7 CFR 3560.158 and 7 CFR 3560.159, a renewal lease or lease extension must cover a one-year period.
4. In areas with a concentration of non-English speaking tenants, leases must be available to tenants in both English and the appropriate additional language.
5. Leases must give address(es) to which to direct complaints.
6. Leases must include a statement of the terms and conditions for modifying the lease.

B. Required Lease Clauses

Leases for all multi-family housing must include a number of specific clauses as listed below:

1. Leases for tenants who have a *Handbook Letter 201, Letter of Priority Entitlement (LOPE)* and are temporarily occupying a unit for which they are not eligible must include a clause establishing the tenant's responsibility to move when a suitable unit becomes available.
2. Leases must contain an escalation clause permitting changes in basic/note rate rents before the lease expires. Changes must be approved by the Agency. The escalation clause must specify that the tenant's contribution may be changed prior to the expiration of the lease if the change is due to changes in tenant status, as documented on the tenant certification form, or the tenant's failure to properly recertify.
3. Leases must specify no escalation in tenant contribution due to loan prepayment or when rental assistance or interest credit is terminated due to the fault of management or the owner, or due to liquidation and acceleration of the note.
4. The requirements for making restitution when a household receives benefits to which it is not entitled and a statement advising tenants that the submission of false information could result in the initiation of legal action.
5. Leases must include statement that the project is financed by the Agency and that the Agency has the right to further verify information provided by the applicant.
6. Leases must say that project is subject to:
    - Title VI of the Civil Rights Act of 1964

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- Title VIII of the Fair Housing Act
- Section 504 of the Rehabilitation Act of 1973
- The Age Discrimination Act of 1975
- The Americans with Disabilities Act
- The Violence Against Women Reauthorization Act of 2013 and any amendments thereto.

7. Leases must specify requirements (and exceptions) to move to the next available appropriately sized unit, if the household becomes over housed or under housed in the unit they occupy, or should the tenant no longer meet eligibility requirements.
8. Leases must include a provision that establishes when a guest will be considered a member of the household and be required to be added to the tenant certification.
9. Leases must include a provision that tenancy remains in place as long as the tenant's possessions remain in the apartment, even after tenant has left. This is the case until possessions are removed voluntarily or by legal means, subject to state and local law.
10. Leases must include a requirement that tenants who are no longer eligible for occupancy under the housing project's occupancy rules or do not meet the criteria set forth in 7 CFR 3560.155(c) and (e) must vacate the property within 30 days of being notified by the borrower that they are no longer eligible for occupancy or at the expiration of their lease, or whichever is greater, unless the conditions cited in 7 CFR 3560.158(c) exist;
11. Leases for rental units receiving rental assistance must include clauses that specify that the tenant's monthly tenant contribution and a description of the circumstances under which the tenant's contribution may change.
12. The requirement that tenants notify borrowers regarding changes in income or assets, citizenship*, or number of persons living in the unit.

    ***Effective date note:** At 70 FR 8503, February 22, 2005, in 7 CFR 3560.156(c)(12), implementation of the words "* * * their citizenship status, * * *" was delayed indefinitely.

13. A requirement that tenants agree to fulfill the tenant income verification and certification requirements established under 7 CFR 3560.152
14. For tenants living in Plan II interest credit units, leases must include a provision on net monthly tenant contribution.
15. All leases, including renewals, must include the drug violation language in 7 CFR 3560.156(c)(15).
16. Leases for rental units accessible to individuals with disabilities occupied by those not needing the accessibility features must establish the tenant's responsibility to move to another unit within 30-days of written notification that the unit is needed by an

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eligible qualified person with disabilities who requires the accessibility features of the unit. Additionally, the lease clause must ensure that the household may remain in the rental unit with accessibility features until an appropriately sized vacant unit within the project becomes available and then must move or vacate within 30 days of notification from borrower.

17. If loan prepayment occurs and the housing project is subject to restrictive use provisions, leases and renewals must be amended to include a clause specifying the tenant protections.

18. All leases must contain the following information and provisions:

    - The name of the tenant, any co-tenants, and all members of the household residing in the unit.
    - The identification of the unit.
    - The amount and due date of monthly tenant contributions, late payment penalties, and security deposit amounts.
    - The utilities, services, and equipment to be provided for tenants.
    - The tenant's utility payment responsibility.
    - The certification process for determining tenant occupancy eligibility and contribution.
    - The limitations of the tenant's right to use or occupancy of the dwelling.
    - The tenant's responsibilities regarding maintenance and consequences if tenant fails to fulfill these responsibilities.
    - The agreement of the borrower to accept the tenant contribution toward rent charges prior to payment of other charges that the tenant owes and a statement that borrowers may seek legal remedy for collecting other charges accrued by the tenant.
    - The maintenance responsibilities of the borrower in buildings and common areas, according to state and local codes, Agency regulations, and Federal fair housing requirements.
    - The responsibility of the borrower at move-in and move-out to provide tenants with a written statement of the unit's condition, and provisions for tenant participation in inspection.

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- The provision for periodic inspections by the borrower, and other circumstances under which borrower may enter the premises while a tenant is renting.
- The tenant's responsibility to notify the borrower of an extended absence.
- A provision that tenants may not assign the lease or sublet the property.
- The provision regarding transfer of the lease if the project is sold to an Agency-approved buyer.
- The procedures that must be followed by the borrower and the tenant in giving notices required under terms of the lease, including lease violation notices.
- The good-cause circumstances under which the borrower may terminate the lease and length of notice required.
- The disposition of the lease if the housing becomes uninhabitable due to fire or other disaster, including the borrower's rights to repair the building or terminate the lease.
- The procedures for resolution of tenant grievances consistent with the requirements of 7 CFR 3560.160.
- The terms under which a tenant may, for good cause, terminate a lease with 30 days' notice prior to lease expiration.
- The signature clause indicating that the lease has been executed by the borrower and the tenant.
- A description of the rights and protections afforded to victims of domestic violence, dating violence, sexual assault, or stalking.

C. Projects and Units Receiving HUD Assistance

In multi-family projects receiving project-based assistance under Section 8 of the Housing Act of 1937, borrowers may use the HUD model lease. The provisions of the HUD model lease will prevail, unless they conflict with Agency lease requirements in accordance with this section. If there is conflict between HUD requirements and Agency requirements, the provision that will be enforced will be the one that is most favorable to the tenant.

For HUD Section 8 certificate and voucher holders, borrowers may use:

- A standard HUD-approved lease;
- A HUD-approved lease that includes a number of modifications; or
- An Agency-approved lease if acceptable to HUD or the local housing authority.

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D. State and Local Requirements

Borrowers must use a lease that is consistent with state and local requirements.

- If any lease provision is in violation of state or local law, the lease may be modified to the extent needed to comply with the law, but any changes must be consistent, to the greatest extent possible, with the required provisions established in 7 CFR 3560.156(c).
- Leases must include procedure for handling tenant's abandoned property, as provided by state law.

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ATTACHMENT 6-F

PROHIBITED LEASE CLAUSES

Borrowers are prohibited from including any of the following clauses in the lease:

- Clauses prohibiting families with children under 18.
- Clauses requiring prior consent by tenant to any lawsuit that borrowers may bring against the tenant in connection with the lease.
- Clauses authorizing borrowers to hold any of a tenant's property until the tenant fulfills an obligation.
- Clauses in which tenants agree not to hold borrowers liable for anything they may do or fail to do.
- Clauses in which tenants agree that borrowers may bring suit against the tenant without notice.
- Clauses in which tenants agree that borrowers may evict the tenant or sell their possessions whenever they determine that a breach or default has occurred.
- Clauses authorizing the borrower's attorney to appear in court on behalf of the tenant, and to waive their right to a trial by jury.
- Clauses authorizing the borrower's attorney to waive the tenant's right to appeal or to file suit.
- Clauses requiring the tenant to agree to pay legal fees and court costs whenever the borrower takes action against the tenant, even though court may find in favor of the tenant.

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ATTACHMENT 6-G

ACQUIRING AUTOMATION SUPPORT FOR MINC OR OTHER AUTOMATION NEEDS

The Agency will approve the use of project funds to acquire automated support to participate in MINC. While operating costs will be reduced in the long term, there may be some short-term increases to accommodate the initial acquisition of automated support.

Guidelines for obtaining automated support for MINC are as follows:

- With prior Agency approval, borrowers may use project operating or reserve funds to purchase or lease hardware or software needed to participate in MINC.

- Once borrowers have acquired automation capabilities, they may allow their management agent to use them to participate in MINC. This cost shall be prorated over several projects owned by different borrower entities with a common management agent.

- When the cost of acquiring management software or hardware is not cost effective for a project (or multiple projects with common management), the Agency may allow the cost of contracting with a service bureau to provide automation support as a project operating expense.

- To request Agency approval, borrowers must submit a brief proposal that documents the anticipated costs and benefits of adopting the automation strategy being proposed.

1. Acquiring Additional Automation Capabilities

It is important to note that the approval for the use of project funds discussed above extends only to the portion of the computer software and hardware needed to participate in MINC. If additional software or hardware capacity is desired by the borrower, the following applies:

- MFH borrowers are encouraged to use automated systems to manage MFH projects and to prepare and process paperwork associated with project management. Where economically feasible, computer applications can improve management efficiency and reduce errors and omissions. However, the purchase of computer hardware and software out of project funds should be carefully analyzed.

- If a borrower entity's purchase of computer hardware or software to be used solely at a project can be expected to show a reduction in project operating and maintenance expenses, the purchase cost may be approved by the Agency as a line-item project expense. The expense may be approved at project inception out of the project's two

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percent initial operating account or subsequent to project start-up out of annual operating revenues. The cost shall be prorated over several projects owned by the same borrower entity. Any computer hardware or software purchased with project funds must remain with the project if there is any subsequent change in management or ownership of the project.

2. Choosing to Use a Service Bureau

If acquiring automation is not a sound decision, borrowers may consider using a service bureau to provide automation services at a fee. The fee can be a project expense and shall be reasonable. The Agency must approve a borrower's determination that it is in the best interest of the project to contract with a service bureau.

The cost of a service bureau is essentially an expense to an operating budget, since the function is not currently performed by any project. Borrowers who find that their project budget will not support the cost of acquiring automation support or a service bureau fee should contact their servicing office to be exempted from mandatory participation in MINC.

The Agency will not allow the cost of a service bureau if the borrower's analysis demonstrates that it is less expensive to acquire an automation capacity, unless extenuating circumstances exist.

The Agency will not approve the use of a service bureau fee as a project expense for a contract with a firm that has an Identify-of-Interest (IOI) with the project borrower or management agent, without detailed documentation indicating that the IOI service bureau is clearly more cost effective than a non-IOI service bureau. While this policy does not restrict the formation of IOI firms to process tenant certifications, service bureau companies or the payment for their services from a management fee, it is intended to address concerns expressed by the Office of the Inspector General (OIG) that IOI firms may unnecessarily inflate project operating expenses.

The following individuals and companies have expressed an interest in developing or marketing software to provide an industry interface with Rural Development's MINC system. Rural Development expresses no preference or opinion on the products or services of any of the individuals and companies listed below.

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LISTING OF PRIVATE SOFTWARE DEVELOPERS AND VENDERS WHO HAVE INDICATED AN INTEREST IN PROVIDING AN INDUSTRY INTERFACE WITH MANAGEMENT AGENT INTERACTIVE NETWORK CONNECTION (MINC)

(Updated as of June 2025)

Appfolio 866-648-1536 www.appfolio.com	Entrata 800-700-2097 www.entrata.com	ExactEstate Matt Hoskins sales@exactestate.com 678-892-7337 https://exactestate.com
Fortress Technology Solutions Gwen Regan gregan@fortresstech.io https://fortresstech.io/	HappyCo www.happy.co	Infor / AMSI 508-444-2674 www.amsisoftware.net
MRI Affordable 800-321-8770 www.mrisoftware.com	PHA-Web Nick Bessey nick@pha-web.com 608-784-0354 www.pha-web.com	RealPage – Onesite Jose Maldonado Jose.maldonado@realpage.com 972-820-3878 www.realpage.com
Resman Corbin du Mont corbin.dumont@myresman.com 972-905-1568 www.myresman.com	Simply Computer Software Duane Tinsley duane@simplycomputer.net www.simplycomputer.net	Scott Accounting & Computer Service Grant Dark grant@sacssoftware.com 256-329-1205 www.sacssoftware.com
Yardi Lauren Chung Lauren.chung@yardi.com 240-515-0396 www.yardi.com		

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Attachment 6-H

Acceptable Forms of Verification

	Acceptable Sources				
	Written/Third Party	Provided by Applicant (generated by third party source)	*Oral	Self-Certification	
Alimony or Child Support	• Alimony/child support payment summary records (12 months) provided by payment agency.	• Copies of recent alimony/child support payment stubs (minimum 3 months). • Copies of alimony/child support payment summary records (minimum 3 months).	Not applicable	Not applicable	Only include the amounts received by the household, not the amount the household may be legally entitled to receive.
Assets disposed of for less than fair market value	None required	• Copies of real estate closing documents that indicate distribution of sales proceeds and settlement costs.	None required.	• Certification signed by applicant / tenant that no household member has disposed of assets for less than fair market value during the preceding two years. • If applicable, certification signed by the owner of the asset disposed of that shows: type of asset disposed,	Only count assets disposed of within a two-year period prior to certification or recertification. The amount of asset to be included in net family assets is the difference between the market value of the asset and the amount that was actually received (if any) in the disposition of the asset.

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	Written/Third Party	Provided by Applicant (generated by third party source)	*Oral	Self-Certification	
				date disposed, amount received, and market value of asset at the time of disposition.	

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Item to be Verified	Acceptable Sources				Tips
	Written/Third Party	Provided by Applicant (generated by third party source)	*Oral	Self-Certification	
Care attendant for disabled household member	• Written verification from attendant stating amount received, frequency of payments, hours of care. • Written certification from doctor or rehabilitation agency that care is necessary for employment of household member.	• Copies of receipts. • Cancelled checks indicating payment amount and frequency.	• Telephone or in person contact with source documented in file by the owner.	Not applicable	The owner must determine if this expense is to be considered a medical or disability assistance expense.
Childcare expense	• Written verification from person who provides care indicating amount of payment, hours of care, names of children, and frequency of payment.	• Copies of receipts • Cancelled checks indicating payments.	• Telephone or in person contact with the childcare provider documenting who provides the care, amount of payment, hours of care, names of children, and frequency of payment.	Not applicable	Childcare expenses are allowed when it enables a family member to work, attend school, or look for employment. There must be no other adult household member capable of providing care during the hours care is needed. A verification of employment income and/or verification of student status must

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					be documented in file. For student status, the verification must show that the time and duration of school attendance reasonably corresponds to the period of childcare.
Item to be Verified	**Acceptable Sources**				Tips
	Written/Third Party	Provided by Applicant (generated by third party source)	*Oral	Self-Certification	
Disability assistance expenses/ Auxiliary apparatus	• Written verification from source of costs and purpose of apparatus. • Written certification from doctor or rehabilitation agency that use of apparatus is necessary for employment of any household member. • In a case where the disabled person is employed, statement from employer that apparatus is necessary for employment.	• Copies of receipts • If periodic payments are being made, evidence of periodic payments for apparatus.	• Telephone or in person contact with these sources documented in file by the owner.	Not applicable	The owner must determine if the expense is to be considered a medical or disability assistance expense.

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Disability status	• Verification from appropriate source of information stating that individual qualifies under the definition of disability. (Appropriate source of information may include a physician, a clinic, welfare agency, the Social Security Administration, or other knowledgeable service.)	• Copy of documentation from appropriate third party, for example, Social Security Administration.	• Telephone or in person contact with medical professiona l verifying qualificatio n under the federal disability definition.	Not applicable	The term disability does not include current, illegal use of or addiction to a controlled substance. A person that does not receive Social Security Disability may still qualify under the definition of a person with disabilities. Owners must not seek to verify information about a person's specific disability other than obtaining a professional's
Item to be Verified	**Acceptable Sources**				Tips
	Written/Third Party	Provided by Applicant (generated by third party source)	*Oral	Self-Certification	
					opinion of qualification under the definition of a person with disabilities.
Dividend income and bank account interest income	• Verification form completed by bank.	• Copies of: - current statements, bank passbooks, and certificates of deposit, if they show required information (i.e., current rate of interest).	• Telephone or in person contact with appropriate party, documente d in tenant file.	Not applicable	Must obtain enough information to accurately project income over next 12 months. Verify interest rate as well as asset value.

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		- Form 1099 from the financial institution, and verification of projected income for the next 12 months. - Broker's quarterly statements showing value of stocks or bonds and earnings credited to the applicant or tenant.			For some assets, copies of year-end statements can provide information about annual income.
Employment income including tips, gratuities, overtime	• Verification of employment form • Employer letter of hire or termination • Payroll summary report.	• Copies of pay stubs or earning statements (minimum of 2 current and consecutive pay stubs). • Copy of payroll summary report. • W-2 Forms, if applicant or tenant has had same employer for at	• Telephone or in person contact with employer, specifying amount to be paid per pay period and length of pay period, documented in tenant file.	Not applicable	Always verify: - frequency of gross pay (i.e., hourly, biweekly, monthly, bimonthly), - anticipated increases in pay and effective dates, and - overtime.
Item to be Verified	**Acceptable Sources**				Tips
	Written/Third Party	Provided by Applicant (generated by third party source)	*Oral	Self-Certification	
		least two years and increases can be accurately projected.			Require most recent 2 consecutive pay stubs; do not use check without stub. Off-Farm labor housing tenants must receive a substantial portion of income from farm labor employment. See 7

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					CFR 3560.576 (b)(2)(i).
Federal Tax Refund	Not applicable	• Copy of IRS Tax Return Transcript • Complete, legible, signed copy of the most recently filed Federal income tax form. • Copy of refund check or bank statement showing deposit, if document clearly indicates federal tax refund.	Not applicable	Not applicable	Only needed if applicant/tenant has net family assets that exceed $51,600 (adjusted annually for inflation) and received a federal tax refund during the prior 12 months. Federal tax refunds are excluded from income. The amount of refund is subtracted from the total value of net family assets.
Interest from sale of real property (i.e., contract for deed, installment sales contract, etc.)	• Verification form completed by an accountant, attorney, real estate broker, the buyer, or a financial institution which has copies of the amortization schedule from which interest	• Copy of the contract. • Copy of the amortization schedule, with sufficient information for the owner to determine the amount of interest to be earned	• Telephone or in person contact with appropriate party, documented in file by the owner.	Not applicable	Only the interest income is counted; the balance of the payment applied to the principal is merely a liquidation of the asset. The owner must obtain enough information to compute the actual
Item to be Verified	**Acceptable Sources**				Tips
	Written/Third Party	Provided by Applicant (generated by third party source)	*Oral	Self-Certification	
	income for the next 12 months can be obtained.	during the next 12 months.			interest income for the next 12 months. Copy of a check paid by the buyer to the applicant is not acceptable.

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Medical expenses	• Verification by a doctor, hospital or clinic, dentist, pharmacist, etc., of estimated medical costs to be incurred or regular payments expected to be made on outstanding bills which are not covered by insurance.	• Copies of income tax forms that itemize medical expenses, when the expenses are not expected to change over the next 12 months. • Receipts, pay stubs, or cancelled checks which indicate health insurance premium costs, or payments to a resident attendant. • Receipts or ticket stubs that verify transportation expenses directly related to medical expenses. • Copies of cancelled checks that verify payments on outstanding medical bills that will continue for all or part of the next 12 months. • Receipts documenting over the counter medicines that have been	• Telephone or in-person contact with doctor, hospital or clinic, dentist, pharmacist, etc., documented in file by the owner.	• Self-certification of transportation expenses directly related to medical treatment, if there is no other source of verification.	Medical expenses are not allowable as deductions unless household status is elderly or disabled.

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Item to be Verified	Acceptable Sources				Tips
	Written/Third Party	Provided by Applicant (generated by third party source)	*Oral	Self-Certification	
		recommended in writing by a physician or other healthcare provider as treatment for a specific medical condition.			
Need for service animal or assistive animal	• Letter from appropriate third party unless the need is readily apparent or already known.	• Copy of letter from appropriate third party.	Not applicable	Not applicable	If the owner's policy is to verify this need, owner must implement the policy consistently.
Net family assets	• Verification forms, letters or documents received from financial institutions, stockbrokers, real estate agents, employers indicating the current value of the assets and penalties or reasonable costs to be incurred in order to convert nonliquid assets into cash.	• A minimum of one statement that reflects the current balance of banking/financial accounts. • Copies of real estate tax statements, if tax authority uses approximate market value.	• Telephone or in person contact with appropriate source, documented in tenant file.	• Self-certification stating cash value of assets that cannot be verified by a third-party source.	Use current balance in savings accounts and checking accounts. Use cash value of all assets (the net amount the applicant would receive if the asset were converted to cash). For some assets, copies of year-end statements can provide information about annual income RD does not allow tenants to self-certify that their net assets do not exceed $51,600 (as adjusted for inflation).
Net income for a business or self-employment	Not applicable	• Most recently filed Form 1040	Not applicable	Not applicable	Income tax returns with corresponding official tax forms

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		with applicable Schedules. • Financial Statement of the business (audited			and schedules attached and including third-party receipt of
Item to be Verified	**Acceptable Sources**				Tips
	Written/Third Party	Provided by Applicant (generated by third party source)	*Oral	Self-Certification	
		or unaudited) including an accountant's calculation of straight-line depreciation expense if accelerated depreciation was used on the tax return or financial statement. • For rental property, copies of recent rent checks, lease and receipts for expenses, or IRS Schedule E.			transmission for income tax return filed (i.e., tax preparer's transmittal receipt, summary of transmittal from online source, etc.) are an acceptable form of verification.
Recurring contributions and gifts	• Statement signed by the person providing the assistance giving the purpose, dates, and value of gifts.	Not applicable	• Telephone or in-person contact with source documented in file by the owner.	• Certification signed by applicant stating purpose, dates, and value of gifts.	Sporadic contributions and gifts are not counted as income. In-kind donations (e.g., food, clothing, or toiletries received from a food bank or similar organization) are not counted as income. Non-recurring, non-monetary in-kind donations from

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					friends and family is excluded as non-recurring income.
Social security number	Not applicable	• Copy of Social Security Card. Management does not need to maintain a copy of	Not applicable	• Household members may submit a signed certification stating his/her	Social security numbers are required as part of the tenant's application. The signed application is

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	Acceptable Sources				
	Written/Third Party	Provided by Applicant (generated by third party source)	*Oral	Self-Certification	
		the Social Security Card.		Social Security Number.	an acceptable self-certification for verification of social security numbers. Social Security Numbers must be verified only once for each resident. Household members 6 years of age and older must provide a social security number. For any household members who do not have a social security number, the household must certify that the individual has never received a social security number.
Student status (of household member 18 or older, excluding head, spouse or foster children)	• Documentation from an institution of higher education showing full-time or part-time enrollment status.	• Copies of documentation from an institution of higher education showing full-time or part-time enrollment status.	• Telephone or in-person contact with source documented in file by the owner.	Not applicable	
Student Financial Assistance	• Statement of financial assistance received from assistance source. • Statement from institution of higher education showing financial assistance received.	• Copy of statement of financial assistance received from assistance source. • Copy of statement from institution of higher education showing financial assistance received.	Not applicable	Not applicable	Any financial aid provided by family or friends is not considered student financial assistance. Student financial assistance falls into two categories: Higher Education Act (HEA) and Non-HEA assistance.

Acceptable Sources

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	Written/Third Party	Provided by Applicant (generated by third party source)	*Oral	Self-Certification	
					Student financial assistance may be paid directly to the student or to the educational institution on the student's behalf. The amount of actual covered costs may also need to be verified.
Unborn Child(ren)	Not applicable	Not applicable	Not applicable	• Applicant/ tenant self certifies to pregnancy. Owner may not verify further than self-certification.	
Unearned income (i.e., welfare, public assistance, Social Security, Supplemental Security Income (SSI), Disability Income, Pensions, Workers Compensation, etc.)	• Verification form completed by applicable third-party source indicating maximum amount family may receive. • Award or benefit notification letters from authorizing agency.	• Copies of the most recent award or benefit letter from the authorizing agency. • Most recent two consecutive payment stubs with date, amount, and check number. • Award or benefit letters or computer printout from court or public agency. • Most recent quarterly pension account statement.	• Telephone or in person contact with income source, documented in tenant file.	Not applicable	For fixed-income sources, a statement dated within the appropriate benefit year is acceptable documentation. Information must be verified annually to account for cost-of-living adjustment (COLA) increases and changes in benefits. When Social Security COLA is known, and the applicant/tenant has not received the applicable award or benefit letter, the
	Acceptable Sources				

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	Written/Third Party	Provided by Applicant (generated by third party source)	*Oral	Self-Certification	
					COLA percentage may be applied to the prior year's benefit amount. Checks or automatic bank deposit slips may not provide gross amounts of benefits if applicant has deductions made for Medicare Insurance. Copy of U.S. Treasury checks is not acceptable.
Unemployment compensation	• Verification form completed by source.	• Applicant/tenant receiving unemployment benefits may provide copies of the most recent award or benefit letter prepared and signed by the authorizing agency to verify the unemployment income. • Copies of checks or records from agency provided by applicant stating payment amounts and dates.	• Telephone or in-person contact with applicable third-party source documented in a file by an owner.	Not applicable	Unemployed applicant/tenant must complete a form, which provides their current employment status and requires them to agree to inform management immediately, in writing, if their employment status changes. Income not expected to last full 12 months must be calculated based on 12 months and interim recertification

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	Written/Third Party	Provided by Applicant (generated by third party source)	*Oral	Self-Certification	
					completed when benefits stop. Frequency of payments and expected length of benefit term must be verified.
Zero income	Not applicable	Not applicable	Not applicable	• Applicant/ tenant self certifies to zero income.	Attachment 6-B provides a zero-income checklist. Tenant must report any change in income status. Management must follow-up with tenant at least quarterly to determine how they are paying for normal living expenses. Quarterly documentation must be kept in tenant file.

* **NOTE:** For all oral verifications, file documentation must include the confirmed information, time and date of phone call, and the name, title and phone number of third party.

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ATTACHMENT 6-I
ELIGIBILITY, INCOME, AND DEDUCTION CHECKLIST

Head of household and/or the co-head should complete.

LIST ALL HOUSEHOLD MEMBERS:

Name (Last, First, M.I.)	**Relationship**	**Date of Birth**	**Sex**	**Social Security #**
_____	_____	___/___/___	___	_____
_____	_____	___/___/___	___	_____
_____	_____	___/___/___	___	_____
_____	_____	___/___/___	___	_____
_____	_____	___/___/___	___	_____
_____	_____	___/___/___	___	_____
_____	_____	___/___/___	___	_____
_____	_____	___/___/___	___	_____

ELIGIBILITY:	**YES**	**NO**
1. I have a household member who is absent from the home due to:		
Employment		
Military service		
Placement in foster care		
Temporarily in nursing home or hospital		
Permanently confined to nursing home		
Away at school		
Other		
2. I have a live-in attendant or resident assistant.		
3. Expected changes in household:		
Baby due on _____		
Adopting a child(ren) on _____		

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Obtaining custody of a child(ren) on _____		
Obtaining joint custody of a child(ren) on _____		
Receiving a foster child(ren) on _____		

INCOME, ASSET, AND DEDUCTIONS

A. Income:	**YES**	**NO**
1. Are you or any other members of the household currently receiving income from any of the following sources?		
Wages/salaries		
Wages earned through a government program such as Senior Aides, Older American Community Service Employment Program, AmeriCorps If yes, which program:		
Tips, bonuses, or commissions		
Overtime pay		
Income from operation of a business		
Social Security		
Disability / SSI		
Death Benefits		
Pension / retirement funds		
Annuities or non-revocable trust		
Unemployment		
Military pay		
Workman's Compensation		
Public assistance / TANF		
Alimony		
Child Support		
Income from rent or sale of property		
Periodic payment from lottery winnings		
Regular recurring contributions from persons or agencies outside of household		
Insurance policies		
Severance pay		
Student Financial Assistance		

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Other		
2. Are there any adult members of the household (18 years of age or older) receiving income not listed above? If yes, specify the source of the income_____		

B. Assets:	**YES**	**NO**
1. Do you or any other members of the household have any of the following:		
Checking accounts – current balance		
Savings accounts – current balance		
Certificates of deposit		
Money market funds		
IRA/Keogh account		
Stocks		
Bonds		
Treasury bills		
Trust funds (do you have access to the funds?)		
If yes, is the trust irrevocable?		
Real estate		
Whole life or universal life insurance policy (term not included)		
Cash held in safety deposit boxes or home		
Assets held in another state or foreign country		
Other		
2. Have you or any other members of the household received any lump sum payments, such as:		
Inheritance		
Lottery winnings		
Insurance settlements		
Other		

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3. Have you or any other household members disposed of any asset(s) for less than fair market value in the past two (2) years?		
4. Do you or any other household members have any assets that are held jointly with another person?		

C. Deductions:	**YES**	**NO**
1. Are there any fulltime students 18 years of age or older in the household?		
2. Does any household member qualify for elderly deduction (age 62 or older or a person with disabilities)?		
3. Do you have medical expenses that are not paid for by an outside source such as insurance (applicable to elderly/disabled)?		
4. Do you have disability expenses that are not paid for by an outside source?		
If yes, is this service necessary to enable a household member (including the member with a disability) to be employed?		
5. Do you have attendant care expenses?		
If yes, is this service necessary to enable a household member (including the member with a disability) to be employed?		
6. Do you currently pay for childcare services for any children under the age of 13 residing in your household?		
If yes, is this service necessary in order for you to be employed or to attend school?		
If yes, are any of these expenses reimbursed by an outside source?		

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ATTACHMENT 6-J

Required Tenant File Documentation

Tenant file records are critical pieces of source documentation, perhaps *the* critical source documentation, used as evidence to support determinations and conclusions in all areas of occupancy monitoring. The tenant file records must be complete and contain all information and forms relevant to occupancy at the project. The tenant files must be retained for at least 3 years or until the next Agency Supervisory Visit, whichever is longer. At a minimum the files should include:

I. Application/Household Information

A. Application (signed, dated, and date and time stamped).
B. Verification/certification of social security numbers, if available.
C. Citizenship declaration/immigration status (all household members) FARM LABOR ONLY.
D. Eligibility verification documents (person with disabilities, elderly, resident assistant, reasonable accommodations requests, etc.).
E. Authorization to release information forms for verifications for each adult household member; and
F. Acknowledgement of the head of household's receipt of lead-based paint disclosure brochure, if applicable.

II. Lease

A. Lease (signed and dated).
B. Lease amendments/addendums/agreements.
C. Project rules and regulations.
D. Pet rules and pet deposit receipt, if applicable.
E. Security deposit receipt, if applicable.
F. Move-in inspection report.
G. Annual inspection reports.
H. Lead-based paint addendum, if applicable.

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III. Certification/Recertification

A. Initial and annual recertifications.
B. Recertification notices (initial and, if applicable, first, second, and third).
C. Verifications for income, assets, and deductions.
D. Disposal of assets verification (head of household, spouse, co-head).
E. Payment plans, if applicable.
F. Correspondence either issued to, or received from, tenant(s); and
G. Copy of Certified Mail Receipt.

IV. Other Files That Need to Be Maintained

A. Move-out files. The current tenant file will become the move-out file. In addition to the above items, the move-out files must contain:

1. Copy of the intent to vacate notice received from the tenant.
2. Move-out inspection report.
3. Copy of the security deposit disposition notice provided to the tenant; and
4. Documents supporting retaining all or a portion of the security deposit.

B. Application/Reject Files.

1. Application.
2. Documentation to support the reason(s) for rejecting, such as screening information from previous landlords, personal references, credit reports, criminal activity, and refusal to sign consent form.
3. Copy of the written notice of rejection sent to the applicant.
4. Copy of certified mail receipt; and
5. Any information or letters regarding appeals by applicants.

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Guide for Administering and Complying with the Violence Against Women Reauthorization Act Rural Development Multifamily Housing

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Rural Development Multifamily Housing Guide for Administering and Complying with the Violence Against Women Reauthorization Act of 2013

A. About this Guide

This guide is for Rural Development (RD) Multifamily Housing's (MFH) Servicing Officials and contains the program requirements for administering and complying with the Violence Against Women Reauthorization Act of 2013 (VAWA), as amended. This guide does not encompass every aspect of VAWA, and therefore, should be used in conjunction with Public Law 113-4, Title VI of VAWA "Safe Homes for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking," and the U.S. Department of Housing and Community Development's (HUD) Housing Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking regulation at eCFR :: 24 CFR Part 5 Subpart L -- Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking.

Related reference documents include RD's Multifamily Housing Program regulation 7 CFR 3560, and the RD Multifamily Housing Asset Management Handbook (HB-2-3560). All of HUD's documents referenced in this guide are available on HUD's website, VAWA Resources for Multifamily Assisted Housing. Where a property is covered by multiple housing programs (i.e., Section 8 voucher, 515, and LIHTC), victims should be able to take advantage of all of the VAWA protections within each program. When there is a conflict between VAWA and RD's program regulations, whichever law, regulation, or policy that provides greater protections for a victim applies.

B. Fair Housing and Non-Discrimination

In addition to the VAWA Act, Borrowers are subject to the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, as amended, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, other applicable Federal laws, and Agency requirements related to occupancy and tenant eligibility.

Under the Fair Housing Act, individuals have the right to be free from discrimination when seeking housing to buy or rent, be protected from eviction, be treated the same as other tenants or occupants by a housing provider, request a reasonable accommodation to ensure that someone with a disability has equal opportunity to use and enjoy housing, and receive equal access to housing programs without regard to a person's actual or perceived sexual orientation, gender identity, or marital status. Individuals who believe their VAWA rights have been violated may file complaints with FHEO, and FHEO will begin investigating such complaints using HUD's existing Fair Housing Act complaint process. Should an individual believe their rights under VAWA have been violated, they may file a complaint at https://www.hud.gov/fairhousing.

VAWA protections are not limited to women. Persons who are threatened or actual victims of domestic violence, dating violence, sexual assault, or stalking are eligible for protections without regard to sex, gender identity, or sexual orientation, and cannot be discriminated against on the basis

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of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age.

When obtaining information from a victim of domestic violence, dating violence, sexual assault, or stalking, Borrowers must take appropriate steps to ensure effective communication with applicants and tenants with

disabilities using appropriate auxiliary aids and services, such as large print or Braille documents, readers, interpreters, and accessible electronic documents.

Borrowers must also take reasonable steps to ensure meaningful access to their programs and activities to Limited English Proficiency individuals such as by providing individualized assistance in completing forms. Borrowers must meet physical accessibility requirements when making emergency transfers, which may include making physical modifications to dwelling units and common use areas.

Borrower non-compliance with VAWA leads to violations of federal laws, including civil rights and fair housing laws to which they are required to adhere, and enforcement actions against them and their
management agents. Acts of Borrower non-compliance with VAWA must be reported to the USDA's Office of Civil Rights.

C. What is VAWA

On March 7, 2013, the VAWA Act of 2013 was initially signed into law as Public Law 113-4 and became effective for RD's Housing Programs. It applies to RD's Sections 515, 515/8, 514/516, 533, 538, and 542 housing programs (referred collectively as the RD-covered programs). Applicants, tenants, and household members of tenants assisted under these programs may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing as a direct result of the fact that the applicant, tenant, or household member is or has been a victim or there is an imminent threat of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.

The VAWA Reauthorization Act of 2022 was signed into law on March 15, 2022. VAWA 2022 enhances housing protections for victims applying for and living in RD-covered units. VAWA 2022 protects an individual's right to call emergency services and report crime from their homes, which means that families do not have to fear losing their housing if they need to call 9-1-1. The protections also ensure that individuals do not have to fear retaliation from their landlord for exercising their rights under VAWA or assisting others in doing so, including filing VAWA complaints.

D. Key Definitions

RD's MFH Servicing Officials and Borrowers should familiarize the meaning of the following terms:

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Actual and imminent threat refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur.

Affiliated individual, with respect to an individual, means:

- ✓ A spouse, parent, brother, sister, or child of that individual, or an individual to whom that individual stands in place of a parent or guardian (for example, the affiliated individual is a person in the care, custody, or control of that individual); or
- ✓ Any individual, tenant, or lawful occupant living in the household of that individual.

Bifurcate means to divide a lease as a matter of law, subject to the permissibility of such process under the requirements of the applicable RD-covered program and State or local law, such that certain tenants or lawful occupants can be evicted or removed and the remaining tenants or lawful occupants can continue to reside in the unit under the same lease requirements or as may be revised depending upon the eligibility for continued occupancy of the remaining tenants and lawful occupants.

Borrower refers to an entity under RD's covered housing programs that has responsibility for the administration and/or oversight of VAWA protections. This includes property management agents, Tribal, and State/local governments or agencies.

Covered Housing Program refers to RD's Sections 515 Rural Rental Housing, 514/516 Off-Farm Labor Housing, 533 Housing Preservation Grant, and 538 Guaranteed Rural Rental Housing, and 542 Rural Development Voucher Programs (Housing Act of 1949 (42 U.S.C. 1484, 1485, 1486, 1490m, 1490p–2, 1490r)). HUD's covered housing programs are listed under 24 CFR Part 5.2003 Definitions.

Dating violence means violence committed by a person:

- ✓ Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- ✓ Where the existence of such a relationship shall be determined based on a consideration of the following factors:

    - The length of the relationship;
    - The type of relationship; and
    - The frequency of interaction between the persons involved in the relationship.

Domestic Violence: The term 'domestic violence' includes felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction receiving grant funding and, in the case of victim services, includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim,

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including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior by a person who:

- ✓ is a current or former spouse or intimate partner of the victim, or person similarly situated to a spouse of the victim;
- ✓ is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- ✓ shares a child in common with the victim; or
- ✓ commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.

Economic Abuse in the context of domestic violence, dating violence, and abuse in later life, means behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, or manipulation to—(A) restrict a person's access to money, assets, credit, or financial information; (B) unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage; or (C) exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or failing or neglecting to act in the best interests of a person to whom one has a fiduciary duty."

Imminent Harm from Further Violence means the tenant's or household member's belief of the threat or danger, based on their experiences and responses to violence, threats, and trauma that they will (may) face without the emergency transfer.

"Safe" Unit means a unit that the victim of domestic violence, dating violence, sexual assault, or stalking believes is safe, based on his/her own beliefs and experiences.

Sexual assault means any nonconsensual sexual act proscribed by Federal, Tribal, or State law, including when the victim lacks capacity to consent.

Spouse or intimate partner means a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- ✓ Fear for the person's individual safety or the safety of others; or
- ✓ Suffer substantial emotional distress.

Technological Abuse means an act or pattern of behavior that occurs within domestic violence, sexual assault, dating violence or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor, except as otherwise permitted by law, another person, that occurs using any form of technology, including but not limited to: internet enabled devices, online spaces and platforms, computers, mobile devices, cameras and imaging

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programs, apps, location tracking devices, or communication technologies, or any other emerging technologies.

VAWA means the Violence Against Women Act of 1994 (Pub. L. 113-4, 127 Stat. 54), as amended (42 U.S.C. 13925 and 42 U.S.C. 14043e *et seq.*)

E. Who is Covered Under the VAWA Protections

VAWA protections cover tenants and members of their household, as defined under RD's program regulations. VAWA protections also apply to applicants when they are applying for admission to RD's covered housing programs. Many victims of sexual assault experience violence perpetrated by individuals with whom they did not have intimate relationships, such as strangers, friends, and family members. Sexual
assault often happens outside of the home and can be perpetrated by individuals with whom the victim has no intimate relationship.

With VAWA 2022, some of VAWA's protections also apply to other individuals, such as those who assist survivors or seek law enforcement or emergency assistance for themselves or others:

- ✓ Any person who has exercised or enjoyed VAWA housing protections, or aided or encouraged another person in exercising or enjoying VAWA housing protections, cannot be discriminated against or coerced, intimidated, threatened, or retaliated against by covered housing providers.

- ✓ Individuals have the right to seek law enforcement or emergency assistance for themselves or others without being penalized based on their requests or based on criminal activity of which they are a victim or otherwise not at fault. This right applies regardless of whether the person seeking law enforcement or emergency assistance is a survivor and regardless of whether their housing is assisted under a covered housing program.

A Borrower may find instances of domestic violence, dating violence, sexual assault, or stalking against youth (unemancipated or under the age of 18 years old) living in an assisted household for which the family may need to exercise VAWA protections to protect the youth victim. Children are often victimized by other
family members. The same rights and protections apply, and the same documentation and confidentiality procedures should be used in assisting this family.

Unemancipated minors are not eligible to sign leases under RD programs. Borrowers may consider contacting child welfare, child protective services, or law enforcement, when a minor claims to be a victim of domestic violence, dating violence, sexual assault, or stalking.

F. Eligibility and Adverse Factors As a Direct Result of Domestic Violence, Dating Violence, Sexual Assault, Or Stalking

The Direct Result provision prohibits Borrowers from denying admission to, denying assistance under, terminating participation in, or evicting a tenant based on an adverse factor, if the adverse factor is determined to be a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

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An adverse factor refers to any factor that can be used as a basis for denying admission or assistance, terminating assistance or participation in a program, or evicting a tenant. However, if a denial or termination of assistance or eviction is required by a federal statute, based on a particular adverse factor, the Borrower must comply with that statute, even if the adverse factor is a direct result of domestic violence, dating violence, sexual assault, or stalking. For example, if an applicant is subject to a lifetime registration requirement under a State sex offender registration program, the Borrower must deny the applicant admission, even if the sex offense(s) was (or were) a direct result of the fact that the applicant was a victim of domestic violence, dating violence, sexual assault, or stalking.

Where an applicant or tenant fails to request VAWA protections, the Borrower is not independently required to identify whether adverse factors are the direct result of domestic violence, dating violence, sexual assault, or stalking. Borrowers may seek training, where available, from a trained third-party (such as an expert victim service provider) on reviewing VAWA documentation. Any communications with a third party must be done consistent with the VAWA rule's confidentiality requirements.

1. Determining When Adverse Factors Are a Direct Result of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

This section provides a framework for determining whether an adverse factor is a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

1. To trigger the direct result analysis, it is the responsibility of the applicant or tenant to:

- ✓ Inform the Borrower that he or she is a victim of domestic violence, dating violence, sexual assault, or stalking: and

- ✓ Provide enough information for the Borrower to make a determination regarding the adverse factor he or she is claiming was a direct result of domestic violence, dating violence, sexual assault, or stalking.

2. After the Borrower receives this information, the Borrower should consider the individual's statement and any possible supporting documentation in determining if an adverse factor was a direct result of domestic violence, dating violence, sexual assault, or stalking.

3. If further information is necessary for this determination, the Borrower may request additional supporting documentation from the applicant or tenant. However, any request for additional documentation must:

- ✓ Be in accordance with the Borrower's policies or practices;

- ✓ Not require evidence of domestic violence, dating violence, sexual assault, or stalking other than as specified in 24 CFR 5.2007 (see Section I – HUD's Forms and Documentation); and
- ✓ Not violate the VAWA confidentiality requirements or any other laws.

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4. If the Borrower believes any information is not clear, they should speak to the victim and try to clarify the information before making an objectively reasonable determination, based on all the
circumstances, whether the adverse factor is a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

2. Examples of Adverse Factors That Might Be a Direct Result of Domestic Violence, Dating Violence, Sexual Assault, Or Stalking

On the surface, adverse factors may appear unrelated to domestic violence, dating violence, sexual assault, or stalking and may present legitimate reasons for denial, termination, or eviction. However, the presence of an adverse factor may be due to an underlying experience of domestic violence, dating violence, sexual assault, or stalking. An adverse factor may be present during much of an abusive relationship, or it may present itself only when a victim is attempting to leave, or has left, the abusive relationship.

The following examples #1 through #4 are provided to give a sense of the many instances in which adverse factors might be the direct result of domestic violence, dating violence, sexual assault, or stalking. Note, however, that this list is neither exhaustive nor definitive.

1. Poor credit history. Depending on the circumstances, poor credit history may be a direct result of domestic violence, dating violence, sexual assault, or stalking, when the domestic violence, dating violence, sexual assault, or stalking results in, for example-

- ✓ Forcing a victim to obtain credit, including credit cards for the perpetrator's use;
- ✓ Using a victim's credit or debit card without permission, or forcing him or her to do so;
- ✓ Selling victims' personally identifiable information to identity thieves;
- ✓ Running up debt on joint accounts;
- ✓ Obtaining loans/mortgages in a victim's name;
- ✓ Preventing a victim from obtaining and/or maintaining employment or credit in their own name;
- ✓ Sabotaging work or employment opportunities by stalking or harassing a victim at the workplace, or causing a victim to lose his or her job by physically battering the victim prior to important meetings or interviews;
- ✓ Placing utilities or other bills in a victim's name and then refusing to pay;
- ✓ Forcing a victim to work without pay in a family business, or forcing him or her to turn the earnings over to the abuser;
- ✓ Job loss or employment discrimination due to status as a victim of domestic violence, dating violence, sexual assault, or stalking;
- ✓ Job loss or lost wages due to missed work to attend court hearings, seek counseling or medical care, or deal with other consequences of domestic violence, dating violence, sexual assault, or stalking; and

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- ✓ Hospitalization and medical bills the victim cannot pay or cannot pay along with other bills.

2. Poor rental history. Depending on the circumstances, poor rental history may be a direct result of domestic violence, dating violence, sexual assault, or stalking, when the domestic violence, dating violence, sexual assault, or stalking results in, for example-

- ✓ Property damage;
- ✓ Noise complaints;
- ✓ Repeated visits by law enforcement;
- ✓ Harassment;
- ✓ Trespassing;
- ✓ Threats;
- ✓ Criminal activity or reporting of such;
- ✓ Missed or late utility payment(s);
- ✓ Missed or late rental payment(s);
- ✓ Writing bad checks to the landlord; and
- ✓ Early lease termination and/or short lease terms.

3. Criminal record. Depending on the circumstances, a criminal record may be a direct result of domestic violence, dating violence, sexual assault, or stalking, when the domestic violence, dating violence, sexual assault, or stalking results in, for example-

- ✓ Forcing a victim to write bad checks, misuse credit, or file fraudulent tax returns;
- ✓ Property damage;
- ✓ Theft;
- ✓ Disorderly conduct;
- ✓ Threats;
- ✓ Trespassing;
- ✓ Noise complaints;
- ✓ Family disturbance/trouble;
- ✓ 911 abuse;
- ✓ Multiple arrests;
- ✓ Public drunkenness;
- ✓ Drug activity (drug use and the selling of drugs);
- ✓ Crimes related to sex work;
- ✓ Failure to protect a child from a batterer's violence and/or abuse;
- ✓ Crimes committed by a victim to defend him or herself or in defense of a third party from domestic violence, dating violence, sexual assault, or stalking; and

- ✓ Human trafficking.

4. Failure to pay rent. Depending on the circumstances, temporary failure to pay rent may be a direct result of domestic violence, dating violence, sexual assault, or stalking, when domestic violence, dating violence, sexual assault, or stalking results in, for example-

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- ✓ The victim's injury or temporary incapacitation;
- ✓ The arrest of the only wage-earning member of the household;
- ✓ Preventing the victim from obtaining and/or maintaining employment;
- ✓ Sabotaging work or employment opportunities by stalking or harassing the victim at the workplace;
- ✓ Causing the victim to lose the victim's job by physically battering prior to important meetings or interviews;
- ✓ Placing utilities or other bills in the victim's name and then refusing to pay;
- ✓ Forcing the victim to turn his or her earnings over to the abuser;
- ✓ Forcing the victim to work without pay in a family business, Job loss or employment discrimination due to status as a victim of domestic violence, dating violence, sexual assault, or stalking;
- ✓ Losing wages or a job due to missing work to attend court hearings, seek counseling or medical care, or deal with other consequences of domestic violence, dating violence, sexual assault, or stalking; and
- ✓ Inability to pay bills after significant medical expenses resulting from the victim's hospitalization.

G. Ineligibility for VAWA Protections

Guests, unassisted members, and live-in aides of the family are ineligible for VAWA protections that are available only to tenants and household members.

As a reasonable accommodation, a tenant can request VAWA protections based on the grounds that the live-in aid is a victim of domestic violence, dating violence, sexual assault, or stalking. In addition, other reasonable accommodations may be needed on a case-by-case basis.

In cases where a guest or unassisted member is a victim of domestic violence, dating violence, sexual assault or stalking, a tenant cannot be evicted or have assistance terminated on the basis of the domestic violence, dating violence, sexual assault or stalking of the guest or unassisted member.

H. Notification of Denial, Termination, and Eviction

Borrowers must notify the applicant or tenant if it is found that the denial, termination, or eviction is not on the basis or as a "direct result" of being a victim of domestic violence, dating violence, sexual assault, or stalking, and the applicant or tenant is thus denied admission to, denied assistance under, terminate from participation in, or evicted from the housing. (See 24 CFR 5.2005(b)(1).) An applicant or tenant who disagrees with a negative determination must use the appeal procedures pursuant to 7 CFR part 11, or he or she may contact the assigned MFH Servicing Official.

In the case of a termination or eviction, Borrowers must comply with the prohibition in 24 CFR 5.2005(d)(2), which states, "The covered housing provider must not subject the tenant, who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, or is affiliated with an individual who is or
has been a victim of domestic violence, dating violence, sexual assault or stalking, to a more demanding standard than other tenants in determining whether to evict or terminate assistance."

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Therefore, even if the direct result prohibition does not apply, the Borrower cannot use that violation to terminate or evict a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking, if the Borrower does not ordinarily terminate or evict tenants for that violation.

I. HUD's Forms and Documentation of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

HUD's VAWA forms discussed in this section are:

1. The Form HUD-5380*, Notice of Occupancy Rights*
2. The Form HUD-5381, *Model Emergency Transfer Plan*
3. The Form HUD-5382, *Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternative Documentation*
4. The Form HUD-5383, *Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking*
5. The Form HUD-91067, *VAWA Lease Addendum (Expir. 6/2017)*

1. The Form HUD-5380, *Notice of Occupancy Rights*

The VAWA Notice of Occupancy Rights is for use by all RD-covered programs and must be distributed to adult applicants, adult tenants and adult household members without changes to the core protections and confidentiality rights in the Notice. Borrowers must add to the VAWA Notice of Occupancy Rights information that identifies the covered housing program (e.g., RD, Section 515 RRH, 514/516 FLH, or 542 RD Vouchers), the company/organization or property name, and any additional information and terminology that is used in the pertinent program and makes the VAWA Notice of Occupancy Rights more meaningful to applicants or tenants. (For example, the term "apartment" or "housing" may be used in lieu of "unit".)

The Form HUD-5380, "Notice of Occupancy Rights" must be provided to each adult applicant or tenant no later than at each of the following occasions: (See 24 CFR 5.2005(a)(2))

For adult applicants:

- ✓ At the time the individual is admitted; and
- ✓ At the time the individual is denied assistance or admission.

For tenants:

- ✓ At the annual tenant recertification and lease renewal;
- ✓ At move-out; and
- ✓ With the Borrower's notification of eviction or termination of assistance.

The Notice of Occupancy Rights must be posted about the property in conspicuous locations such as common use areas (laundry rooms, community room, bulletin boards, leasing office, near the mailboxes), and made available in multiple languages when needed, consistent with guidance in accordance with the Limited English Proficiency regulation at 7 CFR 3560.2(b).

2. The Form HUD-5381, *Model Emergency Transfer Plan*

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VAWA requires that Borrowers adopt an Emergency Transfer Plan. Borrowers may adopt HUD's Model Emergency Transfer Plan or utilize RD's Emergency Transfer Process (see Exhibit A). Borrowers must address the chosen Emergency Transfer Plan in the Management Plan (see Section K – The Management Plan). The Model Emergency Transfer Plan must be customized to include the specific details of the assistance provided by the Borrower and the project operations that pertain to the emergency transfer provisions. Refer to 24 CFR 5.2005(e) and HUD's guidance on the use of this form.

3. The Form HUD-5382, *Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternative Documentation*

The Form HUD-5382, "Certification of Domestic Violence" must be provided to each adult applicant or tenant no later than at each of the following occasions: (See 24 CFR 5.2005(a)(2))

For adult applicants:
- ✓ At the time the individual is provided assistance or admission; and
- ✓ At the time the individual is denied assistance or admission.

For tenants:
- ✓ At the annual tenant recertification and lease renewal process;
- ✓ At move-out; and
- ✓ With the Borrower's notification of eviction or termination of assistance.

The Certification of Domestic Violence should also be posted about the property in conspicuous locations such as common use areas (laundry rooms, community room, bulletin boards, leasing office, near the mailboxes), and made available in multiple languages when needed, consistent with guidance in accordance with the Limited English Proficiency regulation at 7 CFR 3560.2(b).

The uses of the form HUD-5382 are as follows:

- ✓ Provides that VAWA 2013 protects applicants and tenants from being denied admission, denied assistance, terminated from participation, or evicted from housing based on an act of domestic violence, dating violence, sexual assault, or stalking;
- ✓ Serves as an optional way for victims to comply with a written request for documentation about the incident or incidents of domestic violence, dating violence, sexual assault, or stalking for persons seeking VAWA protections;
- ✓ Provides that the victim or someone on the victim's behalf may complete the form;
- ✓ Provides a list of acceptable forms of third-party documentation to satisfy a request for documentation, (See Section B below regarding requests for documentation);
- ✓ Explains the time for responding to a written request for documentation;
- ✓ Describes the confidentiality protections under VAWA;
- ✓ Requires that the victim or someone filling out the form on the victim's behalf must answer 10 numbered questions and provide a brief description of the incident(s);
- ✓ Clarifies that the name of the accused perpetrator does not have to be provided if it is unknown to the victim or it cannot be provided safely;

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- ✓ Clarifies that the date and time of incident should be completed only if known by the victim; and
- ✓ Requires the victim or someone filling out the form on the victim's behalf, to certify to the truth and accuracy of the information being provided and explains that false information could be the basis for denial of admission, termination of assistance, or eviction.

a) Accepting a Verbal Statement

Borrowers are not required to ask for documentation when an individual presents a claim for VAWA protections; the Borrower may instead choose to provide benefits to an applicant or tenant based solely on the individual's verbal statement or other corroborating evidence. RD asks that Borrowers develop written policies for how and under what circumstances a verbal statement will be accepted (e.g., the Borrower was aware of the abuse and encouraged the victim to request VAWA protections). It is recommended that in cases where a Borrower decides to rely on such information, that the Borrower documents, in a confidential manner, the individual's verbal statement or other corroborating evidence in the tenant's file.

b) Requesting Documentation

If the Borrower chooses to request that an applicant or tenant documents his or her claim of domestic violence, dating violence, sexual assault, or stalking, the Borrower must make the request in writing. Simply providing the victim the certification form HUD-5382 does not constitute a written
request for documentation, unless the certification form HUD-5382 is accompanied by a dated letter to the victim requesting documentation. (See 24 CFR 5.2007(a)(1).)

An applicant or tenant may satisfy this request by providing any one of the following documents as described below: (24 CFR 5.2007(b)(1))

- ✓ Form HUD-5382; or
- ✓ A signed document:
- ✓ A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency (for example, a police report); or
- ✓ At the discretion of a Borrower, a statement or other evidence provided by the applicant or tenant.

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The policies should indicate whether a verbal statement will be accepted. The Borrower's policies should outline how they will exercise discretion when accepting a statement or other evidence from applicants and tenants.

Borrowers are prohibited from requiring third-party documentation of victim status, except where there are conflicting certifications or submitted documentation contains information that conflicts with existing information already available to the Borrower. (Section J)

c) Allotted Time to Submit Documentation

Given the possible consequences to both the victim and the alleged perpetrator of domestic violence, dating violence, sexual assault, or stalking, it is important that any allegations made by one individual against another are made with the understanding that there are consequences if the
allegations are false. In this regard, form HUD-5382 advises that the submission of false information may be a basis for denial of admission, termination of assistance, or eviction.

Borrowers may require submission of documentation within 14 business days after the date that the individual received the written request for documentation. However, the Borrower may extend this period at its discretion. During the 14-business day period and any granted extensions of that time, no adverse actions, such as eviction or termination, can be taken against the individual requesting VAWA protection. For example, Borrowers must not schedule an eviction to take place during this time frame. (See 24 CFR 5.2007(a)(2).)

In determining whether to extend the 14-business day period, Borrowers must consider factors that may contribute to the victim's inability to provide the documentation in a timely manner. These factors may include, but are not limited to: cognitive limitations, disabilities, limited English proficiency, absence from the unit due to hospitalization or time in an emergency shelter,
administrative delays in obtaining police or court records, the danger of further violence, and the victim's need to address health or safety issues. Borrowers must also grant reasonable accommodations for persons with disabilities. Note that because of these factors, the Borrower might not be contacted by the victim with a request to extend the 14-business day period until after the 14-day period has passed.

d) Acknowledging Receipt of Documentation; Failure to Provide Documentation in a Timely Manner

Once a victim provides documentation of domestic violence, dating violence, sexual assault, or stalking, the Borrower must acknowledge receipt of the documentation in a timely manner. If the applicant or tenant fails to provide documentation that meets the criteria in 24 CFR 5.2007 within 14 business days after receiving the written request for that documentation, or within the designated extension period, nothing in the VAWA Final Rule may be construed to limit the authority of the Borrower to:

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- ✓ Deny admission by the applicant to the housing or program;
- ✓ Deny assistance under the covered housing program to the applicant or tenant;
- ✓ Terminate the participation of the tenant in the covered housing program, or
- ✓ Evict the tenant, or a lawful occupant that commits a violation of a lease.

An applicant's or tenant's failure to timely provide documentation of domestic violence, dating violence, sexual assault, or stalking does not result in a waiver of the individual's right to challenge the denial of assistance or termination, nor does it preclude the individual's ability to raise an incident of domestic violence, dating violence, sexual assault, or stalking at eviction or termination proceedings. If the Borrower denies VAWA protections, they must still follow established appeal procedures, as set forth in 7 CFR part 11.

4. The Form HUD-5383, *Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking*

The form HUD-5383, Emergency Transfer Request For Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking (Emergency Transfer Request document), may be used to request an
emergency transfer and to certify that the requirements of eligibility for an emergency transfer under VAWA have been met.

The elements contained in the model Emergency Transfer Request document, form HUD-5383 are:

- ✓ Permits victims of domestic violence, dating violence, sexual assault, or stalking to use this form to request an emergency transfer and to certify that the victim meets the requirements of eligibility for an emergency transfer under VAWA;
- ✓ Defines the qualifications for an emergency transfer;
- ✓ Allows victims who have third-party documentation that demonstrates why they are eligible for an emergency transfer to submit this information to the Borrower if it is safe to do so;
- ✓ Describes the confidentiality protections under VAWA;
- ✓ Provides examples of acceptable third-party documentation;
- ✓ Requires that the victim answer numbered questions;
- ✓ Clarifies that the name of the accused perpetrator does not have to be provided if it is unknown to the victim or it cannot be provided safely, and
- ✓ Requires the victim to certify to the truth and accuracy of the information being provided and explains that false information could be the basis for denial of admission, termination of assistance, or eviction.

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5. The Form HUD-91067 and the RD Example VAWA 2013 Lease Addendum

Borrowers and management agents must ensure that tenant leases contained the latest protections afforded to victims of domestic violence, dating violence, sexual assault, or stalking, as required in the final VAWA 2013 rule. The form HUD-91067 (Exp. 6/2017 or its successor) "HUD VAWA Lease Addendum" may be used or Borrowers and Management Agents may utilize RD's Example VAWA Lease Addendum (Exhibit B of this Guide) for this purpose. Borrowers must be certain that the appropriate VAWA Lease addendum has been signed by all current adult household members. Extra signature lines may be added when needed. This may be done at each household's next annual recertification or at an earlier or more timely opportunity. All new move-ins must sign the VAWA lease addendum. (24 CFR 5.2005)

J. Requests for Third-Party Documentation of Victim Status

A Borrower is not permitted to require the victim to provide third-party documentation of victim status, unless:

✓ More than one applicant or tenant provides documentation to show he or she is a victim of domestic violence, dating violence, sexual assault, or stalking, and the information in one person's documentation conflicts with the information in another person's documentation, or

✓ Submitted documentation contains information that conflicts with existing information already available to the Borrower.

In both of the above scenarios, Borrowers are permitted to require the applicants or tenants to submit third-party documentation that meets certain criteria. See 24 CFR 5.2007(b) for the permissible documentation and submission requirements when requesting third-party documentation.

If the Borrower requests, but does not receive, third-party documentation, the Borrower has the option to deny VAWA protections and must notify the applicant or tenant. If this results in one of the tenants being terminated from assistance, the Borrower must hold a separate hearing for that tenant, pursuant to 7 CFR part 11.

When the documentation requirements are satisfied and the question of victim status is resolved, the Borrower may not require further evidence or question whether the person satisfies the requirements for VAWA protections.
Note: Perpetrators sometimes obtain temporary restraining orders or file police reports against victims as a form of retaliation. Further, many victims are unable to timely access the courts or law enforcement due to language barriers, disabilities, cultural norms, or fear for their safety. As a result, the fact that only one party submitted third-party documentation is not always a reliable indicator of domestic violence, dating violence, sexual assault, or stalking. A family break-up policy allowing assistance to be provided to both parties may alleviate a negative impact, such as loss of housing assistance.

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K. The Management Plan and Borrower's VAWA Policies and Procedures

The Management Plan (HB-2-3560, Attachment 3-A), Tenant Selection Plan (HB-2-3560, Chapter 6.21), and Occupancy Rules must include policies and procedures that educate, protect, support, and assist tenants and applicants who are victims of domestic violence, dating violence, sexual assault, or stalking, as well as members of the household from being denied housing and from losing their assisted housing as a direct result of domestic violence, dating violence, sexual assault, or stalking. The VAWA section of the Management Plan should contain policies and procedures that reflect compliance with VAWA requirements prohibiting the denial of assistance, tenancy, or occupancy rights.

These policies and rules are critical to informing Borrowers and management agents how to operate daily while ensuring compliance with VAWA. Borrowers are obligated to undertake whatever actions permissible and feasible to assist individuals residing in their units who are victims of domestic violence, dating violence, sexual assault, or stalking to remain in their units or in units of other covered housing providers, and for the Borrower to bear the costs of any transfer, when possible.

The VAWA section of the Management Plan must contain protections for victims, such as strict confidentiality of VAWA information, lease bifurcation and emergency transfer. Unit leasing and tenant selection policies (HB-2-3560, Chapter 3, Attachment 3-A, paragraph 5) must also include the protection of the rights of tenants and applicants afforded under VAWA. The Borrower's policies and procedures for VAWA may be presented as an annex to the Management Plan and must provide adequate details for the Agency to effectively monitor VAWA compliance, including a person or position in the owner's organization that is the key contact for the management agent regarding VAWA.

When a Borrowers Management Plan does not include the VAWA policies and procedures, or if project operations change and are no longer consistent with the current Management Plan on file with the Agency, an updated Management Plan must be submitted to the Agency, as outlined in HB-2-3560, Chapter 3.3 B.

The updated Management Plan should address all activities, objectives, policies, or programs that will enable a Borrower to serve the needs of child and adult victims of domestic violence, dating violence, sexual assault, or stalking. A most comprehensive Management Plan would provide details on the following:

- ✓ Certification and Documentation Requirements
- ✓ Strict Confidentiality Policies
- ✓ Lease Bifurcation and Emergency Transfer Plan
- ✓ Partnerships
- ✓ Conflicting Claims of Abuse
- ✓ Admissions Preference, if applicable
- ✓ Other areas of consideration

Certification and Documentation – (See Section I - HUD's Forms and Documentation of Domestic Violence, Dating Violence, Sexual Assault, or Stalking)

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- ✓ How will the Borrower provide the VAWA Notice of Occupancy Rights (form HUD-5380) and Certification form (HUD-5382) to each adult household member?
- ✓ How and where will the VAWA forms be made available?
- ✓ Will the Borrower ask for documentation when an individual presents a claim for VAWA protections, and if so, under what circumstances?
- ✓ How will the Borrower define the term "other evidence"?
- ✓ Will the Borrower require submission of documentation within 14 business days?
- ✓ Under what conditions will an extension of the 14-business day period for submitting documentation be allowed?
- ✓ How long will the Borrower take to acknowledge receipt of documentation?

Strict Confidentiality – (See Section L)

- ✓ Who will have access to VAWA information?
- ✓ How will information be stored and secured?
- ✓ How will information be accessed?
- ✓ Who are the Borrower's VAWA points of contacts for tenants?
- ✓ How will the management agent determine appropriate communications with victims?
- ✓ What procedures will the Borrower undertake to ensure others will not overhear conversations with victims?
- ✓ Will victims be required to come into a management office?
- ✓ Will the Borrower suggest that a victim designate a point of contact for communications?

Emergency Transfer Plan - (See Section M)

- ✓ What efforts will the Borrower make to assist a tenant or household who request an internal emergency transfer or external emergency move?
- ✓ Will the Borrower accept verbal-certification or require a written transfer request?
- ✓ Will the Borrower require the use of the emergency transfer request form HUD-5383?
- ✓ Will the Borrower make additional efforts to assist a tenant who wishes to make an internal emergency transfer (e.g. provide a moving van)? (Under the VAWA regulation, the Borrower's Emergency Transfer Plan must allow a tenant to make an internal emergency transfer under VAWA when a safe unit is immediately available.)
- ✓ Will the Borrower make arrangements, including memoranda of understanding, with other HUD-funded Borrowers to facilitate external moves?
- ✓ Will the Borrower provide contact information for local service providers?

Partnerships – (See Section S)

- ✓ Will the Borrower conduct outreach activities to organizations that assist or provide resources to victims?
- ✓ Will the Borrower develop partnerships with domestic violence victim advocates, legal aid services, and law enforcement agencies to further VAWA protections?
- ✓ Will the Borrower invite domestic violence victim advocates to speak to resident groups and employees?

- ✓ Will the Borrower create pamphlets, posters, and other media to help inform applicants, tenants, and participants about the VAWA protections available to them?

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- ✓ Will the Borrower offer any activities, services, or programs either directly or in partnership with other service providers to enhance victim safety?
- ✓ Will the Borrower offer any domestic violence, dating violence, sexual assault, or stalking prevention programs?

Conflicting Claims of Abuse – (See Section J)

- ✓ What will the Borrower do in cases of conflicting third-party documentation?
- ✓ Will hearings include a trained third party with experience in adjudicating domestic violence, dating violence, sexual assault or stalking cases?

Admissions Preference – (See Section Q)

- ✓ Will the Borrower adopt an admissions preference for victims seeking an external emergency move from another RD-funded property?
- ✓ What priority will be given to victims?
- ✓ Will the Borrower treat RD tenants who are victims looking for an external emergency transfer the same or different than non-RD tenants who are victims?
- ✓ Will the Borrower limit the preference to persons referred by a partnering service organization or consortia of organizations?
- ✓ Are there State or local laws that provide greater protections than those provided under VAWA that an owner should be made aware of?

Other Considerations

- ✓ What actions will the Borrower take to reduce or eliminate an "actual or imminent" threat?
- ✓ Will the Borrower offer lease bifurcation?
- ✓ Under what circumstances would a perpetrator who was evicted/terminated from assistance or convicted of domestic violence, dating violence, sexual assault, or stalking be allowed to rejoin the household upon request of the family?

L. Victim Confidentiality and Best Practices for Communications

Under VAWA 2013, any information submitted to the Borrower or management agent regarding domestic violence, dating violence, sexual assault, or stalking, including the fact that the individual is a victim of such abuse must be kept strictly confidential. All documentation relating to an individual's
domestic violence, dating violence or stalking incident must be in a separate file that is kept in a separate secure location from other tenant files. (See 24 CFR 5.2007(c).)

Given the significant safety issues faced by victims of domestic violence, dating violence, sexual assault, or stalking, it is critical that Borrowers adopt policies to maintain the confidentiality and privacy of victims who seek protections under VAWA, including strict measures to prevent the disclosure of the location of the new dwelling unit to the person that commits an actual or

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imminent act of violence. The Borrower's confidentiality and privacy policies shall be explained in the Management Plan.

Employees of the Borrower or those who administer VAWA assistance on their behalf, (e.g., management agent and contractors) must not have access to the information unless explicitly authorized by the Borrower
for reasons that specifically call for these individuals to have access to such information under applicable Federal, State, or local law (e.g., the information is needed to provide the VAWA protections to the victim).

The Borrower must not enter this information into any shared database, or disclose this information to any other entity or individual (e.g., a prospective owner of participant's unit), except to the extent that disclosure is:

- ✓ Requested or consented to in writing by the individual (victim) in a time-limited release;
- ✓ Required for use in an eviction proceeding or hearing regarding termination of assistance from the program; or
- ✓ Otherwise required by applicable law.

The prohibition against entering this information into any shared database does not preclude a Borrower from entering this information into a database system used by the Borrower that meets all requirements for securing sensitive personally identifiable information (PII), including the Privacy Act of 1974 (5 U.S.C. § 552a), as long as the requirements listed above and provided at 24 CFR 5.2007(c) are also met (e.g. the victim consents to it in writing in a time-limited release).

When communicating with an applicant, participant, or tenant who has requested VAWA protections, the Borrower must take precautions to avoid inadvertent disclosure of confidential information to another individual or entity in violation of 24 CFR 5.2007(c).

Unless given permission from the victim to do so, the Borrower must not leave messages or send mail of any kind that contain confidential information or refer to VAWA, the VAWA protections, or the domestic violence, dating violence, sexual assault, or stalking (e.g., asking the victim to come to the property management agent's office to pick up the form HUD-5382) or with other individuals, including members of the victim's household. Leaving a voicemail requesting that the victim contact the property management agent without referencing VAWA, VAWA protections, or the domestic violence, dating violence, sexual assault, or stalking, is not prohibited.

If the victim gives the Borrower permission to contact them about the domestic violence, dating violence, sexual assault, or stalking via mail, voicemail system, electronic mail, or other method approved by the victim, best practice would be to ensure this permission is in writing. If it is not feasible for the victim to provide the permission in writing, the Borrower may make a note in the victim's file about which forms of communication with the victim have been approved by the victim. The written permission or other notation must be kept confidential.

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Best Practices

The following best practices are designed to address the challenges of collecting information and communicating with a victim while meeting the strict confidentiality requirements of VAWA:

- ✓ Conduct the intake session in a private room, where the individual and staff person can talk without the risk of other staff or clients overhearing.
- ✓ Explain the Management Agent's information sharing policies.
- ✓ Communicate to the individual who is responsible for handling questions or complaints about confidentiality.
- ✓ Provide adequate time for the individual to review and sign forms.
- ✓ Post confidentiality notices in the intake room and around the property's common areas.
- ✓ Ensure relevant staff understand confidentiality policies and procedures through regular staff training.
- ✓ Unless given permission from the victim to do so, do not send mail or leave messages of any type that contain confidential information or refer to VAWA. The perpetrator may have access to

  the victim's mail or be the co-head of household, or the perpetrator may be employed at the residence of the victim.
- ✓ When discussing these matters directly with the victim, ensure that no one can overhear the conversation. Make arrangements that do not place the victim at risk, such as requesting a

  meeting in a private room accompanied by a trusted friend or service provider; not in an open space at the management office.
- ✓ Direct staff to respond to third-party inquiries only after verifying that written client consent has been obtained.
- ✓ Clarify information sharing policies with referring/referral agencies and other service and business partners.
- ✓ Maintain distinct phone lines for certain purposes.
- ✓ Avoid using language referencing domestic violence or sexual assault in agency names, program names, organization names, and staff titles.
- ✓ Use a Management Agent controlled post office box to receive written correspondence.
- ✓ Serve individuals off-site as needed or when appropriate.
- ✓ Provide interpretation and/or documents translated into the appropriate language when necessary.
- ✓ Provide accessible documents or assistance filling out forms for individuals with disabilities.

M. The Emergency Transfer Plan

Borrowers are required to adopt an Emergency Transfer Plan allowing tenants who are facing actual or imminent harm from domestic violence, dating violence, sexual assault, or stalking to make an

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internal emergency transfer under VAWA when a safe unit is immediately available. A victim determines whether the unit is safe. (See 24 CFR 5.2005(e)(1)(iii)).

The Form HUD-5381 may be used for this purpose or Borrowers may utilize RD's Emergency Transfer Process which is discussed in paragraph 3 below. Borrowers must engage the victim in a conversation as to what they may consider safe or what factors the victim considers unsafe. This may allow the Borrower to better tailor its emergency transfer response.

The Emergency Transfer Plan must identify tenants who are eligible for an emergency transfer, whether documentation is needed and what type of documentation is needed from a victim to request an emergency transfer, confidentiality protections, how an emergency transfer may occur, and guidance to tenants on safety and security. The Emergency Transfer Plan should describe the reasonable efforts the Borrower will take to assist a tenant in making an internal emergency transfer when a safe unit is not immediately available, and the reasonable efforts the Borrower will take to quickly assist a tenant who wishes to make an external emergency transfer when a unit that meets the victim's safety standard is not available internally. If a property is fully occupied and after checking the RD MFH Rentals website the Borrower is unaware of other vacant units in the area, Borrowers must use their best effort to support victims in finding a safe place to live. (See Section S - Developing Partnerships with Victim Service Providers)

The Emergency Transfer Plan should also make clear that qualifying for an emergency transfer does not guarantee continued assistance under the current program or an external transfer to another covered housing program. The emergency transfer requirements do not supersede any eligibility or occupancy requirements that may apply under a covered housing program. This means that even if a tenant at Property A is eligible to request an emergency transfer, the tenant cannot move into Property B if the tenant does not meet the program eligibility requirements at Property B. For example, if a tenant qualifies for an emergency transfer at Property A to escape an abusive partner, but the tenant does not meet the program eligibility requirements at Property B (must be a disabled person or age 62 at a Section 515 Elderly property), the tenant cannot be rehoused at Property B under that program.

The Borrower's Emergency Transfer Plan *may* require documentation from a tenant seeking an emergency transfer, pursuant to 24 CFR 5.2007(b)(1). When a Borrower requires documentation from the tenant, the request for documentation must be submitted to the tenant in writing. The Emergency Transfer Plan must specify whether verbal statements, self-certification, or a written request from the tenant is sufficient to initiate an emergency transfer. If a verbal statement, self-certification or written request is needed, it shall include:

- ✓ A statement that the tenant requests an emergency transfer because he, she, or a household member reasonably believes that there is a threat of imminent harm from further violence if the tenant were to remain in the same dwelling unit, or

- ✓ A statement that the tenant requests an emergency transfer because the tenant was a sexual assault victim and that the sexual assault occurred during the 90-calendar day period preceding the tenant's request for an emergency transfer.

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If revisions to existing policies are necessary to facilitate emergency transfers, Borrowers should consider the following when making the needed revisions:

- ✓ Availability and location of units under current ownership;
- ✓ Demand by applicants for assistance under the program;
- ✓ Frequency of mandatory or emergency transfers; and
- ✓ Availability of alternative housing opportunities.

Borrowers must also comply with state specific VAWA laws which may provide additional requirements for emergency transfer policies, such as a requirement to create an admissions preference for victims of domestic violence, dating violence, sexual assault, or stalking. (See Section Q - Establishing an Admissions Preference)

1. Internal Transfers

An internal transfer is a transfer within the same or scattered site property in which the tenant requesting the transfer currently resides. The transfer can be performed without the tenant reapplying for housing assistance. The Emergency Transfer Plan must allow a tenant to make an internal emergency transfer under VAWA when a safe unit is immediately available. The plan must also describe policies for assisting tenants when a safe unit is not immediately available. Those policies must ensure that requests for internal emergency transfers under VAWA receive, at a minimum, any applicable additional priority that Borrowers may already provide to other types of emergency transfer requests.

Often Borrowers will not have a unit which is immediately available and/or that the victim determines is safe within the same property or in another building that is part of the same scattered site property. The Borrower must have a policy to assist the tenant in obtaining a safe unit within the property once one becomes available. If the Borrower has an internal transfer waiting list, the victim should be placed on that list. The Borrower's policy should state whether or not the Borrower will give priority to victims of domestic violence, dating violence, sexual assault, or stalking on their internal transfer waiting list. This is the Borrower's choice.

If a safe unit is not immediately available, the Borrower must, at the same time, offer the tenant assistance in making an external transfer. The Borrower and victim should discuss why an internal transfer is not viable at that time and what external transfer options are available based on the Emergency Transfer Plan.

2. External Transfers

An external emergency transfer refers to a tenant's physical move out of the RD property in which he or she resides to a property where the tenant would be categorized as a new applicant. A VAWA LOPE from the Agency may be used for this purpose. For example, a move from Property A to Property B is an external transfer – this also means that the household goes from being a tenant at Property A to an applicant at Property B with priority placement in an available unit or on the waiting list over all other applicants.

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Borrowers are required to make reasonable efforts to assist a tenant who requests to make an external emergency transfer when a safe unit at the current property is not immediately available. Borrowers are strongly encouraged but are not required to research available units and/or arrange for the move.

A Borrower's reasonable efforts should include providing contact information for relevant local service providers, government agencies, and other affordable housing developments in the area.

Borrowers must consider the following when creating their external emergency transfer policies:

- ✓ Making available a list of similar assisted housing options in an area requested by the victim. A housing search can be completed on RD's MFH Rentals website here RD MFH Rentals.
- ✓ Making arrangements including memoranda of understanding, with other local affordable Borrowers to facilitate moves.

- ✓ Conducting outreach activities to organizations that assist or provide resources to victims of domestic violence, dating violence, sexual assault, or stalking (see Section T – Additional Resources).

- ✓ Creating an admissions preference for victims seeking an external emergency transfer from another covered housing provider. This would allow a victim to more quickly access an available unit administered by a RD Borrower without being placed on the bottom of an applicant waiting list. (See Section Q – Establishing An Admissions Preference)

- ✓ Providing a letter such as an RD LOPE that the victim may give to prospective covered housing providers, indicating that the victim is eligible for an emergency transfer and is entitled to priority placement on the waiting list because a safe unit is not immediately available at their current property.

3. RD's Emergency Transfer Process

RD's Emergency Transfer Process requires a VAWA Letter of Priority Entitlement (LOPE) from the Agency. A VAWA LOPE entitles existing RD tenants to receive priority over all other applicants for available housing at any Section 515 Rural Rental Housing or Section 514 Farm Labor Housing property, anywhere in the United States, if the victim otherwise meets the normal RD program eligibility criteria in accordance with 7 CFR 3560.152 and 7 CFR 3560.576(b), respectively. The priority under VAWA does not depend on income and apartment size, except applicants with a LOPE will be ranked among themselves by income level, giving priority first to very low-income households, then to low-income households, and finally to moderate-income households.

This letter may also help the victim receive preference in a non-RD financed apartment if permitted by the occupancy policy of the non-RD financed program. RD's VAWA LOPE should be issued upon satisfaction that a tenant has certified as an actual or imminent victim of domestic violence, dating violence, sexual assault, or stalking. (See HB-2-3560, Chapter 6.18(C) and 6.22))

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Tenants facing actual or imminent harm should contact the property manager, or if the property manager cannot be contacted due to safety concerns because of the inappropriate conduct of the property manager or an employee at the property, the local MFH RD office may be contacted directly by the victim, or by a local service provider or domestic violence or sexual assault agency that could contact the local MFH RD office to request an emergency transfer. The property manager shall provide the victim with the

VAWA Notice of Occupancy Rights (form HUD-5380) and may request written Certification (form HUD-5382) or other acceptable type of documentation, when required, certifying to an incident.

Upon determination by the property manager that a tenant has met the eligibility criteria for an emergency transfer (see Section N) the property manager shall immediately contact their assigned MFH Servicing Official. The MFH Servicing Official shall provide the VAWA LOPE to the tenant indicating at a minimum, the specific benefits that are being provided and that the tenant may receive priority placement in an available RD unit within given timeframes.

After the VAWA LOPE has been issued, the appropriate HUD forms have been received and completed where required, and a new unit has been located that was deemed safe by the victim, the transfer is permitted to occur.

Tenants who receive a LOPE and are beneficiaries of Rental Assistance (RA) may transfer their RA to another RD property.

Strict confidentiality measures must be exercised by Borrowers and management agent staff at all times. VAWA records, communications and the location of the new dwelling must not be disclosed to the person that commits an actual or imminent act of domestic violence, dating violence, sexual assault, or stalking.

4. Processing an Emergency Transfer Request

An Emergency Transfer request must be made by the existing tenant facing actual or imminent harm from domestic violence, dating violence, sexual assault, or stalking. The Emergency Transfer must be processed in accordance with the Borrower's Emergency Transfer Plan, which should be thoroughly and clearly set forth in the Management Plan.

Below is a basic example of an emergency transfer, although there may be additional circumstances involved that could affect the manner in which it is processed.

Example:

Scenario: A tenant approaches property management staff, informing them that they are a victim of dating violence and fearful of further violence. The household consists of the victim (head of household) and two children under the age of 18.

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Step 1: The management agent provides the victim with the VAWA Notice of Occupancy Rights (Form HUD-5380) and Certification (Form HUD-5382) if not previously provided to ensure that they understand the rights and protections afforded them.

Step 2: The victim requests an emergency transfer either verbally or in writing, depending upon the management agent's policy. The management agent can accept the victim's verbal statement of the incident or may request a Certification form or other documentation per 24 CFR 5.2007.

Step 3: The management agent exercises confidentiality while working with the victim and informs him or her of options as set forth in the Emergency Transfer Plan.

1. Internal Transfer:
A safe unit is not immediately available at the current property. The management agent offers to put the victim on an internal transfer waiting list. Because a safe unit is not immediately available, the management agent also explains external emergency transfer options.

2. External Transfer:
The management agent should offer RD's Emergency Transfer Process and a VAWA LOPE. A list of RD rental properties with Rental Assistance may be obtained using RD MFH Rental Properties website. Borrowers may obtain the number of available RA units for each RD project listed in the local area from their assigned MFH Servicing Official.

The management agent should also provide a list of non-RD rental units for which the Borrower has agreed to partner with and other local organizations serving victims of domestic violence, dating violence, sexual assault, or stalking. There may be victim service providers locally that may have resources such as safety planning, counseling, and emergency funding. The management agent provides the victim with contact information.

Step 4: The victim decides to forgo the external transfer and stay in the current RD housing unit until he or she is able to secure another housing unit. The management agent must take steps to reduce the threat of further violence against the victim. Examples include changing the victim's locks (pursuant to the
Borrower's lock replacement policy and state and local laws); installing better lighting around the perimeter of the building and reminding the victim that he or she is allowed temporary absence from the unit in accordance with the Borrower's policies.

Step 5: An assisted unit becomes available at the current property. The management agent notifies the victim of the availability of a unit and provides a tour of the unit.

Step 6: The victim determines the unit to be safe. The management agent expeditiously follows its policies for the internal transfer.

N. Eligibility for An Emergency Transfer

The Emergency Transfer Plan must provide that a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking, qualifies for an emergency transfer if:

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1. The tenant expressly requests the transfer; and

2. Either –
   - ✓ The tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit, or
   - ✓ In the case of sexual assault, the tenant reasonably believes there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit that the tenant is currently occupying, or the sexual assault occurred during the 90-calendar day period preceding the date of the request for transfer. (See 24 CFR § 5.2005(e)(2))

O. Lease Bifurcation

In accordance with 7 CFR 3560.159(d) and 24 CFR 5.2009(a), management agents may bifurcate a lease (or remove a household member or lawful occupant from a lease) in order to evict, remove, or terminate
occupancy rights of a household member who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual. Typically, a victim must be a tenant or an adult household member to request a bifurcation of the lease. Lease bifurcation is not the appropriate remedy to remove a person living in the unit who is not on the lease and who is not a tenant.

Eviction or termination of a victim's assistance under the actual and imminent threat provision should occur only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the abuser from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the abuser from acting on a threat.

Eviction, removal, or termination of occupancy rights shall be carried out in accordance with HB-2-3560, Chapter 6.32 and as prescribed by the federal, state, or local law that provides the greater protection for victims of domestic violence, dating violence, sexual assault, and stalking.

Victims should consider temporarily moving to a safe, confidential location until the bifurcation process is completed. Once the process is complete, ask the landlord to change the locks. To avoid unnecessary delay in

the bifurcation process, RD recommends that management agents seek court-ordered eviction of the perpetrator pursuant to applicable laws. This process results in the underlying lease becoming null and void once the management agent regains possession of the unit. The management agent would then execute a new lease with the victim.

Management agents should simultaneously attempt to reach agreement to the mutual termination of the lease, if it is safe to do so.

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1. Reasonable Time to Establish Eligibility Following Lease Bifurcation

VAWA establishes a reasonable time period for a remaining household member(s) to demonstrate eligibility for housing assistance or find alternative housing following the lease bifurcation.

The management agent must provide to the remaining household member(s) a minimum period of 90-calendar days from the date of lease bifurcation to:

- ✓ Establish eligibility for the same housing program that aided the evicted or terminated tenant;
- ✓ Establish eligibility under another covered housing program; or
- ✓ Find alternative housing.

The management agent is encouraged to allow an additional 60-calendar day extension when needed. In addition, the 90-calendar day period and any extension thereafter will not apply beyond the expiration of a lease.

In seeking a lease bifurcation, management agents must not subject victims to more demanding standards than other applicants. When the remaining household members are unable to establish eligibility, such as when the removal of the abuser leaves the family with no member who can qualify, a qualified adult may be added to the household to serve as the head of household as outlined in HB-2-3560, Chapter 6.30 D "Remaining Household Members."

As a result of a lease bifurcation, it may be necessary to transfer the existing household to an appropriate unit size in accordance with the lease. In some cases, the lease bifurcation may result in a change in tenant rent or the Tenant Contribution. The management agent must ensure the remaining tenant is provided the proper notice of increase as outlined in HB-2-3560, Chapter 7.4 G and in accordance with local and state laws.

Management Agents should perform an Interim Recertification for the remaining household members at the time of the lease bifurcation. Any modification of the rent payment for the remaining household members
must be done during the 90-calendar day period. The Interim Recertification should be carried out in accordance with HB-2-3560, Chapter 6.28 B.

If the remaining family member will not be able to establish eligibility, the household is not eligible to receive subsidy. In this case, the remaining family member must then pay market rent for the duration of the 90-calendar day period or move-out, whichever comes first.

2. Family Break-Up Example

The occurrence of domestic violence, dating violence, sexual assault, or stalking may lead to the break-up of the assisted family. Family break-up involves terminating the assistance of the perpetrator while continuing the assistance to the victim, ensuring that the victim understands his or

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her rights, documenting the abuse, maintaining the confidentiality of the victim, and ensuring the safety of the victim.

Changes to a family's composition must be reported to the management agent in accordance with the terms of the lease. The lease includes a requirement that the tenant transfer to an appropriate size dwelling unit based on family composition, upon appropriate notice by the management agent that such a dwelling unit is available. Management agents must follow the lease and their written internal transfer waiting list policies in their Tenant Selection Plans in instances where the change in family composition would require that the family move to another unit of appropriate size. (See HB-2-3560, Chapter 6.30 D).

To help understand each of the steps involved with this process, this Guide presents the following scenario:

Note: The example below provides a scenario that is fact intensive. Real-world cases of victims seeking VAWA protections must be approached in a way that takes in consideration the specifics of each case and is addressed pursuant to program requirements and management policy.

Example
A victim informs the management agent that his or her family member is committing domestic violence, dating violence, sexual assault or stalking against him or her, and he or she wishes to retain tenancy. The victim may choose to inform the management agent of the abuse after the management agent has notified the household that it is being evicted (due to criminal activity, for example), or at any other point.

Step 1: If the management agent previously has not provided notification to the family members of their VAWA rights, then in accordance with 24 CFR 5.2005(a)(2), the management agent must provide notice to the victim of his or her VAWA rights. If he or she has been previously notified of his or her VAWA rights, the management agent must again provide the victim with the VAWA Notice of Occupancy Rights and Certification form, to ensure that he or she fully understands the rights and the protections afforded him or her.

Step 2: The management agent can decide to accept the victim's statement or provide the victim a written request for documentation per 24 CFR 5.2007.

Step 3: Upon provision of documentation (if requested and provided as specified in 24 CFR 5.2005(7)), the management agent should ensure the victim knows of the upcoming notification of eviction of the perpetrator, including the exact date the notification will take place. As part of this notification to the victim, the management agent should give the victim contact information for local victim service providers to allow
the victim an opportunity to create a plan of action (e.g., the victim may need to leave the unit temporarily and stay in a domestic violence shelter until the eviction takes place). The management agent is obligated to utilize any partnerships it may have established with local law enforcement and victim service providers to ensure the safety of the victim.

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Step 4: The management agent begins the process to evict the perpetrator. If the victim wants to move out of the unit for his or her safety, the management agent must first determine if the tenant qualifies for an

emergency transfer and then follow its Emergency Transfer Plan. If the victim wants to stay in the unit, the management agent bifurcates the lease by evicting the perpetrator and allowing the victim and the remaining household members to remain on the lease. The management agent must expeditiously conduct an Interim Recertification to determine the new rent computations. The management agent should refer to HB-2-3560, Chapter 6.28 B for the requirements of processing an Interim Recertification when there is a change in family composition.

Step 5: The management agent should provide the perpetrator with no more than 30 days (in most cases) notice of termination (24 CFR 247.4(c)). If the perpetrator requests a hearing, the management agent is
encouraged to conduct an expedited hearing within no more than 10 days following the effective date of the notice.

The perpetrator has a right to examine the management agent's documentation relevant to the eviction. This means the perpetrator has a right to examine the relevant documentation the victim provided, claiming VAWA protections. This documentation is required for use in an eviction proceeding or hearing regarding termination of assistance from the covered housing program. (This is an exception to the victim's confidentiality rights, per 24 CFR 5.2007(c)(2)). To protect the victim's safety, any information that would reveal the location of the victim, or the location of any services that the victim is receiving must be maintained confidentially (i.e., redacted from the shared documentation), unless it meets the exception in 24 CFR 5.2007(c)(2)(ii).

Management agents should consult a local domestic violence expert or victim service provider (that has not worked with either the victim or perpetrator), to be on the grievance hearing panel. The hearing officer or hearing panel provides the perpetrator with a written decision.

Step 6: If it is determined that the perpetrator did indeed commit the acts, the case will then be moved to eviction court.

Step 7: If the eviction process is upheld, the management agent processes the Interim Recertification to remove the household member and completes the bifurcation of the lease agreement.

P. Termination of the Victim Due to "Actual and Imminent Threat" and Any Violation Not Premised on an Act of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

VAWA prohibits denial of admission or assistance, termination of assistance, or eviction on the basis or as a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. However, nothing in the VAWA Final Rule may be construed to limit the authority of a management agent to evict or terminate assistance for any violation not premised on an act of domestic violence, dating violence, sexual assault, or stalking that is in question against the tenant or an affiliated individual of the tenant. (See 24 CFR 5.2005(d)(2))

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In addition, nothing in the VAWA Final Rule may be construed to limit the authority of the Borrower or management agent to terminate assistance or evict a tenant if the management agent can demonstrate that an actual and imminent threat to other tenants or those employed at or providing services to the property would be present if that tenant or lawful occupant is not evicted or terminated from assistance. (See 24 CFR 5.2005(d)(3))

To demonstrate an actual and imminent threat to other tenants or employees at the property, the management agent must have objective evidence of words, gestures, actions, or other indicators that meet the standards in the following definition:

> "Actual and imminent threat" refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm.

In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- ✓ The duration of the risk;
- ✓ The nature and severity of the potential harm;
- ✓ The likelihood that the potential harm will occur, and
- ✓ The length of time before the potential harm would occur.

Eviction or termination of assistance should only be used by a management agent when there are no other actions or remedies to reduce or eliminate the threat, including when actions or remedies are unavailable. This is the case even when time periods could reasonably be called "immediate." Management agents should work with local law enforcement to prevent or remedy instances where a threat may occur to better protect the victim and other tenants in the community.

A management agent may consider the following actions to reduce or eliminate an "actual and imminent" threat:

- ✓ Barring the perpetrator from the property (where state and local laws permit);
- ✓ Changing the victim's locks (pursuant to the management agent's lock replacement policy and state and local laws);
- ✓ Installing basic security features (e.g., better lighting or an alarm);
- ✓ Encouraging the victim to seek an emergency transfer;
- ✓ Allowing an early lease termination;
- ✓ Allowing the victim to arrange for temporary absence from the assisted unit;
- ✓ Helping the victim access available services and support (e.g., providing information for a local victim service provider and civil legal assistance providers, to help the victim get any necessary court orders); and/or
- ✓ Working with police and victim service providers to develop a safety plan for the property and a plan of action for the victim. (See HB-2-3560, Chapter 6.32 "Termination of Occupancy.")

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Q. Establishing An Admissions Preference

Borrowers may establish an admission preference for qualified victims of domestic violence, dating violence, sexual assault, or stalking who are non-RD tenants referred by a partnering service organization or consortia of organizations. The Borrower may not limit the source of referrals to an agency, organization, or consortia that denies its services to members of any Federally protected class under fair housing laws, e.g., race, color, religion, national origin, sex, disability, or familial status. For example, the source of referrals may not be limited to only service providers of female victims of domestic violence, dating violence, sexual assault, or stalking.

To establish an admissions preference for non-RD tenants, Borrowers must submit amended Tenant Selection (HB-2, Chapter 6.22), Occupancy Policies and Rules (HB-2, Chapters 6.13 and 6.15), as applicable, in the Management Plan as outlined in HB-2-3560, Chapter 3.3(b), for Agency review. The amendment should include a detailed description of the Borrowers policy and procedure for giving priority placement at the top of RD's waiting list.

All routine tenant eligibility and screening criteria will apply.

R. Agency Monitoring

Agency monitoring should consist of regular reviews to ensure that Borrowers and management agents are complying with VAWA. Reviews will include the Management Plan, occupancy policies and rules
governing the project, project records, tenant files, tenant interviews, and management reviews. Reviews will determine whether VAWA activities (i.e., documentation, emergency transfers, bifurcations, strict confidentiality, and admission and eviction protection) are being handled properly.

A Borrower not in compliance with VAWA may be violating civil rights laws and if so, must be reported to the USDA's Office of Civil Rights. Any enforcement mechanisms available to RD should be used as necessary to ensure compliance with VAWA protections.

Recordkeeping and Reporting Requirements

Borrowers and management agents shall provide RD staff with access to VAWA records for the Triennial Supervisory Visit and at other times upon request by the Agency. Records should be retained for the longer period of three years or until the next scheduled Triennial Supervisory Visit is completed.

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Supervisory Visit (Forms 2000/2100)– Tenant Review, Tenant Interview and Management Review Questions

Tenant Review:

- ✓ Does the signed lease/lease addendum indicate that the housing is subject to VAWA and contain the required VAWA protections? Yes or No

Tenant Interview:

- ✓ Has the management agent provided the VAWA "Notice of Occupancy Rights" (HUD-5380) and the "Certification of Domestic Violence" (HUD-5382) forms to the adult household members at the time of move-in and recertification? Yes or No
- ✓ Are you aware of the rights, responsibilities, and protections afforded to you as a tenant under VAWA? Yes or No

Management Review:

- ✓ Are the Forms HUD-5380, "Notice of Occupancy Rights" and HUD-5382, "Certification of Domestic Violence" posted in common area location(s) at the property where they are visible to tenants and prospective tenants? Yes or No
- ✓ Are all adult household members provided the VAWA "Notice of Occupancy Rights" (HUD-5380) and the "Certification of Domestic Violence" (HUD-5382) upon move-in/rejection, recertification, and move-out? A signed acknowledgement of receipt may be maintained by the management agent and be placed in the appropriate file (i.e., Reject Files, Tenant Files or Move Out Files). Yes or No
- ✓ Does the Management Plan contain policies and procedures for protecting victims, including strict confidentiality measures for maintaining VAWA records and all communications with victims? Yes or No
- ✓ Record the number of: ____Requests received _____Requests resolved _____Requests pending
  Outcome of requests:
  ____Number of internal unit transfers (within same project)
  ____Number relocated to other RD-funded properties
  ____Number relocated to other assisted housing (e.g., HUD-assisted public housing/housing vouchers, or HOME)
  ____Number of tenants who chose to remain in unit (not a lease bifurcation)
  ____Number of lease bifurcations: _____Received _____In Process _____Completed

Review questions that are answered "No" could indicate a finding, should be explained in the comments section, and require further review. When a further in-depth review determines that a borrower or management agent is not in compliance with VAWA requirements, a finding of "Unacceptable VAWA Disclosure" should be assessed for the applicable area of review and servicing actions should be initiated to resolve the finding.

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S. Developing Partnerships with Victim Service Providers

Emergency Transfer Plans should be developed in consultation and collaboration with other public and private organizations and entities that are dedicated to helping victims of domestic violence, dating violence, sexual assault, or stalking. Borrower efforts to strengthen access to supportive services for victims of domestic violence, dating violence, sexual assault, or stalking should be ongoing. Some Borrowers have proactively developed valuable relationships with domestic violence victim advocates, legal aid services, and law enforcement agencies to ensure that victims are getting the supportive services they need.

Borrowers have an obligation to reach out to other owners in their jurisdiction and strive to establish a relationship in which they, whether private market or government-assisted, help one another to the extent feasible address emergency domestic violence, dating violence, sexual assault, or stalking situations.

Emergency Transfer Plans must be designed to facilitate a transfer as quickly as possible. Therefore, RD recommends including reference to other such resources in the plan.

Management Agents should share their best practices in developing a strong domestic violence, dating violence, sexual assault, or stalking victim education and program referral service.

Such practices may include:

- ✓ Participating in regular domestic violence working groups with domestic violence victim advocates, legal aid services, and law enforcement agencies;
- ✓ Inviting domestic violence victim advocates to speak to resident groups and property management staff;

- ✓ Providing easy-to-access and easy-to-understand information pamphlets;
- ✓ Facilitating counseling and support groups through available community space;
- ✓ Working with domestic violence victim advocates to make policy changes to better protect victims; and
- ✓ Establishing applicant admission preferences to prioritize victims for housing assistance.

These efforts can also help Borrowers identify local domestic violence experts for participation in grievance hearings.

T. Additional Resources for Victims

The U.S. Department of Justice's (DOJ) Office on Violence Against Women (OVW) maintains several resources and hotline numbers that may be of assistance to communities seeking contact information for national advocacy groups for victims or to learn more about domestic violence, dating violence, sexual assault, or stalking. This information is available at: https://www.justice.gov/ovw/areas-focus.

DOJ Office of Victims of Crime - State Map of Services and Information: http://www.ovc.gov/map.html

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DOJ Office of Victims of Crime - Help for Crime Victims Helpline:
http://www.ovc.gov/help/tollfree.html

The OVW Rural Sexual Assault, Domestic Violence, Dating Violence, and Stalking Program (Rural Program) seeks to enhance the safety of rural victims of sexual assault, domestic violence, dating violence, and stalking. The Rural Program supports projects uniquely designed to address and prevent these crimes in rural areas by
providing grants to a subgroup of domestic violence and sexual assault programs to support projects designed to address and prevent crimes in rural areas. Eligible applicants are limited to states, Indian tribes, territories, local governments, and nonprofit (public or private) entities, including tribal nonprofit organizations. DOJ Office of Victims of Crime - Awards by state: https://ovc.ojp.gov/states

Once posted, the solicitation to apply for this program can be found on OVW's website here: https://www.justice.gov/ovw/open-solicitations. For more information, contact OVW, (202)-307-6026.

Additional programs and phone numbers for advocacy organizations that assist victims of domestic violence, dating violence, sexual assault, and stalking on an emergency basis that may be contacted for assistance are:

- ✓ The National Domestic Violence Hotline, 1-800-799-SAFE (7233), SMS Text START to 88788, or (TTY) 1-800-787-3224 for immediate assistance.

- ✓ The National Resource Center for Domestic Violence (NRCDV) "Our mission is to strengthen and transform efforts to end domestic violence". NRCDV provides a wide range of free, comprehensive, and individualized technical assistance, training, and specialized resource materials. NRCDV will also route survivors to either their local DV Coalition or local program. 1-800-537-2238 or www.nrcdv.org.

- ✓ The National Housing Law Project's (NHLP) mission "is to advance housing justice for underserved people and communities. For over ten years, NHLP has been funded by the Department of Justice's Office on Violence Against Women to serve as a national technical assistance provider on the housing protections under the Violence Against Women Act (VAWA). NHLP has worked with thousands of advocates and housing providers on VAWA compliance and implementation issues." www.nhlp.org/initiatives/protections-for-survivors-of-domestic-and-sexual-violence/, 415-546-7000 or nhlp@nhlp.org.

- ✓ The National Victim of Crimes Hotline, 1-855-4-VICTIM (855-484-2846) or help-for-crime-victims-toll-free-helplines-1.pdf (victimsofcrime.org)

- ✓ Safe Housing Partnerships, "Working together to end homelessness for domestic and sexual violence survivors and their families". https://safehousingpartnerships.org/.

- ✓ Domestic Violence Help for Women
    - The Office of Women's Health (OWH), 1-800-994-9662, or https://www.womenshealth.gov/relationships-and-safety/get-help

    - Women's Law (Shelters for women, legal assistance, courthouse locations where you can file for a protection order, sheriff departments)

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https://www.womenslaw.org/find-help

- ✓ Sexual assault victim service providers
  - National Sexual Violence Resource Center Directory of Advocacy Organizations: https://www.nsvrc.org/organizations
  - National Sexual Assault Hotline, 1-800-656-HOPE (4673) or https://ohl.rainn.org/online

- ✓ Teen and youth advocacy and support
  - The National Teen Dating Abuse Helpline, 1-866-331-9474 or (TTY) 1-866-331-8453 or https://youth.gov/federal-links/national-teen-dating-abuse-helpline

- ✓ Culturally specific victim service organizations
  - Ujima, Inc.: National Center on Violence Against Women in the Black Community: https://www.ujimacommunity.org
  - Asian Pacific Institute on Gender Based Violence: https://www.api-gbv.org
  - Esperanza United: Knowledge base - Esperanza United
  - National Organization of Sisters of Color Ending Sexual Assault: www.sisterslead.org
  - Tribal Resource Tool: Resources for Survivors of Crime and Abuse: https://tribalresourcetool.org/

- ✓ Human trafficking victim service providers
  - Trafficking Victims Assistance Program: https://www.acf.hhs.gov/otip/map/trafficking-victim-assistance-program
  - National Human Trafficking Hotline: National Human Trafficking Hotline | The Administration for Children and Families (HHS.gov)
  - Office for Victims of Crime (OVC) grantees: https://ovc.ojp.gov/matrix-ovc-funded-human-trafficking-services-grantees-and-task-forces
  - National Human Trafficking Program Grantees: https://www.acf.hhs.gov/otip/map/domestic-victims-human-trafficking-program-grantees

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Exhibit A

USDA Rural Development Emergency Transfer Plan
The Violence Against Women Reauthorization Act of 2013

IMPORTANT: Strict confidentiality measures **must** be practiced to protect the victim's location.

In accordance with the Violence Against Women Reauthorization Act of 2013 (hereafter, "the Act"), tenants living in USDA Rural Development-financed Multifamily Housing properties who are – or fear becoming – victims of domestic violence, dating violence, sexual assault, or stalking, shall be permitted by the owner or manager to request a transfer to a safe dwelling unit in another RD-financed Multifamily Housing property, provided:

1. The tenant reasonably believes they or a household member will suffer harm from further violence if they remain in the same dwelling.

2. If the tenant is a victim of sexual assault, the alleged assault occurred during a 90-day period preceding the tenant's request for transfer.

Transfers under this plan are subject to the availability of other Rural Development Multifamily Housing units.

Eligible tenants who request an emergency transfer under the Rural Development Emergency Transfer Plan can receive a Letter of Priority Entitlement (LOPE) from Rural Development, as domestic or dating violence, sexual assault, and stalking are considered situations beyond the tenant's control. See 7 CFR 3560.159(c) Other Terminations.

A LOPE entitles victims to receive priority for available housing at any Rural Development-financed Multifamily Housing complex or Off-Farm Labor Housing property anywhere in the United States, provided the victim otherwise meets normal Tenant Eligibility criteria under 7 CFR 3560.152 or 7 CFR 3560.576(b) Eligible Households. The LOPE also can help the victim get preference in a U.S. Department of Housing and Urban Development (HUD) property if permitted by the housing complex's occupancy policy.

Rural Development may transfer the Rental Assistance to another Rural Development property.

Tenants should contact the property manager to request an emergency transfer or lease. The property manager may choose to request written documentation of the incident from the victim. If the property manager requires the victim to provide documentation to claim a threat or an incident of domestic violence, dating violence,

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sexual assault, or stalking, the property manager's request to the victim must be given in writing. When documentation of the incident from the property manager is requested, the victim may submit one of the following:

- Form HUD 5382 – Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking
- Form HUD 5383 – Emergency Transfer Request document
- An alternate form of acceptable documentation

In situations in which the victim cannot contact the property manager due to safety concerns, the victim's designee or service provider may contact Rural Development directly to request a LOPE.

The property manager shall contact their assigned Rural Development Multifamily Housing servicing official without hesitation. The servicing official will provide a LOPE indicating – at a minimum – that the tenant may receive priority placement in an available Rural Development unit without regard to income, and within the stated timeframes for using a LOPE. In certain instances, Rural Development may reissue a LOPE in order to maintain priority placement for the tenant.

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RURAL DEVELOPMENT
[Insert location here]

DATE: [Insert today's date]

SUBJECT: VAWA LETTER OF PRIORITY ENTITLEMENT (LOPE) FOR:
[Insert tenant (and, if applicable, family) name(s)]
[Insert tenant address]

Dear Tenant:

As a victim of domestic violence, dating violence, sexual assault, or stalking as defined by the Violence Against Women Act of 2013, you are eligible for priority placement at any Rural Development-financed Multifamily Housing complex or Off-Farm Labor Housing property nationwide that has available units you are eligible to occupy. This Letter of Priority Entitlement (LOPE) also may give you preference in non-Rural Development-financed properties and rental programs served by the U.S. Department of Housing and Urban Development (HUD) as their occupancy policies allow. Please present this LOPE to your new landlord.

Dear Rural Development or HUD Property Owners:

In accordance with the Violence Against Women Act of 2013, the above-named tenant and, if listed, their family, is eligible for this Letter of Priority Entitlement (LOPE).

In accordance with Regulation 7 CFR 3560.11 (LOPE definition), the above-named tenant must be given priority placement on all waiting list(s) associated with your properties. The only other tenants who can receive priority over the above-named tenant are those with similar LOPEs **already on** your waiting list(s), or tenants who require specific design accommodations in accordance with the Americans with Disabilities Act.

The LOPE must be used within 120 days of its issue date. The applicant is to remain in priority position on your waiting list(s) until they find an apartment they feel is safe. After 120 days, the tenant may continue to be placed on waiting lists for apartments for which they are eligible, but without priority. Rural Development may reissue a LOPE in order to maintain a tenant's priority placement.

NOTE: This priority places the above-named tenant, and, if applicable, their family, at the top of **all waiting lists** at your properties. The priority exceptions noted above do not depend on income and apartment size, except tenants with a LOPE will be ranked among themselves by income level, giving priority first to very low-income households, then to low-income households, and finally to moderate-income households.

To accept a LOPE, your property must have at least one apartment the tenant is eligible to occupy. If the tenant occupies an apartment for which they are ineligible, the lease

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must state that the tenant will move to the first appropriate apartment for which they are eligible.

Rural Development may transfer the Rental Assistance to another Rural Development property.

If the tenant's current security deposit is returnable but has not been released to the tenant by the new property's move-in date, it should be assigned directly to you by the original property as long as permitted by state law. Otherwise, you will have to wait to receive the security deposit until it is returned to the tenant.

Tenant Data:

Composition of family: _____

Type of unit required (circle one or more): Tenant only / Family / Elderly / Disabled

Unit-size eligibility: _____

Last verified income: _____ as of _____

RA or Section 8 voucher: _____

Current security deposit: _____

If you have any questions, please contact your Multifamily Housing Servicing Official at the address below:

[RD MFH Servicing Official]

[Address]

[Phone number]

[RD MFH Servicing Official signature and title]

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Exhibit B
Example Lease Addendum - HUD-91067 (Exp. 6/30/2017)
USDA Rural Development – Multi-Family Housing Programs
Violence Against Women Reauthorization Act of 2013

TENANT	LANDLORD	UNIT NO. & ADDRESS

Purpose of the Addendum
The lease for the above-referenced unit is being amended to include Rural Development's policies adopting the provisions of the Violence Against Women and Justice Department Reauthorization Act of 2013 (VAWA).

Conflicts with Other Provisions of the Lease
In case of any conflict between the provisions of this Addendum and other sections of the Lease, the provisions of this Addendum shall prevail.

Term of the Lease Addendum
This Lease Addendum shall continue to be in effect through the term of the Lease, any lease renewals and subsequent month-to-month tenancies until the Lease or tenancy is terminated.

VAWA Protections

1. The Landlord may not consider incidents of domestic violence, dating violence or stalking as serious or repeated violations of the lease or other "good cause" for termination of assistance, tenancy or occupancy rights of the victim of abuse.

2. The Landlord may not consider criminal activity directly relating to abuse, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant's family is the victim or threatened victim of that abuse.

3. The Landlord may request in writing that the victim, or a family member on the victim's behalf, certify that the individual is a victim of abuse and that the Certification of Domestic Violence, Dating Violence or Stalking, Form HUD-5382, or other documentation as noted on the certification form, be completed and submitted within 14 business days, or an agreed upon extension date, to receive protection under the VAWA. Failure to provide the certification or other supporting documentation within the specified timeframe may result in eviction.

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ACKNOWLEDGEMENT:

Tenant (head of household)	Date
Tenant	Date
Landlord	Date

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CHAPTER 7: RENTS, SHELTER COST, AND UTILITY ALLOWANCES

7.1 INTRODUCTION

The purpose of the low interest rate loans that the Agency makes is to enable borrowers to set rents at rates that are affordable to low- and moderate-income tenants, the target occupants for Agency-financed multi-family housing. Rents provide the necessary income stream to maintain and operate the housing. Thus, the Agency has a twofold interest in maintaining the rent streams in multi-family housing to protect the value of the property at affordable rates.

This chapter presents the program rules regarding rents, occupancy charges, and utility allowances for multi-family housing projects and the Agency's procedures for determining borrower compliance, including those for Farm Labor Housing projects. After reading this chapter, the MFH Servicing Official will understand the various types of project rents and how they are set, how rents are to be paid by tenants and collected and reported on by the borrower, and the procedure for changing rents in a project. They will also learn how security deposits are set and when they may be collected.

The Agency defines "rent" as the amount established as a charge for occupancy in a rental unit of Agency-financed multi-family housing. Rents must be established at the same rate for all similar units in the housing project: basic or note rent plus the utility allowance (when used) or the occupancy charge plus the utility allowance. If the utility costs are included in the rent, the rent will equal shelter costs.

Unless otherwise noted, for purposes of this discussion the term "rents" refers to both rents and occupancy charge, and "tenants" refers to both tenant and members of a cooperative.

SECTION 1: RENT REQUIREMENTS

7.2 RENT REQUIREMENTS BY PROJECT TYPE *[7 CFR 3560.202]*

A. Major Rent Levels

Subject to Agency approval, borrowers set project rents and utility allowances based on debt service and reasonable operating and maintenance expenses. Projects will have one or more of the following four rents:

Note rent is the rental charge established to cover expenses in the housing project's approved budget and the required loan payment set at the interest rate shown in *Form RD 3560-52*, *Promissory Note.*

Basic rent is the rental charge established to cover expenses in the housing project's approved budget and the required loan payment contained in *Form RD 3560-52* reduced by the interest credit agreement.

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U.S. Department of Housing and Urban Development (HUD) contract rent is the rental charge established for housing receiving project-based HUD Section 8 rental subsidies in accordance with 24 CFR Part 880 or Part 884, as applicable.

Low-income housing tax credit (LIHTC) rent is the rental charge established in accordance with LIHTC requirements.

B. Rent Levels by Project Type

These rent levels will apply depending upon the project type as follows:

- Plan I projects, direct and full-profit projects with loans made prior to 1968, and unrestricted Farm Labor Housing projects all have rents that are note rate only. Tenants all pay the same rent depending upon the size of their unit.

- Plan II projects have a minimum rent that is the basic rent and a ceiling rent that is the note rate rent. Tenants without rental subsidies (see Chapter 8, Rental Subsidies, for details) pay a rent within that range, based on their incomes. Tenants with rental assistance pay the basic rent, although the rental subsidy may pay all or a portion of the rent on behalf of the tenant.

- HUD Section 8 projects with interest credit have a minimum basic rent, a maximum note rate rent, and a HUD rent.

- HUD Section 8 projects without interest credit have a note rate rent and a HUD rent.

Exhibit 7-1 summarizes the rents that appear in each project type.

Exhibit 7-1

Rents by Project Type

Project Type	Rents
Plan I projects	Note rent
Plan II projects	Note, basic
Section 8/515 projects without interest credit	Note rent, HUD contract rent
Section 8/515 projects with interest credit	Note rent, basic rent, HUD contract rent
Early projects (pre-1968, direct loan and full profit projects)	Note rent
Labor housing—On Farm	No rent or note rent
Labor housing—Off Farm	Note
Congregate housing/group homes	Note rent, basic rent
Cooperatives	Note rent, basic rent

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C. Setting Rent Levels

Rents are set by unit size and established by the borrower through a project budget at levels adequate to cover debt service, reasonable project operating expenses, and a return to owner if appropriate. Initial rents and any changes must be approved by the Agency as part of the project budget approval process. Chapter 4 addresses procedures for determining whether project budgets are reasonable.

7.3 UTILITY ALLOWANCES *[7 CFR 3560.202]*

When tenants pay some or all of their utility costs themselves, borrowers must establish a utility allowance to determine the amount tenants pay toward rent. The utility allowance is deducted from the total shelter cost calculated for the tenant, and the difference is paid by the tenant as rent. If the tenant is entitled to a utility reimbursement, management companies may issue a joint check payable to the tenant and utility company, if they choose to do so.

A. Setting Utility Allowances

The utility allowance is based on expected costs for utilities that are paid by the tenants. Once established, the borrower must review the utility allowance annually. This is done in conjunction with the annual budget process. The borrower must submit *Form RD 3560-7, Multiple Family Housing Project Budget/Utility Allowance* to the Agency and follow the procedures described in Section 4 of this chapter.

B. Approving Utility Allowances

MFH Servicing Officials must review the utility allowance documents submitted with the budget to make sure that the numbers being used are reasonable and comparable to other projects in the same market area. The MFH Servicing Official should check current rate schedules and known rate increases from such sources as suppliers of electric utility, natural gas utility, water and sewer service, fuel oil and bottle gas; public service commissions; real estate and property management firms; and state and local agencies, including public housing authorities. In addition, the MFH Servicing Official should check project budgets of any other Agency-funded projects in the area to see if utility allowances are similar. Chapter 4 provides further guidance on revising cost increase justifications.

C. Monitoring Utility Allowances

To make sure that borrowers are correctly applying utility allowances, servicing staff must check tenant leases during supervisory visits of projects where tenants pay their own utilities. These leases should reflect the current utility allowances as shown on the current approved budget for the project.

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7.4 DETERMINING TENANT RENT PAYMENT *[7 CFR 3560.203]*

Tenants pay rents in an amount that depends on the project type, whether utilities are included in the rent, the tenant's income, and the availability of rental subsidy.
Form RD 3560-8, Tenant Certificate is used to determine individual rents. Borrowers must adjust net tenant contribution and unit rents, if applicable, whenever there is a change in tenant household status sufficient to generate a new certification in accordance with 7 CFR 3560.152.

A. Net Tenant Contribution

Form RD 3560-8 is used to calculate a tenant's rent based on their income. The net tenant contribution to rent must not exceed the highest of:

Thirty percent of monthly adjusted income, with an adjustment for any utility allowances, or

- Ten percent of gross monthly income, with an adjustment for any utility allowances, or
- If the household is receiving payment for public assistance from a public agency, the portion of such payment which is specifically designated by that agency to meet the household's shelter costs, or
- The basic rent, unless Rural Housing Service (RHS) rental assistance is provided to the household.

For an example of how to calculate the net tenant contribution, refer to Exhibit 7-2.

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Exhibit 7-2

Examples—Net Tenant Contribution

(Where Rental Assistance (RA) is Available)

Example 1: The basic rent for a one-bedroom unit at Beautiful Acres Apartments is $350 and the note rate rent is $450. Tenants at Beautiful Acres pay their utilities directly, so there is a utility allowance of $60. *Form RD 3560-8* for Joe Smith shows that he has an annual income of $12,000. Since he is elderly, he receives a $400 adjustment for elderly status, giving him an adjusted annual income of $11,600. In completing *Form RD 3560-8*, the site manager calculates that 30 percent of Mr. Smith's adjusted monthly income is $290 and 10 percent of his gross monthly income is $100. Since he is receiving no payment for public assistance, the site manager enters $290 on line 30 (which is the highest of 30 percent of adjusted income, or 10 percent of monthly gross income, or the public assistance payment) of *Form RD 3560-8* as the Gross Tenant Contribution. The utility allowance must then be deducted, leaving a unit rent payment by Mr. Smith of $230.

Basic Rent	$350
Note Rate Rent	$450
Utility Allowance	$60
Mr. Smith's Annual Income	$12,000
Adjustment for Elderly Status	$400
Adjusted Annual Income	$11,600
30 Percent Adjusted Monthly Income	$290
10 Percent Gross Annual Income	$100
Payment for Public Assistance	$0
Highest of Above	$290
Deduction for Utility Allowance	$60
Unit Rent Payment for Mr. Smith	$230

Example 2: Joe Smith has decided to move to Cozy Home Apartments. The rents there include utilities. The basic rent for a one-bedroom unit for which he qualifies is $360 and the note rate rent is $460. His income information is the same, which means $290 is again entered onto line 30, Gross Tenant Contribution, of *Form RD 3560-8*. Since there is no utility allowance, Mr. Smith will make a unit rent payment of $290.

Basic Rent	$360
Note Rate Rent	$460
Utility Allowance	$0
Mr. Smith's Annual Income	$12,000
Adjustment for Elderly Status	$400
Adjusted Annual Income	$11,600
30 Percent Adjusted Monthly Income	$290
10 Percent Gross Monthly Income	$100
Payment for Public Assistance	$0
Highest of Above	$290
Deduction for Utility Allowance	$0
Unit Rent payment for Mr. Smith	$290

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B. Unit Rents

1. Note Rents

In projects with note rents only, tenants will pay the note rent, regardless of income, unless they are income ineligible, in which case they will pay a surcharge.

When a Plan II project is experiencing severe vacancies due to market conditions, the Agency may allow the borrower to charge a Special Note Rent (SNR) to attract or retain tenants whose income level would require them to pay note rent. An SNR is less than the note rent but is higher than the basic rent. The requirements for requesting and receiving an SNR are established under 7 CFR 3560.454.

2. Basic Rents

In projects with basic and note rents, tenants will pay their net tenant contribution, but no less than the basic rent and no more than the note rent.

3. Rental Assistance Rents

Tenants who are eligible to receive available rental assistance in a project pay the net tenant contribution. Rental assistance makes up the difference between the net tenant contribution and approved shelter costs (basic rent). Chapter 8 provides further details on charging and collecting rents from tenants with rental assistance.

4. HUD Section 8/USDA Section 515 Rents

In projects with HUD Section 8 housing assistance contracts, HUD sets the rents and utility allowances and tenants pay the borrower rent the total tenant payment (TTP), which is the greater of: 30 percent of monthly adjusted income or 10 percent of gross income; welfare rent or; $25. The HUD rent should never be less than the basic rent. If it is, the borrower must make up the difference, since it cannot be collected from the tenant.

5. Tenant-Based Subsidies

Tenants with tenant-based subsidies such as HUD vouchers pay the rents established at the project. If the voucher is less than the project rent, the tenant is responsible for the difference.

C. Overage

Overage is that portion of a tenant's net tenant contribution that exceeds basic rent up to note rent. Full overage is an amount equal to the difference between the note rent for a unit and the basic rent.

Example

Jimmy Smits pays $180 a month in rent, which is 30 percent of his adjusted monthly income. The basic rent is $150. The $30 difference between the basic rent and Mr. Smits's rent payment is called overage.

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D. Unit Rents for Ineligible Tenants

There will be times when ineligible tenants occupy multi-family housing units. Such tenants must pay rent based on the type of project they occupy.

1. Surcharge for Ineligible Tenants in Plan I Projects

Ineligible tenants occupying a Plan I project must pay the established note rate rent plus a rent surcharge of 25 percent of the established rent. A Plan I project is defined in 7 CFR 3560.11.

2. Income-Ineligible Tenants in Plan II Projects

Income-ineligible tenants occupying Plan II projects must pay the note rate rent. A Plan II project is defined in 7 CFR 3560.11.

E. Unit Rents for Site Managers, Caretakers, and Owner-Occupied Units

When used as a revenue producing unit at approved rental rates, the salary paid to the site manager and/or caretaker will be included in the project operation and maintenance expenses. The same amount will be included in the annual income of the site manager and/or caretaker. The site manager and/or caretaker may be an eligible or ineligible tenant and their rent contribution will be based on their total income from all sources as shown on the tenant certification form.

When the unit is used as a non-revenue producing unit, the project cost of providing the unit will be treated the same as those of other non-revenue producing portions of the project. Project rental rates will be established as if the unit did not exist as living quarters. Debt payment will be as if the units were rented at basic rent. A tenant certification form will not be prepared for this situation.

With prior approval of the Leadership Designee, an owner may occupy a unit in the project when the owner will manage the project rather than hiring a management agent or site manager. If the unit is a revenue-producing unit, rental rates will apply to the borrower as they would to any other caretaker or manager.

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F. Unit Rents for Low Income Housing Tax Credit Units

1. Setting and Collecting Rents

Unit rents in projects with LIHTCs will be set in accordance with regular Agency program rules. Two examples of setting such rents are provided in Exhibit 7-3. The Agency must be aware that the LIHTC program prohibits owners from charging tenants more than a certain amount of rent in LIHTC units. Borrowers who do this risk recapture of their tax credits and stiff penalties. While the law does not allow the borrower to collect basic rent from the tenant if it exceeds the LIHTC limitation, overage may be collected from the tenant in only those projects with 1991 and later tax credit allocations, if necessary, according to *Form RD 3560-8* even if that rent exceeds the LIHTC limitations.

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Exhibit 7-3

Setting Unit Rents for Section 515 Projects with LIHTCs

Example 1: Assume the units receive only interest credit and no rental assistance or HUD Section 8 assistance. One-bedroom apartment: basic rent = $275, LIHTC rent = $250. The expense level required to meet financial requirements of the project exceeds the rent allowed to be charged by the low-income housing LIHTC program by $25.

Example 2: Assume a project where LIHTC rent is equal to or greater than the basic rent, and a previously eligible tenant's household income increases beyond the LIHTC rent. In this case, the tenant may or may not have previously received rental assistance or HUD Section 8. Example: One-bedroom apartment: basic rent = $250, LIHTC rent = $300. Only one co-tenant works. Household pays $200 per month and rental assistance is $50. Household is Agency and LIHTC eligible. Second co-tenant goes to work, causing the household rent to go up to $350. The new rent level exceeds both basic and LIHTC rents. Overage of $100 is due. LIHTC rent limitations require that the owner charge tenants no more than $300, which causes a shortage of $50 per month in overage due the Agency. Therefore, the owner is accountable for this shortage if the project was allocated LIHTCs prior to 1991. For projects allocated LIHTCs after 1990, the owner is allowed to collect the overage due from the tenants because gross rent that tenants pay in the LIHTC unit does not include any rental payment to the owner of the unit to the extent such owner pays an equivalent amount to the Agency under Section 515. The tenant cannot be required to move based on LIHTC ineligibility.

2. Agency Review and Monitoring of LIHTC Rents

The law does not excuse the borrower from paying the basic rents required to the Agency; these rents must be deposited into the operating account in full. Borrowers must be informed by the Agency that the borrowers are responsible for funding any gap between basic rents and tax credit rents collected from tenants when basic rent exceeds LIHTC rents. This fact should be noted when the MFH Servicing Official reviews the project operating budget.

Borrowers must not use project funds to make up any difference between rents required under Agency program rules and the maximum allowed rents under the LIHTC program, and they must collect the required rents. During the annual review process, MFH Servicing Officials should review the previous year's budget with a focus on any cash shortfalls. If the MFH Servicing Official determines that a shortfall exists due to differences between tax credit limitations and basic rents, they must ensure that a provision is made in the coming year's budget and future years on line 11, "Cash-non project" of *Form RD 3560-7* for the owner to contribute necessary funds to meet the required rents.

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G. Adjustments to Unit Rents

Borrowers must adjust net tenant contribution and unit rents, if applicable, whenever there is a change in tenant household status sufficient to generate a new certification in accordance with 7 CFR 3560.152. Borrowers are not required to recertify a household prior to the annual recertification unless a change in household income of $100 or more per month occurs. If a tenant requests it, the borrower must recertify the tenant for a change in household income of $50 or more per month (see Chapter 6 for further details on interim recertifications).

A change in household status could take place in any one of the following circumstances:

- The tenant has had a change in income (increase or decrease);
- The tenant has had a change in the size of the household (increase or decrease in number of people residing in the unit); or
- The tenant has had a change in the type of household (the household may become handicapped or elderly, or a 17-year-old child may turn 18).

If *Form RD 3560-8* shows that a change in rents is in order as a result of the change in household status, the effective date of a tenant's changed rent is the first day of the month following third-party verification of the tenant's reported changes. However, the management agent must complete the verification process no later than 30 days following the tenant's notice of the change.

7.5 RENTS DURING EVICTION OR FAILURE TO RECERTIFY *[7 CFR 3560.208]*

Tenants must continue to pay rents during termination through eviction and if they are not recertified for occupancy.

A. Rents for Tenants Being Evicted

Tenants must continue to pay rents as per *Form RD 3560-8* while the eviction process is underway.

B. Rents for Tenants without a Current Certification

A tenant who is not recertified is technically an ineligible tenant, and note rate rent must be collected and deposited to the general operating account for that tenant. Whether the tenant or the borrower/management agent pays the note rate depends upon who is to blame for the failure to recertify.

1. Tenant Failure to Recertify

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If a borrower can document that a tenant received a notice specifying a tenant recertification date, and the tenant fails to comply by the specified date or fails to cooperate with verification or other procedures related to the tenant's recertification so that the tenant recertification cannot be completed by the recertification date, the borrower, within 10 days of the recertification date, will give the tenant and the Agency written notification that:

Termination proceedings are being initiated, in accordance with 7 CFR 3560.159; and

The tenant will be charged note rent until the tenant's lease is terminated.

2. Borrower Failure to Recertify

If a borrower cannot document that a tenant received a recertification notice, and a tenant is not recertified within 12 months of the most recently executed tenant certification, tenants will continue to make net tenant contributions to rent based on their most recent *Form RD 3560-8.* The borrower must remit to the Agency from non-project funds, full overage and lost rental assistance, until the tenant is re-certified.

7.6 IMPROPERLY ADVANCED RENTS *[7 CFR 3560.209]*

Improperly advanced interest credit or rental assistance, whether it was the fault of the borrower or the tenant, will be recaptured in accordance with the requirements established by 7 CFR part 3560, subpart O.

A. Borrower Error

When rents have been improperly collected from a tenant due to borrower error, such as a miscalculated *Form RD 3560-8* the borrower must make up the difference to the Agency for any additional rents that should have been collected or reimburse the tenant for any excess rents collected.

B. Tenant Fraud

When the borrower has collected an incorrect rent amount from the tenant due to tenant fraud, the borrower must make every attempt to recapture the rent due from the tenant. Once the borrower has delivered documentation to the Agency of failed attempts to collect, the MFH Servicing Official must comply with the requirements of 7 CFR part 3560, subpart O to pursue collection.

7.7 MONITORING TENANT CONTRIBUTION AND UNIT RENTS

A. Borrower Monthly Submissions

The Agency monitors unit rents and tenant contributions on a monthly basis via *Forms RD 3560-29* and *RD 3560-8*.

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B. Site Visits

The MFH Servicing Official will verify information on *Forms RD 3560-29* and *RD 3560-8* during site visits through random tenant interviews. If the MFH Servicing Official is told by any tenant that they pay a different amount of rent than is shown on *Form RD 3560-29 Notice of Payment Due Report*, the MFH Servicing Official must ask the borrower or management agent to explain the discrepancy.

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SECTION 2: SECURITY DEPOSITS

7.8 SECURITY DEPOSITS *[7 CFR 3560.204]*

Borrowers should collect security deposits as assurance of rental payment or charges for damages when it is reasonable and customary for the area in which the project is located. Security deposits are largely governed by state and local laws; MFH Servicing Officials must familiarize themselves with those laws.

A. Allowable Amounts

The borrower must specify the amount of the security deposit that will be charged in a project by unit size in the management plan and in the dwelling lease. This amount may not be changed without prior consent of the Agency. The following requirements must be met:

- Borrowers may charge security deposits in an amount that is typical for the area, but the security deposit charged to a tenant may not exceed that tenant's contribution for one month's rent or the basic rent, whichever is greater;

- Households receiving a HUD rental subsidy must pay security deposits according to HUD requirements;

- Members in a cooperative must pay a membership fee equal to one month's occupancy charge; and

- Security deposits for tenants may not be increased in later years, even if the tenant has been residing in the project for a long time and the initial amount charged is not representative of current basic rents or security deposits.

B. Payment Plans

If tenants cannot pay the full amount of the security deposit initially, they may be placed on a payment plan. Should installments not be met, the total charge may become due and payable in full.

C. Authorized Uses

Funds in the security or membership fund account must only be used for authorized purposes as specified by the borrower's management plan.

Borrowers may charge tenants for damage or loss caused or allowed by the tenant equal to the cost of the damage or loss.

Borrowers must consider expenses due for addressing normal wear and tear as normal operating expenses and must not charge tenants a fee or withhold security deposits to pay for such costs.

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Borrowers may withhold security deposits and may charge tenants for damage or loss costs above security deposit amounts. An itemized accounting for any charges against the security deposit must be presented to the tenant after the move-out inspection, unless the tenant has abandoned the project and their whereabouts are unknown and cannot be ascertained after reasonable inquiry. Resolution of any security deposit disputes must be handled in accordance with state and local laws.

Any amount which is kept by the borrower as a result of lease or occupancy agreement violation must be transferred to the general operating account and treated as project income.

D. Accounting and Interest

Security deposits must be held in a separate bank account in a Federally insured institution in accordance with 7 CFR 3560.302 (see Chapter 4). These funds are held in trust for the tenant until used or returned to the tenant.

Any interest earned on security deposits will accrue in accordance with state law, but in no case will it accrue to the project management or the borrower. If a state requires the borrower to pay the interest earned on security deposits and the borrower collects more interest than is required by the state, the additional interest must be deposited into the general operating account for use by the project.

Any interest on security deposits unclaimed by a tenant must accrue to the project and must be deposited by the borrower into the general operating account.

E. Additional Deposits

Borrowers may charge additional deposits for pets; however, these must not exceed basic rent for the animal owner's unit. Where a service animal is necessary for the normal function of a household member, an additional security deposit must not be charged.

Borrowers must not charge additional security deposits based on disabilities of tenants or other personal characteristics.

7.9 MONITORING SECURITY DEPOSITS

MFH Servicing Officials will monitor security deposits charged to and collected from tenants during supervisory visits by:

Reviewing project annual financial statements;

- Reviewing dwelling leases and comparing the amount charged with what has been specified in the current management plan;

- Reviewing bank statements to see what the deposits of security deposits total; and

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- Asking tenants to confirm what they have paid as security deposits.

Any discrepancies must be explained by the borrower or management agent. Monitoring of security deposit accounts is further addressed in Chapter 3.

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SECTION 3: RENT COLLECTION

7.10 RENT COLLECTION *[7 CFR 3560.209]*

Borrowers must collect rent on a monthly basis. Rents should be due on the first day of the month. The time and place of onsite collection and/or the address for payment by mail should be well publicized and consideration should be given to an after-hours depository, if needed. Borrowers must maintain an accounting system to collect and track receipts that can be audited.

A. Tracking Rents

Any collection system employed by the borrower must include the following:

- A serially numbered receipt book or similar device to track collections;
- A ledger that shows which tenants have paid their rents and which have not; and
- If collections are held onsite, they must be secure. A safe may be used to ensure security.

The borrower must explain how the above requirements are to be met in the management plan. The MFH Servicing Official will verify that these requirements are being met during onsite supervisory visits by asking to see the receipt book or similar tracking device, the ledger, and the onsite collection device, if any.

B. Fees for Late Payments

Borrowers may adopt a late fee schedule for overdue rental payments. Late fee schedules must be submitted to the agency for approval as part of the housing project's management plan, be in accordance with state and local law, and consistent with the following requirements:

(1) A grace period of 10 days from the rental payment due date must be allowed for all tenants.

(2) The late fee must not exceed the higher of $10 or an amount equal to 5 percent of the tenant's gross tenant contribution.

(3) Tenants receiving housing benefits from sources other than the Agency may be subject to the late rent fee requirements of the other funding sources.

Any other type of schedule must be submitted by the borrower to the Agency for approval. All schedules must be in accordance with state and local laws and must be justifiable. To approve the schedule, the MFH Servicing Official needs to make sure that the fees are not excessive, are customary for the area, and allow for a reasonable grace period.

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The borrower must describe any late fee schedule in the management plan. During the onsite supervisory visit, the MFH Servicing Official must ask tenants about the late fees schedule to make sure it is as the borrower has described it. The MFH Servicing Official must also check leases to confirm that the late fee schedule is stated and matches its description in the most current management plan. Any discrepancies must be explained by the borrower.

7.11 BORROWER REPORTING OF RENTS

Borrowers must report to the Agency on *Form RD 3560-29, Notice of Payment Due Report* all rents, overages, and surcharges collected. This form shows the occupancy status of each unit, rents collected from each tenant, and borrower payment and agency tracking of overage. Overage is the amount by which total rental payments paid or to be paid by the tenants of a project exceed the total basic monthly charge (see paragraph 7.4). Borrowers identify any overage collected on *Form RD 3560-29*. Overage is returned by the borrower to the Agency. Overage for an account with an interest credit agreement is charged to the account as additional interest on the initial loan. Tenant contributions must be applied first to rental charges rather than to miscellaneous charges and fees, such as late fees.

A. Agency Tracking of Overage

The Agency must process overage that is reported and returned by the borrower with *Form RD 3560-29* through the use of MFIS. Overage is coded for Agency accounting purposes depending upon the type of project it is collected from as follows:

Overage Type 1: Occupancy surcharge paid by ineligible tenants in Plan I projects. Occupancy surcharge is equal to twenty-five percent (25%) of note rate rent.

Overage Type 2: Rents paid by tenants in a Section 8/515 Project with an Interest Credit Plan Code of 7 or 8 that are greater than the basic rent, up to the note rent.

Overage Type 3: Rents paid by tenants in a Plan II project that are in excess of the basic rent up to the note rate rent. This includes HUD contract rents in a Section 8/515 project with an Interest Credit Plan Code of 2 that are greater than the basic rent, up to the note rate rent.

Overage collected that is in excess of the note rate rent in Section 8/515 projects with interest credit, where the HUD contract rent exceeds note rate rent, is reported on *Form RD 3560-29* as excess Section 8 funds and is deposited into the project reserve account.

For additional information on how the Agency handles overage, please refer to the Automated Multi-Family Housing Accounting System (AMAS) manual.

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B. Payment of Overage for Multi-Family Housing Projects with Interest Credit and No Rental Assistance

When 30 percent of a tenant's adjusted income exceeds the basic rent, the difference they pay in rent between the basic rent and the note rate rent is referred to as overage. This is returned by the borrower to the Agency as extra interest payment on the loan. Exhibit 7-4 provides an example of how overage is paid.

Exhibit 7-4
Example—Overage Payments at Sunny Brook

Basic Rent: $350	Note Rate Rent: $400		Utility Allowance: $0
Tenant	30% of Adjusted Monthly Income	Rent Payment	Overage Payment
Smith	$200	$250	$0
Miller	$350	$350	$0
Jones	$375	$375	$25
Young	$400	$400	$50
Brown	$400	$400	$50

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C. Payment of Overage for Section 8/515 Projects

It is Agency policy that any funds paid by HUD are paid on behalf of a tenant. Therefore, the Agency does not consider any HUD Section 8 payments as excess funds until any benefits provided by the interest credit agreement are recovered. Borrowers must collect overage for their tenants as follows:

1. For Section 8/515 Projects with a One Percent or Two Percent Reduced Interest Rate

In 100 percent Section 8/515 projects when the HUD contract rental rate is more than the one or two percent reduced interest rate and is either equal to or less than the note rate rent, overage will be paid to the Agency in an amount equal to the difference between the HUD contract rental rate and the 1 or 2 percent reduced interest rate. The overage is reported as Overage Type 2.

In 100 percent Section 8/515 projects when the HUD contract rental rate is greater than the note rate rent, the difference between the one or two percent reduced interest rate and the HUD contract rate will be paid to the Agency and reported as overage Type 2. The amount equal to the difference between the HUD contract rental rate and the Agency note rate rent will be deposited in the reserve account as excess income.

In 100 percent Section 8/515 projects when the HUD contract rental rate exceeds the note rate rent, the borrower must use *Form RD 3560-29* to document the required deposit in the reserve account.

Exhibits 7-5 and 7-6 provide examples of how overage is determined in Section 8/515 projects.

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Exhibit 7-5

Determining Overage in Section 8/515 Projects With 1 or 2 Percent Reduced Interest Rate—Examples

Example 1

1 or 2 Percent Reduced Interest Rate	HUD Contract Rent	Note Rate Rent
$250	$300	$375
$50 difference paid to Agency as overage type 2		$75 interest credit

Example 2

1 or 2 Percent Reduced Interest Rate	Note Rate Rent	HUD Contract Rent
$250	$375	$400
$125 difference paid to Agency as overage type 2		$25 required to be placed into reserve

Note: If the HUD contract rent and the Agency 1 or 2 percent reduced interest rent are the same, then the first column would not apply.

2. For Section 8/515 Projects with Full Interest Credit

In Section 8/515 projects the overage is the difference between basic rental rate and the note rate rent including the income from HUD. The overage will be reported as Type 3.

In the cases where the HUD contract rental rate exceeds the note rate rent the difference is excess income and will be deposited in the reserve fund. The borrower should use *Form RD 3560-29*, Part I, items 23 through 29, to document the required deposit in the reserve account.

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Exhibit 7-6

Determining Overage in Section 8/515 Projects With Interest Credit—Examples

Example 1

Basic Rent	HUD Contract Rent	Note Rate Rent
$175	$300	$375
	$125 difference paid to Agency as overage type 3 by Section 8 tenants and subject to overage type 2 by non-Section 8 tenants	$75 interest credit and subject to overage Type 1 from non-Section 8 tenants

Example 2

Basic Rent	Note Rate Rent	HUD Contract Rent
$175	$375	$400
	$200 difference paid to Agency as overage by Section 8 tenants and subject to type 2 overage by non-Section 8 tenants	$25 required to be placed in reserve account as excess income

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SECTION 4: RENT CHANGES

7.12 OVERVIEW

All borrowers, including those using HUD Section 8 contract assistance, must obtain prior Agency approval for a rent increase. Changes in rental rates will apply to all units in a project. Rent change requests for multi-family housing projects with no HUD subsidy are typically submitted and reviewed at the same time the borrower submits their annual budget for approval. Rent changes in Section 8/515 projects resulting from rent increases by HUD must also be reviewed and must not automatically be approved. For any project, only the amount of rent necessary to cover project expenses must be approved. This section covers rent changes in projects without HUD subsidies, then changes in projects with HUD subsidies.

7.13 CHANGES IN RENTS AND UTILITY ALLOWANCES *[7 CFR 3560.205]*

It may be necessary as operating costs and/or revenues in a project fluctuate for the borrower to request Agency approval to effect a rent change. Exhibit 4-1 shows the timeline for borrower submission and Agency review of rent change requests. This process is also described in Chapter 4.

A. Rent Change Requests under Special Circumstances

The MFH Servicing Official may accept borrower requests for rent or utility allowance changes at times other than with the annual budget submission under special circumstances where a change is necessary to preserve the financial integrity of a project and the financial distress is due to circumstances beyond a borrower's control. Such circumstances might be in the event of a natural disaster or when work-out procedures are necessary.

When a Plan II housing project is experiencing severe vacancies due to market conditions, the Agency may allow the borrower to charge a special note rent (SNR), which is less than note rent but higher than basic rent, to attract or retain tenants whose income level would require them to pay special note rent. The requirements for receiving an SNR are established under 7 CFR 3560.454.

B. Annual Utility Allowance Reviews

The borrower should review tenant paid utility allowances on an annual basis to determine whether any changes have to be made. The borrower should indicate no changes to utility rates in the comment section of the budget narrative.

C. Tenant Notification and Comments

At the same time the borrower submits the initial notice to the Agency that they intend to submit a rent change request, the borrower will send or deliver notices to each tenant in the project notifying them of the rent change request that will be submitted to the Agency with their annual budget. **Appendix 4** provides an example of such a notice.

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The borrower must also post this notice in a common area frequented by the tenants, such as the laundry room or near the mailboxes.

The notice must notify tenants that they have 20 days to provide their comments to the Agency. If during this time the Agency receives any tenant comments, these must be immediately forwarded to the borrower, with the identity of the tenant protected. This can be done by either paraphrasing the comments for the borrower or by removing any identifying information from the correspondence received from the tenant and forwarding it on to the borrower.

After the 20-day comment period, the Agency must notify the borrower of approval or rejection within 10 days. If the Agency approves a rent or utility allowance increase request where comments were solicited, tenants should be notified of the rent or utility allowance change that will take effect at least 30 calendar days from the date of the notification.

D. Documentation

The borrower must fully document any rent change request. Requests for a rental charge change must be based on a realistic projected budget for the interim year or the ensuing full year. The borrower must provide to the Agency the information identified in Exhibit 7-8 with the rent or utility allowance change request.

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Exhibit 7-8

Information Required to Document Rent or Utility Allowance Change Request

1. *Form RD 3560-7* must be used to reflect the project's financial needs for the year and thereby rental charge requirements. A narrative cover letter must be included explaining why the rent change is necessary. A new operating budget for the fiscal year must show:
   - Currently approved budget at old rents;
   - Proposed budget at proposed new basic rents; and
   - Proposed budget at proposed new note rate rents (if applicable).
2. Actual utility costs. Refer to Chapter 4 for a description of the information required to document utility allowance change requests.
3. Additional documentation. Additional documentation must be attached to *Form RD 3560-7* in accordance with the instructions to these forms as evidence of the need for the rent or utility allowance change.
4. Other information. Any other information the borrower believes is necessary to justify the proposed shelter cost change.

The narrative attached to the budget form must clearly explain the necessity for the change request and the MFH Servicing Official must analyze the supporting documentation to the budget and *Form RD 3560-7* to see if it supports the request. For example, if the rent increase is due to increased taxes, then the MFH Servicing Official should look for copies of tax increase notices in the budget documentation. If the rent increase is due to an increase in general operating expenses, the MFH Servicing Official must review those expenses for reasonableness. Chapter 4 discusses reasonableness and how a budget should be reviewed for acceptability.

E. Agency Responsibility

1. Reviewing the Rent Change Request

When the borrower submits a budget with a rent or utility allowance change request, the Agency must respond to the borrower within 60 days. If the Agency does not contact the borrower, the borrower may assume that any rent change request of $25 or less has been automatically approved.

2. Circumstances in which the Agency Will Not Approve a Rent Increase

The MFH Servicing Official must not approve a rent increase under the following circumstances:

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- The borrower is able but unwilling to comply with program requirements. Such a borrower has ignored repeated requests from the Agency to take servicing actions by a specified deadline.

- If the borrower is in default of the Agency loan agreement and does not have an Agency-approved work-out plan, or is not in compliance with an Agency-approved workout plan.

- There are sufficient project funds under the existing rents to meet project operating expenses, and the borrower is not able to justify the higher rents. Such a condition is established when the project budget shows that income meets expenses at current rent levels.

- The project is operated on a profit basis, and the rent change would result in rents higher than what tenants can afford. This condition is established by comparing rents with 30 percent of tenant adjusted incomes. If it is shown that tenants would be paying in excess of 30 percent of their adjusted incomes as new rents and the increase is not necessary to meet projected costs, then the increase must not be approved.

3. Rejection of Rent Change Request

If the MFH Servicing Official rejects the change request, the borrower must be notified and be provided with appeal rights.

4. Effective Dates of Change

The effective dates of any approved changes will coincide with the start of the project's fiscal year or the start of the season for labor housing projects. For a request of a rent/utility allowance change on which comments were solicited, tenants should be notified of the rent or utility allowance change, that will take effect at least 30 calendar days after the date of the notification.

For notices to tenants, see **Appendix 4**.

7.14 RENT CHANGES FOR UNITS RECEIVING HUD SECTION 8 ASSISTANCE *[7 CFR 3560.207]*

The Agency has the responsibility to review and approve project budgets on an annual basis based on need to meet cash flow and expense requirements. Therefore, the Agency will not take into account HUD's automatic annual adjustment for Section 8 contract rents. The MFH Servicing Official must approve only the rents needed to provide sufficient income to meet approved project expenses.

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A. Reviewing Budgets with HUD Subsidies

Since HUD- and Agency-approved rental rates frequently differ, it may be necessary to have a three-column budget in properties with HUD Section 8 contracts. Exhibit 7-9 depicts how many columns are required in the budget, depending upon the project type.

Exhibit 7-9

Reviewing Budgets with HUD Subsidies

Project Type	Columns Needed in Budget
• 100 percent Section 8/515 with no interest credit; HUD contract rent rate is equal to basic rent	• One column only showing HUD contract rent
• 100 percent Section 8/515 with interest credit; HUD contract rent is greater than basic rent and less than note rate rent	• Three columns showing basic rent, HUD contract rent and Agency note rate rent
• 100 percent Section 8/515 without interest credit; HUD contract rent is greater than note rate rent	• Two columns showing HUD contract rent and note rate rent; difference is excess funds and deposited into reserves
• Less than 100 percent Section 8/515 with interest credit; HUD contract rent is greater than basic and less than or greater than note rate rent	• Three columns showing basic rent, HUD contract rent and Agency note rate rent

B. Excess Rents

When reviewing the budget, if the MFH Servicing Official concludes that the HUD-authorized rent is more than what is needed to meet project expenses, a lesser amount than the HUD rent must be approved. When this occurs, in accordance with Exhibit 7-9, the borrower must deposit the difference between the Agency approved note rate rent and the higher HUD-authorized rate into the reserve account. The manager or borrower must use *Form RD 3560-29* to document the required deposit in the reserve account.

If excess HUD rents accumulate in the reserve account beyond the sum shown in the borrower's loan agreement or resolution, the Agency may reduce or cancel the interest credit on the project. The Agency may reinstate interest credit whenever HUD rent should become lower than the Agency note rate rent.

Before depositing excess funds in the reserve account, the borrower may have to collect overage. Whether overage is collected and a project is subject to cancellation of interest credit depend upon the issuance date and execution date of the project's interest credit agreement.

Certain early versions of the interest credit agreement do not have a legal basis to support the Agency's policy to cancel interest credit or collect overage to offset interest

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credit. Each Section 8/515 project needs to be categorized according to the issuance date and execution date of the project's interest credit agreement on *Form FHA 444-7* or its successor *Forms FmHA 444-7* and *RD 3560-9*. Exhibit 7-10 provides a description of the rules that apply to each interest agreement form.

Exhibit 7-10

Impact of Interest Credit Agreement on Ability to Cancel Interest Credit, Collect Overage, and Deposit Excess Funds in the Reserve Account

Form	Executed Before October 27, 1980	Executed On Or After October 27, 1980
FHA 444-7, dated 11/17/69 and 7/27/72	No basis to cancel or reduce interest credit, collect overage, or deposit excess funds in the reserve account unless the borrower agrees.	Legal basis exists to cancel or reduce interest credit, collect overage, and deposit excess funds in the reserve account and/or apply it on the loan.
FmHA 444-7, dated 10/13/77	• If first, second, fourth or fifth block of paragraph 2 checked, no legal basis to cancel or reduce interest credit, collect overage, or deposit excess funds into reserves. • If the third block of paragraph 2 is checked, no legal basis to cancel or reduce interest credit, unless borrower agrees. However, there is legal basis to collect overage and deposit excess funds to reserves and/or apply it on the loan.	Legal basis exists to cancel or reduce interest credit, collect overage, and deposit excess funds in the reserve account and/or apply it on the loan.
FmHA 1944-7, dated 11/29/82		Legal basis exists to cancel or reduce interest credit, collect overage, and deposit excess funds in the reserve account.
FmHA 1944-7, dated 4/85		Legal basis exists to cancel or reduce interest credit, collect overage, and deposit excess funds in the reserve account.

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SECTION 5: RENTS FOR LABOR HOUSING PROJECTS

7.15 OFF-FARM LABOR HOUSING

A. Rent Structure

Tenants in Off-Farm Labor Housing are required to make a monthly rent payment in the amount equal to:

- In units with rental assistance, 30 percent of their income for rent in accordance with the amount calculated annually on *Form RD 3560-8*; or
- The approved rent, when rental assistance is not available.

B. Establishing a Basic Rent at the Property

For each Off-Farm Labor Housing project, the Agency will establish a basic rent in accordance with the project's annual operating budget. This basic rent will be equal to the project's operating expenses, plus the debt service payment based on the project's one percent interest rate, as approved by the Agency.

7.16 ON-FARM LABOR HOUSING

Rents for On-Farm Labor Housing should be in accordance with the employment agreement between the tenant and the borrower. In general, rents should not be required for projects assisted through the On-Farm Labor Housing program. Borrowers who choose to charge rents at On-Farm Labor Housing properties must comply with the rent setting and adjustment procedures established for Section 515 projects in this chapter.

On-farm labor housing borrowers are not required to charge security deposits, but if they do so, they must follow the terms described in Section 2 of this chapter.

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CHAPTER 8: RENTAL SUBSIDIES

8.1 INTRODUCTION

Rental subsidies are deep subsidies that enhance the affordability of rents in a project. Each year, the Agency has available a limited number of Agency-funded rental assistance units that can be allocated to new or existing Agency-financed multi-family housing projects. The Agency also encourages the use of non–Agency rental subsidies in multi-family housing projects as a way to reduce tenants' rents.

Because rental subsidies are limited, it is important that they be allocated to borrowers and distributed to tenants in a fair and equitable manner. Consequently, the Agency has developed rules that must be followed in the distribution and administration of rental subsidies. This chapter presents the program rules and procedures for allocating and administering rental subsidies in multi-family housing projects, including Farm Labor Housing projects. It covers not only Agency-funded rental assistance, but U.S. Department of Housing and Urban Development (HUD) and other types of subsidies as well.

For purposes of this chapter, the term "tenant" also means "member," and "rental assistance" is reserved for use in describing Agency-financed rental subsidy.

8.2 AUTHORIZED RENTAL SUBSIDIES *[7 CFR 3560.252]*

A. Project-Based Rental Subsidies

The Agency may authorize the use of project-based rental subsidies in addition to interest credit for multi-family housing projects. These rental subsidies may take the form of:

Agency-funded rental assistance. This is a project-based subsidy program available to very low- and low-income tenants in Agency-financed multi-family housing.

HUD Section 8 assistance. This project-based subsidy is administered by HUD and was used extensively with Agency-financed housing from the mid-1970s to the early 1980s.

- **Private rental subsidy.** This is a subsidy program whereby the project owner(s) or others enter into an agreement with the Agency to provide and fund subsidy to tenants of the project on approximately the same basis as the Agency-funded rental assistance program. In some instances, the agreement may include a limit on the number of units and a per-unit ceiling on the amount of assistance.

- **State or local rental subsidy.** Such subsidy is provided and funded by some states and available to borrowers to assist tenants on approximately the same basis as the

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Agency rental assistance program. The assistance is in the form of a contract between the borrower and the state and has the Agency's concurrence.

- **Operating subsidy for off-farm migrant farmworker projects.** Section 521 Agency rental assistance funds may be used as operating assistance in migrant farmworker projects financed under 514 or 516 to reduce operating costs so that rents may be set at rates affordable to low-income migrant farmworkers.

B. Tenant-Based Rental Subsidies

- RD Vouchers supplement the tenant's rent payment when the mortgage is paid off prior to the maturity date in the promissory note. This includes foreclosed properties. Tenants in these properties may be eligible for an RD Voucher that may be used at any other rental unit in the United States or its territories that:

    - passes an RD inspection, and

    - the owner will accept an RD Voucher.

    - RD Vouchers cannot be used for subsidized rental units, such as USDA Section 521 Rental Assistance, HUD Section 8, or with other programs where two housing subsidies would result.

- HUD Section 8 Vouchers may be accepted by borrowers in Agency-funded multi-family housing. These subsidies are administered by HUD or others authorized to administer the program such as a State Housing Finance Agency or the local public housing agency. Projects accepting tenants who use such vouchers assigned by a local public housing agency will also comply with any requirements imposed by that agency.

C. Multiple Subsidies

More than one type of subsidy may be used in a project. The rental subsidy that the tenant is receiving must be less than the full amount of Agency rental assistance for which the tenant would qualify. In such cases, the Agency may provide the difference between the subsidy received by the tenant and the amount of Agency rental assistance for which the tenant qualifies.

- Tenants with subsidies from sources other than the Agency may be eligible for Agency rental assistance if all of the following conditions are met:

    a. The tenant qualifies for Agency rental assistance.

    b. The rental subsidy the tenant is receiving is not a HUD voucher.

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c. The rental subsidy being received by the tenant is less than the full amount of Agency rental assistance for which the tenant would qualify.

There are special tenant codes under Part II, item 6 of the electronic MFIS Tenant Certification to denote what types of subsidy, if any, a tenant is receiving, and whether the tenant is receiving full or partial subsidy from a source other than the Agency.

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SECTION 1: ALLOCATION OF AGENCY RENTAL ASSISTANCE

8.3 AGENCY-FUNDED RENTAL ASSISTANCE

The objective of the Agency rental assistance (RA) program is to reduce rents paid by low-income households. RA is the portion of approved shelter cost (rent and utilities) paid by the Agency to the borrower on behalf of a tenant to compensate for the difference between the approved shelter cost and the monthly tenant contribution as calculated on *Form RD 3560-8, Tenant Certification*. When the household's monthly gross tenant contribution is less than the approved utility allowance that is billed directly to and paid by the tenant, the owner will pay the household that difference.

If a prospective tenant with a HUD voucher or other subsidy applies for occupancy and the project has RA or project-based subsidy, the RA or project-based subsidy may take priority. The management plan or criteria for selecting tenants/members for occupancy may identify RA priority assignment. RA may only be provided to tenants who are income eligible and residing in eligible units. There are four types of RA:

- **Renewal RA** is RA that replaces RA agreements contracts expiring because the obligated funds under the agreement have been fully disbursed. Because the Agency wishes to protect tenants currently benefiting from RA, replacement of RA contracts receives first priority for funding from the Agency.

- **Servicing RA** is RA that increases the number of RA units in a project resulting in an initial RA agreement or an amendment to an existing agreement with a borrower.

- **New construction RA** is RA to accompany new units of multi-family housing.

- **Incentive RA** is RA that is used to help preserve multi-family housing projects as part of the prepayment process. For information about the prepayment process, see HB-3-3560, Chapter 15.

8.4 ALLOCATION AND DISTRIBUTION OF AGENCY RA *[7 CFR 3560.257]*

A. Allocation of RA by the Agency

RA is allocated on an annual basis by the Agency's Asset Management Division and in an amount based on Congressional appropriations. The Agency uses RD Instruction 1940-L to allocate the RA.

B. Prioritization of RA

In the absence of other guidance, the Agency will use the following priorities to allocate RA:

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- **Replacements units.** First priority will be for replacing RA units that are expiring.

- **New construction.** Second priority will be for RA to accompany new construction.

  RA units will be allocated to those projects that are selected for funding under the Notice of Funding Availability (NOFA) system and in accordance with the scoring and ranking system described in Chapter 4 of HB-1-3560.

  ◊ For farm labor housing projects, RA units will be allocated by the National Office from the National Office reserve on a case-by-case basis at the time the projects are considered for funding at the National Office level.

- **Servicing assistance.** Third priority is for RA for existing multi-family housing projects that have requested servicing RA by checking the appropriate box on the budget *Form RD 3560-7, Multiple Family Housing Project Budget/Utility Allowance*.

Incentive RA is not allocated by priority. The Agency allocates incentive RA from a special set-aside of funds.

8.5 PROJECT ELIGIBILITY FOR AGENCY RA *[7 CFR 3560.254]*

To be eligible for RA, a project must be designated as one of the following types according to the loan agreement:

A Plan II interest credit project. If a project is not currently a Plan II project, it may be possible to change to Plan II and thereby become eligible. Exhibit 8-1 lists which types of projects may switch to Plan II and which may not.

An off-farm labor housing project. (Off-farm labor housing projects that are financed with grants only are not eligible.)

A project financed with a direct or insured Rural Rental Housing Loan approved prior to August 1, 1968. To be eligible, the project must be operated under an interest credit agreement that identifies the housing project as a Plan RA project.

A project funded by multiple sources, including Agency financing, for which the loan must be a Plan II interest credit loan.

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Exhibit 8-1

Project Eligibility for Rental Assistance

Project Type	Eligible	Not Eligible	Can Convert to Plan II
On-Farm Labor Housing		X	NO
Off-Farm Labor Housing	X		
For Profit		X	YES
Plan I		X	YES
Plan II	X		
Section 8/515 with no interest credit		X	YES
Section 8/515 with interest credit reduced by 1%		X	YES
Section 8/515 with interest credit reduced by 2%		X	YES
Section 8/515 with full interest credit	X		

8.6 PROCESSING RA OBLIGATIONS *[7 CFR 3560.255]*

The Leadership Designee approves or disapproves RA requests. *Form RD 3560-51, Obligation Fund Analysis*, is the form that obligates the RA.

When reviewing RA requests, the MFH Servicing Official must consider the following questions:

- Is the project/unit eligible for RA? The project must meet the requirements specified in Section 8.5.
- Does the project need the RA? The supporting documentation from the borrower must show that there are tenants or applicants who are eligible for the RA.
- Is the RA available for distribution? There must be RA units/funding available.

How an RA request gets processed depends upon whether the assistance is for replacement RA, servicing RA, or new construction RA.

A. Renewal and Servicing Rental Assistance

1. Tracking Usage of Agency-Funded RA

The Agency reviews RA payments and obligations status for each project. This is done quarterly and annually. The Agency monitors RA payments and obligations in conjunction with the Automated Multi-Family Housing Accounting System (AMAS) to ensure maximum utilization of existing RA obligations. If it is determined that RA units are not being used, the procedures in Section 8.8 should be followed to transfer the units.

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2. Processing Renewal RA

Renewal RA must not award more units than necessary to cover existing expiring contracts. For example, if a 24-unit project has only 18 units of RA that are expiring, the Leadership Designee may not award the project more than 18 units of RA.

To the extent that sufficient Federal funds are available, the Agency will automatically renew expiring RA agreements at the existing number of units.

If there is no renewal RA available to give to the borrower due to a lack of Congressional appropriations, the MFH Servicing Official will inform the borrowers that they must notify the affected tenants of their increased rents and give them the option of terminating their leases with no penalties.

3. HUD Section 8 Housing Assistance Payments

For properties that receive project-based HUD Section 8 assistance, borrowers must provide copies of their Housing Assistance Payments (HAP) contracts to the MFH Servicing Official. The MFH Servicing Official must monitor these contracts, particularly their expiration dates.

4. Servicing RA

Borrowers apply for servicing RA by checking a box on the project budget *Form RD 3560-7*, indicating a need for servicing units and certifying that they have looked elsewhere for other rental subsidies. To allocate servicing units to a project, the MFH Servicing Official must verify that the project is eligible and:

- Existing tenants are paying more than 30 percent of their incomes in rent; or
- There are vacancies in the project and evidence that shows that there are very low-income tenants who would occupy the housing if there were RA units available. Such evidence must be in the form of market data and/or waiting lists.

B. New Construction Rental Assistance

New construction RA is requested with the initial application. The following requirements must be met for the Agency to consider awarding new construction RA:

- The number of RA units requested must be based on the market data for the area, the proposed rental rates as reflected in a budget for the project, and the income levels of the prospective tenants; and
- If the RA is going to be part of a project funded by a participation loan, the Agency participation rate needs to be at least 25 percent of the total development cost.

Chapter 4 of HB-1-3560 provides further details on processing new construction RA.

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C. Special Language for FY 2004, 2005 & 2006 RA Obligations.

The FY 2004, 2005 and 2006 appropriation language has established a set term of four years for RA Obligations, only. Therefore, the following instructions should be used for completing Form RD 3560-27, "Rental Assistance Agreement" regarding **ALL** FY 2004, 2005 and 2006 RA obligations.

1. All FY 2004, 2005 and 2006 obligations will ALWAYS need to have a separate Form RD 3560-27.

2. Changes to the form:

a. Above title: "Rental Assistance Agreement" add "FOUR YEAR"

b. Section 8 (a) - cross out "...automatically upon total disbursement or credit rental assistance to the borrower's account" and insert - "four (4) years from _____*_____, unless the funds are fully expended prior to that time."

*If agreement is for the original obligation, enter the date the agreement is prepared.

*If the agreement is for units transferred, enter the date of the agreement from the original *Form RD 3560-27*.

For example, renewal obligation for Borrower A is obligated on April 6, 2006, and the Form RD 3560-27 is signed on April 10, 2006. The expiration of the obligation will be April 10, 2010. If one unit of RA (from the FY 2006 obligation) is transferred to Borrower B on August 15, 2007, then the Form RD 3560-27 for Borrower B will have an expiration date of April 10, 2010, even though the borrower received the unit on August 15, 2007.

For new construction RA obligations, Form RD 3560-27 must be signed during the Fiscal Year of the RA obligation.

A servicing effort tracking item "FY __ RA Obligations" has been established in MFIS to assist in the monitoring of FY 2004, 2005 and 2006 obligations. The National Office will be monitoring this tracking item to assure that funds are being properly monitored.

D. General Approval and Processing Actions

When it has been determined that RA can be obligated, the MFH Servicing Official will complete the obligation in MFIS and Form RD 3560-51 Part III will be generated. Upon verification that the obligation has processed in AMAS, the MFH Servicing Official will complete the RA Review process in MFIS, if applicable.

Once the MFH Servicing Official has verified the RA units have been obligated, they will attach Form RD 3560-51 Part III to Form RD 3560-27 Rental Assistance Agreement

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and update the form according to the instructions. The Form RD 3560-27 is then filed in the borrower's active case file, and a copy is sent to the borrower.

If RA funds are available but cannot be provided due to a determination of ineligibility, the Leadership Designee will inform the borrower in writing of the reasons and provide the borrower information on appeal rights in accordance with 7 CFR Part 11. See paragraph 1.8 of Chapter 1 for an overview of the appeals process.

Loan applicants or borrowers determined to be eligible for RA as a result of an appeal or funding review will receive RA, if RA funding is available. If the funding is available, the applicant or borrower will receive it beginning with the month following the date of the appeal or funding review decision. If the funding is not available, the applicant or borrower will receive it beginning in the first month that RA funding becomes available.

A RA request is not appealable when it is denied due to the lack of appropriated or Agency reserved funding.

E. RA Obligation Numbers

AMAS uses obligation numbers to track RA obligations and undisbursed balances. See the AMAS manual for information on tracking RA obligations.

1. Current Obligations

When RA is approved, each RA obligation is assigned a six-digit RA obligation number as follows:

- First two digits represent the fiscal year in which the funds are obligated (e.g., 21, 22, 23, etc.);
- Second two digits represent the number of the RA obligation for each project in sequential order for each fiscal year starting with 01 (e.g., 2301, 2302, 2303, etc.); and
- Third two digits are coded 00 for all obligations.

For example, the fifth RA obligation made in fiscal year 2023 would be coded 230500.

2. Pre-1985 Obligations

RA obligations obligated before 1985 were coded as follows:

- First two digits represent the fiscal year in which the initial obligation was made on the project (i.e., 78, 79, 80, etc.);

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- Second two digits relate to the pre-Automated Multi-housing Accounting System conversion loan number to which the RA obligation was processed; and

- Third two digits indicate the number of modifications plus 1. (*Form RD 3560-27,* with two modifications on September 30, 1984, would be designated "03").

8.7 TERMS OF AGREEMENT *[7 CFR 3560.258]*

Form RD 3560-27 is the document that sets out the terms of RA agreement between the Agency and the borrower.

A. Terms of Agreement

RA agreements may be renewed in accordance with 7 CFR 3560.255(a)(1). Each *Form RD 3560-27* will be effective the first day of the month in which it is executed and will have a term of the later of 12 months from the first disbursement of the obligation or when funds under the agreement are exhausted. If assistance is granted to a project under an appeal, the amount of the assistance will cover what is needed for an effective date retroactive to the first day of the month in which the assistance was denied, provided the borrower agrees to make any appropriate refunds to tenants who would have been entitled to RA during the retroactive term.

Previously the Agency issued 20-year and 5-year RA agreements. Starting in 2004, RA was obligated for 4-year terms. The agreement for RA obligations prior to FY 04 expire when the funds obligated for the RA units described in Section 10 of *Form RD 3560-27* are fully disbursed.

B. When Agreements May Be Amended

MFH Servicing Officials may amend RA agreements to:

- Add replacement units for the project to the agreement;

- Add or subtract servicing units assigned to the project through obligation, through transfer from another RA obligation, or as an incentive to avert prepayment;

- Reinstate a suspended RA obligation(s) to a new borrower in the same project after a voluntary conveyance or a foreclosure and a credit sale within the Multi-Family Housing program; or

- Transfer a suspended RA obligation(s) to a new borrower and a different project after liquidation of the project assets or after the loan is paid in full.

C. Procedures for Amending Agreements

The following steps are taken to amend agreements.

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- Any existing RA obligation executed prior to February 15, 1983, which will have a remaining obligation balance at the end of the expiration date stated in section 9 of the RA agreement, "Term of the Agreement," may be amended. The amended agreement will expire when the obligated funds are fully disbursed.

- For every replacement or modification of an RA agreement that occurs on or after May 1, 1985, the original and all copies of the affected RA agreement will be noted, assembled, and distributed by the MFH Servicing Official according to the form's instructions. When a *Form RD 444-27A, Amendment to RA Agreement* initiated prior to May 1, 1985, is replaced or modified, a new *Form RD 3560-27* will be prepared and distributed according to the form's instructions.

- The MFH Servicing Official must use the new form so that eventually all borrowers will be using the new form.

D. Consolidating Agreements

Consolidation of RA agreements is allowed, if the fiscal year and the type of RA are the same.

E. Replacing Expiring Obligations

The Agency will renew all expiring obligations with obligations to the extent funds are appropriated. Expiring 20-year obligations will be replaced with current funding levels.

Expiring RA obligations and replacement RA obligations may run concurrently for a short time period so any undisbursed obligation balance on the expiring RA agreement can be disbursed.

8.8 TRANSFERRING RA *[7 CFR 3560.259]*

A. Cases in which RA May Be Transferred

The Leadership Designee may transfer RA in the following instances:

1. At Project Transfer

When a project is transferred to an eligible borrower, the transferee may assume the transferor's unliquidated RA obligation(s).

2. Following Voluntary Conveyance or Foreclosure Sale

When a project with RA is voluntarily conveyed to the Agency or acquired by foreclosure sale, the RA obligation will be automatically suspended under the borrower's name when the St. Louis Office processes the *MFH Advice of Mortgaged Real Estate*

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Acquired form. The RA for these units will be held in suspension until the final disposition of the acquired property has been determined, at which time the remaining RA balances may be used for renewal purposes or transferred to a different Agency-financed project in accordance with paragraph C of this section. During the inventory period, tenants will pay 30 percent of their incomes for rent. Tenants entitled to reimbursement for utilities will be paid from project income.

3. Following Liquidation or Prepayment

RD may transfer RA units from prepaid, liquidated, or naturally maturing projects. Since Letter of Priority Entitlement (LOPE) letters are issued for 120 days, RA should not be moved prior to the expiration of the 120-day period.

4. When Not Being Used After Initial Rent-Up

RA that is not being used may be transferred with or without the borrower's consent or request. When RA is unused after initial rent-up (following the construction period) and not needed because of a lack of eligible potential tenants in the area, all or a portion of it may be transferred by the Leadership Designee under the following conditions:

- The MFH Servicing Official recommends the RA transfer after reviewing documentation submitted by the borrower; and

- Available RA units remain unused after a one-year period since initial availability.

5. When Not Being Used 6 Months or Later After the Initial Year of the Agreement

If after the end of the initial year of an RA agreement, to the extent permitted by law, when any rental assistance units have not been used for a 6-month period (Section 515) or a 12-month period (Section 514 or 516), the Leadership Designee may transfer the number of unused units to another project without the borrower's request. If the remaining unit(s) remain(s) unused after an additional 6-month period, the Leadership Designee may authorize its transfer to another project. This would apply only if the current agreement is on *Form RD 3560-27,* and when:

- The MFH Servicing Official has reviewed the project occupancy list and verified that there is no apparent RA need at the project;

- The Agency has notified the borrower at least 30 days in advance of the Agency's intent to transfer the RA units and has given the borrower appropriate appeal rights;

- If the borrower appeals the decision, the appeal is resolved in accordance with 7 CFR Part 11 before any transfer action is taken; and

- The transfer will take place in accordance with transfer procedures described in subparagraph D below.

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6. Due to an Unclosable Loan

When RA will be unused because the loan to which it was obligated will not be closed or the RA agreement is not signed, the RA obligation may not be transferred except when the circumstances allow for the funds to finance the project to be transferred as well. However, if this situation occurs during the same fiscal year of obligation, the obligation must be canceled and reallocated immediately using current authorities. Obligations from prior fiscal years must be canceled and will be lost unless the conditions allow the financing for the project to be transferred, in which case the RA may be transferred as well.

7. In Response to a Disaster

If a disaster renders a project temporarily or permanently uninhabitable, the RA may be transferred.

8. Due to a Servicing Action

The Leadership Designee will suspend RA in a project where the loan has been accelerated to the extent that no payments will be credited to the project's account. Interest credit will be credited to the project's account until the appeal period for the acceleration has expired. After the expiration of the appeal period, if it is determined that foreclosure will proceed, the interest credit will be canceled as of the last day of the month in which the appeal period expired. RA will be automatically suspended by the interest credit cancellation.

That portion of the monthly RA not needed to pay the project monthly installment and other charges, including any delinquencies, overage, and late fees may be processed and returned to the project operating account to maintain project operation. RA agreements expiring during the acceleration and appeal process may be renewed in order to continue payment of RA for this purpose, but only if a third party is managing the project to ensure the proper use of project funds.

After final disposition of the acceleration, expiration of the appeal and redemption period of the defaulting borrower, the RA will be either transferred with a credit sale, transferred to a different project when the defaulting project is sold outside the program, or reinstated to the same project as follows:

- **Transferred with a credit sale.** If the project is sold through a credit sale to an eligible borrower within the program, the suspended RA should be transferred from the previous borrower's case number and project number to the new case number and project number. *Form RD 3560-55, Multi-Family Housing Transfer of RA*, will be attached to *MFH Advice of Mortgaged Real Estate Acquired* form.

- **Transferred to a different project.** If a defaulting project is sold outside the program, the RA must be transferred to a different project.

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- **Reinstated to the same project.** When defaults are corrected, the Leadership Designee may reinstate the RA to the borrower's account.

The Leadership Designee will apprise the borrowers of their appeal rights under 7 CFR Part 11 upon notification of the pending suspension. The suspension will not be effective until these appeal rights have been exhausted.

B. Eligible Units

In order to be eligible for RA, units must be eligible for interest credit in terms of habitability. Should a fire, natural cause, or other damage render a unit uninhabitable, the RA may be suspended during rehabilitation or it may move with a tenant to a temporary location in another project financed by the Agency.

C. Transferring RA for Displaced Tenants

The Leadership Designee may transfer RA from one project to another eligible multi-family housing project to which a tenant is moving due to displacement as a result of prepayment, liquidation, or a natural disaster for that tenant's initial use.

The displaced tenant will be given first priority for an RA unit, regardless of other priorities for the RA, if all of the following conditions are met:

- The borrower is eligible to receive and administer RA.
- The tenant is eligible to occupy the project and to receive RA.
- The tenant has taken all of the following steps to ensure eligibility to receive priority for the unit of RA:
- Placed on at least one waiting list for an Agency-financed project with a *Handbook Letter 201 (3560), Letter of Priority Entitlement (LOPE)*.
- Moved to the project as soon as the name was reached on a waiting list, even if it meant temporarily occupying an ineligible unit. The ineligible unit may not differ from the one for which the tenant is eligible by more than one bedroom.
- Moved to an eligible unit as soon as one was available.
- The RA has not previously been transferred for the tenant's current displacement.

D. Process for Transferring

Only the Leadership Designee may approve an RA transfer. RA may be transferred to any borrower with an RA eligible project according to the priorities established in this

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handbook or by a Leadership Designee. All or any portion of the units in an RA agreement with an undisbursed balance may be transferred from one project to another.

When the Leadership Designee approves an RA transfer, the MFH Servicing Official uses *Form RD 3560-55*, completed according to the instructions, to document the RA transfer, enter the MRT transaction into AMAS, and notify the St. Louis Office, if applicable.

AMAS determines the per-unit value of the RA obligation being transferred by dividing the undisbursed balance of the RA obligation on the date the transfer is processed by the number of RA units in the agreement. The number of units being transferred times the per-unit value equals the total amount transferred. After the transfer processes, the MFH Servicing Official must enter the dollar amount of the transfer in the remarks area of *Form RD 3560-55*.

RA units identified by different RA obligation numbers may be transferred. New RA obligation numbers should be assigned according to the instructions for *Form RD 3560-55* and as described in paragraph 8.6 E.

The MFH Servicing Official will complete *Form RD 3560-27* with *Form RD 3560-55* attached. These will be completed according to the instructions for each transferee. The transferee may use the transferred units effective the first day of the month in which the transfer is approved. Borrowers must assign the rental assistance units, in accordance with the established priorities identified in Exhibit 8-2, as soon as they become available.

The MFH Servicing Official will amend the transferor's *Form RD 3560-27* by attaching a copy of *Form RD 3560-55* according to the instructions to indicate that a portion of the agreement has been transferred. When all RA units on a RA agreement have been transferred, the transferor's present agreement will be so documented.

E. Agency Use of Obligation Balances

In lieu of transferring rental assistance units, the Agency may elect to utilize the remaining obligation balances of units from a voluntary conveyance, foreclosure, liquidation, prepayment or natural maturing housing project, for renewal purposes.

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SECTION 2: ADMINISTRATION OF RENTAL ASSISTANCE

8.9 CORRECTIONS TO RENTAL ASSISTANCE PAYMENTS

A. Administrative Errors

The borrower is responsible for correcting any errors made in the administration of the RA program that are made by the borrower or the borrower's authorized management agent. Errors in computation or other unauthorized use of RA will require, at a minimum, the repayment of incorrectly advanced RA funds. Agency requirements regarding unauthorized assistance as established under 7 CFR part 3560, subpart O, apply whenever any RA has been incorrectly advanced.

If the error or unauthorized use of RA appears to be deliberate or intentional, the Leadership Designee will refer the case to the OGC. For more information on unauthorized assistance, see HB-3-3560, Chapter 9.

B. Canceling an RA Check

When an RA check needs to be canceled, such as when it is returned, or if the borrower must return an RA payment, an MS2 transaction must be entered directly into the AMAS. Specific instructions for completing this transaction can be found in the AMAS On-Line Manual. This transaction will not be processed until the funds have been received by the Agency through one of the following methods:

- The original U.S. Treasury check covering the RA is returned.
- The borrower submits an EFT payment or a check made payable to the Agency for all or a portion of the monthly RA payment that needs to be returned.

8.10 ASSIGNING RENTAL ASSISTANCE TO TENANTS AND APPLICANTS *[7 CFR 3560.257]*

Because RA is limited, the Agency has established procedures to ensure that it is distributed consistently and to the most needy households.

A. Eligible Households

Households which are eligible for RA are those:

- With very low or low incomes who are eligible to live in multi-family housing projects;
- With net tenant contribution determined in accordance with 7 CFR 3560.203(a)(2) that is less than the current basic rent for the unit;

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- Who meet the occupancy rules/policies established by the borrower, which conform to 7 CFR 3560.155(e);

- Who have a signed an unexpired *Form RD 3560-8* on file with the borrower; and

- Who is not delinquent on any Agency unauthorized assistance repayment agreements.

To determine priority for assigning an available RA unit in an operational project, the borrower must update the latest *Form RD 3560-29* for the project as of the date the unit is available.

B. Priorities in Existing Projects

When assigning available RA, borrowers must use the priorities identified in Exhibit 8-2.

Exhibit 8-2

Five Priorities for Assigning Rental Assistance

- First priority is always to eligible very low-income tenants paying the highest percentage of their adjusted annual income in shelter costs.
- Second priority is to very low-income applicants on the waiting list, considering the applicant's unit size and type needed.
- Third priority is to eligible low-income tenants paying the highest percentage of their adjusted annual income in shelter costs.
- Fourth priority is to eligible low-income applicants on the waiting list.
- Final priority is to households that are residing in a rental unit for which they do not qualify on the basis of an occupancy waiver or other special approval situations

In order to provide RA to the third, fourth, and final priority categories, a borrower must fully document that either there are no very low-income households on the waiting list or fully document that occupancy by low-income households is limited as follows:

- For projects occupied on or after November 30, 1983, no more than 5 percent of the units in the project are occupied by low-income households; or

- For projects occupied before November 30, 1983, no more than 25 percent of the units in the project are occupied by low-income households.

Borrower documentation of these circumstances must be kept in the borrower's files and made available to the MFH Servicing Official upon request.

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C. Assigning RA in Newly Constructed Units

A borrower with RA units for a newly constructed project should accept applications for occupancy during the construction phase of the project, after the preconstruction conference has been held. The names of the applicants should be placed on a waiting list. During the initial rent-up period, the following priorities will apply:

- Until all the RA units have been assigned, a number of apartment units in the project equal to the number of RA units will be initially reserved for eligible tenants who qualify for RA, even if there are applications on other lists that applied earlier. Applications qualifying for RA will be considered according to the priority established for existing projects, by passing those applicants on the waiting list whose income is above the low-income limits for the area. The remaining units equal to the number of units that will not be subsidized with RA can be rented simultaneously to other applicants.

- If a substantial number of apartment units reserved to be used with RA units remain vacant after initial rent-up and the borrower could rent those units to applicants ineligible for RA, the borrower may request a transfer of unused RA units. However, applicants ineligible for RA cannot be selected to occupy units initially reserved to be used with RA until the unused RA units are transferred.

- If there are still vacant units, those applicants bypassed because they did not qualify for RA will be considered for occupancy on a first-come, first-served basis.

D. Continued Eligibility

Eligible tenants receiving the benefits of RA may continue receiving such benefits as long as they remain eligible for occupancy, are eligible for RA under 7 CFR 3560.254(c)(2), and RA units are available.

E. Timing of RA Assignment

Rental assistance is paid to the borrower on the first of the month based on the prior month's occupancy.

When a tenant who has been receiving RA vacates the project, the borrower must immediately assign that unit of RA to the next existing eligible tenant or applicant on the waiting list.

When a tenant receiving RA vacates before the end of the month and the borrower reassigns the RA, the Agency will provide RA for the newly designated tenant starting on the first day of the following month.

When an RA unit is assigned to an eligible existing tenant on a day other than the first day of a month, the Agency will not provide rental assistance for the newly assigned

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existing tenant and the tenant will not pay reduced rental charges until the first day of the month following the assignment of the rental assistance.

F. Incorrectly Assigned RA

Incorrectly assigned RA is viewed as unauthorized assistance and handled in accordance with the requirements established under 7 CFR part 3560, subpart O.

When the tenant has correctly reported income and household size but RA was assigned to a household in error, that tenant's RA benefit should be canceled and reassigned. Incidents involving incorrect reporting are handled in accordance with the unauthorized assistance requirements established under 7 CFR part 3560, subpart O.

Before the borrower notifies the tenant, the borrower or management agent shall review the case with the MFH Servicing Official. If the MFH Servicing Official verifies that an error has been made based on information available at the time the unit was assigned, the tenant will be given 30 days' written notice that the unit was assigned in error and that the RA benefit will be canceled effective on the next monthly rental payment due date after the end of the 30-day notice period. It should be noted that some states require a 60-day notice of rent increases, in which case the written notice must be extended to 60 days. The borrower will also notify the tenant in writing that:

- The tenant has the right to cancel the lease based on the error made by the borrower and the loss of benefit to the tenant;

- The RA granted in error will not be recaptured from the tenant; and

- The tenant may meet with management to discuss the cancellation and the facts on which the decision was based. If the facts are accurate and the tenant cannot produce further evidence proving eligibility for RA, there will be no appeal for the decision. If the tenant feels there is justification for further review, the borrower must give the tenant appeal rights under 7 CFR 3560.160.

The RA unit will be reassigned to the next eligible household, based on *Form RD 3560-29* from which the original priority was established, when the unit was erroneously assigned. The RA will not be retroactive unless the reassignment was based on an appeal by the tenant. Retroactive RA may not exceed the project's remaining RA obligation balance.

Tenants may appeal determination of ineligibility for available RA under 7 CFR 3560.160. See paragraph 1.8 of Chapter 1 for information on the appeals process.

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G. Dealing with Tenants Who Attempt to Receive RA Simultaneously in Two Different Projects

A tenant may not receive RA in two different multi-family housing projects at the same time. If part of the household is occupying a unit and the tenant attempts to occupy a seasonal unit in another project, MFIS will identify the duplicate tenancy through the tenant's Social Security Number.

8.11 TENANT PAYMENTS *[7 CFR 3560.256(d)]*

A. Rents

Tenants receiving RA must pay the net tenant contribution toward rent, which will not exceed the higher of:

- 30 percent of monthly adjusted income, with an adjustment for any utility allowance; or

- 10 percent of gross monthly income, with an adjustment for any utility allowance.

B. Utilities

The utility allowance for a project with RA is determined as it is for any other project. As for non–RA projects, the utility allowance is reviewed annually for accuracy and changes are made when necessary.

When the tenant is billed directly for utilities, rent paid by the tenant receiving RA will be the difference between the established utility allowance and the net tenant contribution as determined by 7 CFR 3560.203.

- Example: Assume a basic rent of $250 and a utility allowance of $50. Patty Duke's adjusted monthly income is $400. Thirty percent of her adjusted income is $120. Fifty dollars is deducted from the $120 to allow her to pay her utilities, leaving her a net tenant contribution of $70 for rent to the borrower. The Agency pays RA to the borrower on behalf of Patty Duke in an amount of $180 to total the $250 basic rent.

When utilities are paid by the household receiving RA and the net tenant contribution is less than the allowance for utilities, the borrower will pay the household the difference between the utility allowance and net tenant contribution.

- Example: Assume a basic rent of $250 and a utility allowance of $50. Jane Ronda's adjusted monthly income is $160. Thirty percent of her adjusted monthly income is $48, which is less than the utility allowance. The Agency will pay $252 in RA to the borrower to cover the $250 basic rent and the extra $2 that the borrower must provide to the tenant to allow her to meet the $50 utility allowance.

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In a project where the borrower pays all utilities, the tenant rent will be the net tenant contribution as per 7 CFR 3560.203 up to the approved rent for the rental unit being occupied.

- Example: In a project where the basic rent is $300 and there is no utility allowance, RHS would pay the borrower $180 for Patty Duke, who would pay the whole $120 in rent, totaling the required rent payment of $300. For Jane Ronda, the Agency would pay $252 to the borrower in RA and Ms. Ronda would contribute her $48 to make the total $300 rent payment.

SECTION 3: OTHER RENTAL SUBSIDIES

8.12 HUD RENTAL SUBSIDY *[7 CFR 3560.260]*

The Agency encourages the use of HUD Section 8 vouchers.

A. Project-Based Assistance

Tenants in Section 8/515 units must pay rents and utility allowances in accordance with HUD requirements.

B. Tenant-Based Assistance

Families using vouchers must be initially eligible as per program rules *[7 CFR 3560.152]*. The public housing authority issuing the vouchers will be responsible for an annual examination of household income and family composition. The public housing authority will adjust the housing assistance payments made on behalf of the family to reflect any changes in the family's monthly adjusted income, size, or composition.

For tenants with HUD vouchers, the borrower must set the rent for each unit occupied by a voucher holder at the basic rent. If the HUD Voucher is less than basic rent, the difference must be collected. The rent declared on the HUD Request for Tenancy form may not be higher than the project's basic rent. The public housing agency distributing the HUD vouchers may set the utility allowance.

Once a HUD assistance contract expires, recertification responsibility reverts to the borrower, and Agency form and income verification and certification requirements apply.

8.13 OTHER SOURCES OF RENTAL SUBSIDY *[7 CFR 3560.260]*

The Agency may authorize other types of rental subsidies to be used in new or existing projects but will make no commitment to providing RA at the expiration of the project-based rental subsidy agreement from other sources.

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A. Agency Requirements for New Construction Projects Proposed with Non–Agency Rental Subsidy

For the Agency to consider a new project with non-Agency rental subsidy, the applicants must demonstrate that:

- A market exists for the assistance and at income levels that would benefit from the subsidy being provided;
- Once the rental subsidy is no longer available, an adequate rental market exists for the project without assistance; and
- Tenants will not be displaced at the end of the subsidy agreement.

Applicants will specify how they intend to meet the above requirements through two documents: the memorandum of understanding with the provider of the RA and the Project-Based Rental Subsidy Agreement.

B. Formalizing the Project-Based Rental Subsidy

Rental subsidy for new and existing projects is formalized through two main documents: the memorandum of understanding, which is between the Agency and the provider of the rental subsidy, and the Project-Based Rental Subsidy Agreement, which is the instrument agreement involving the tenant, borrower, and provider of assistance.

1. Memorandum of Understanding

The Agency must enter into a memorandum of understanding with the provider of the rental subsidy to make sure that the Government's interests are secure. This memorandum of understanding must include the following provisions:

- The reason for providing the project-based rental subsidy and its intended purpose;
- The length of time the project-based rental subsidy will be provided;
- Actions to be taken at the end of the project-based rental subsidy agreement to minimize the effect on tenants losing the rental subsidy and to avoid displacement; and
- A copy of the proposed project-based rental subsidy agreement.

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2. The Project-Based Rental Subsidy Agreement

The Project-Based Rental Subsidy Agreement is the instrument of agreement involving the tenant, borrower, and provider of assistance.

The Agency will not be a party to the Project-Based Rental Subsidy Agreement nor have any responsibilities under the agreement. However, the MFH Servicing Official must ensure that the Project-Based Rental Subsidy Agreement provides that:

- The rental subsidy payments will be paid directly to the tenants or deposited to a separate project operating account established for this purpose. The tenants must be advised of the amount and source of the subsidy through the lease or supplement to the lease.

- The life of the Project-Based Rental Subsidy Agreement must be similar to existing or current Agency RA funding levels, and sufficient funds must be set aside in a way that ensures availability of project-based rental subsidy for this term. The method of supplying the funds must be clearly set forth and acceptable to the Agency.

- During the term of the Project-Based Rental Subsidy Agreement, the provider must make available the subsidy amounts required at least annually.

C. Low-Income Housing Tax Credit Projects

For projects with low-income housing tax credits (LIHTCs), if the project-based rental subsidy term is less than the LIHTC compliance period, the borrower must demonstrate the marketability of the project-based rental subsidy units by either:

- Demonstrating that there are sufficient households within the LIHTC income limits to support the units without rent overburden; or

- Certifying that the targeted percentage of LIHTC units (not the minimum set-aside option) does not include the project-based rental subsidy units, so that the units will be marketable to households in all Agency program eligible income ranges.

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SECTION 4: LABOR HOUSING REQUIREMENTS FOR RENTAL ASSISTANCE

8.14 USING RENTAL ASSISTANCE AS OPERATING ASSISTANCE *[7 CFR 3560.574]*

The Agency's rental assistance program, which provides assistance based on each household's income, can be difficult to administer in housing for migrant workers because of frequent tenant turnover and short periods of occupancy.

Borrowers of section 514 or 516 funds for Off-Farm Labor Housing projects may use Agency rental assistance funds for operating assistance rather than for providing rental assistance to individual households. By using operating assistance to reduce operating costs, rental rates can remain lower so that they are affordable to tenants based on the average wages of migrant farmworkers in the area. Tenants in Off-Farm Labor Housing projects that are receiving operating subsidy are still required to provide income verification and household income must be within the very-low or low-income limits to qualify for reduced operating assistance rents. Borrowers must provide documentation of tenant incomes to the Agency.

8.15 PROJECT ELIGIBILITY FOR OPERATING ASSISTANCE

Only Off-Farm Labor Housing project units that are designated for migrant farmworkers are eligible to receive operating subsidy. The property must be eligible to receive rental assistance.

8.16 OPERATING SUBSIDY LIMITS

The amount of operating assistance requested by the owner must be based on the project's actual income and expenses and must be approved by the Agency. For projects with both migrant and year round farmworkers, the amount of operating assistance is based on the portion of actual income and expenses attributable to the units that are for migrant farmworkers. In no instance may the annual amount of operating assistance exceed 90 percent of the annual operating costs that are attributable to the migrant units.

8.17 OWNER RESPONSIBILITIES.

A. Requesting for operating assistance program

Owners of Off-Farm Labor Housing projects with units for migrant farmworkers may request operating assistance by submitting a request to the Agency, which must include a budget. The budget must include:

- Estimated operating costs for the migrant units, including authorized expenditures such as reserve deposits;

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- Proposed rental rates for the migrant units to generate sufficient funds for operating costs of those units, taking into consideration all other sources of project income; and

- Estimated rental income from tenants, based on a tenant contribution of 30 percent of the average adjusted monthly income of migrant farmworker households in the area.

B. Requesting operating assistance payments

Each month, the owner will submit a request for operating assistance to the Agency.

C. Verifying tenant income eligibility

Owners are responsible for verifying tenant income eligibility. Only very low or low-income households are eligible for the operating assistance rents. Households with incomes above the low-income limits must pay the full rent.

D. Reporting requirements

Owners will complete and submit to the Agency tenant certifications to document tenant income and eligibility.

Owners will complete and submit monthly to the Agency a project worksheet for operating assistance.

Owners must submit an annual planning budget to the Agency prior to the project's fiscal year.

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CHAPTER 9: AGENCY MONITORING
[7 CFR part 3560, subpart H]

9.1 INTRODUCTION

When borrowers accept Agency loan and grant funds, they agree to operate the property in accordance with program objectives and comply with program requirements established by the Agency. To ensure that borrowers meet these responsibilities, the Agency monitors borrower performance and takes action as needed to see that borrowers fulfill their responsibilities. The previous chapters have described the program requirements for multi-family housing projects and the Agency's procedures for implementing these requirements. This chapter describes the Agency's procedures for monitoring multi-family housing projects to ensure that these requirements are met.

Section 1 of this chapter provides an overview of Agency monitoring activities. Section 2 describes the procedures for Servicing Officials' monitoring activities. Section 3 discusses monitoring farm labor housing projects for compliance with program requirements. Section 4 provides an overview of Agency oversight of servicing activities. Section 5 provides for MFH program initiatives and oversight.

9.2 AGENCY MONITORING OBJECTIVES AND PRIORITIES

A. Monitoring Objectives

The Agency will monitor project operations to:

- Ensure the project is managed in accordance with the goals and objectives of the Multi-Family Housing program;
- Preserve the value of the property;
- Ensure that the property is maintained in accordance with Agency requirements for providing housing that is decent, safe, sanitary, and affordable;
- Ensure that the project is operated at actual, necessary, and reasonable costs;
- Detect waste, fraud, and abuse;
- Verify compliance with occupancy requirements; and

- Ensure compliance with affirmative fair housing marketing requirements; Title VI of the Civil Rights Act of 1964; Title VIII of the Civil Rights Act of 1968, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Americans with Disabilities Act of 1990; the Violence Against Women Act of 2013;

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other applicable Federal, state, and local laws; and Agency requirements related to occupancy and tenant eligibility.

B. Monitoring Priorities

The Agency will monitor the performance of all borrowers. However, to make the best use of its available resources, the Agency will give priority in its monitoring efforts to borrowers with projects that have the greatest risk of poor performance or compliance violations. By focusing more attention on projects experiencing problems, the Agency can maximize the effect of its monitoring activities. Agency monitoring efforts involve three levels of activities:

- **Routine monitoring.** For projects with limited risk of performance or compliance problems, MFH Servicing Officials will conduct routine monitoring. This level of monitoring involves regular checks of project compliance through reviews of regular borrower submissions and periodic on-site visits.

- **Intensive monitoring.** For projects with a higher risk of performance or compliance problems, MFH Servicing Officials will conduct intensive monitoring. This level of monitoring involves not only regular checks of project compliance, but also more frequent borrower reporting and on-site visits by Agency staff.

- **Quality control.** While MFH Servicing Officials conduct routine and intensive monitoring, Leadership Designees are responsible for oversight of MFH Servicing Officials monitoring efforts. The Agency will establish a set of goals for MFH Servicing Officials performance. Leadership Designees will use Multi-Family Housing Information System (MFIS), Automated Multi-Family Housing Accounting System (AMAS), and other monitoring reports to ensure that MFH Servicing Officials are meeting these goals. Additional oversight of performance is conducted through the Internal Compliance Review (ICR) process.

9.3 BORROWER RESPONSIBILITIES

Borrowers are responsible for cooperating fully with the Agency staff performing monitoring activities. The Agency will notify borrowers in writing of any deficiencies or compliance violations identified during its review. Borrower must address these deficiencies within the correction period established by the Agency and described in the notice.

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SECTION 1: OVERVIEW OF AGENCY MONITORING

9.4 AGENCY MONITORING REVIEWS

A. Key Parties in the Monitoring Process

Monitoring involves a range of staff from the Agency and throughout the department. Borrowers, their management agents, and tenants also need to be active participants in the monitoring process. Exhibit 9-1 lists the key parties in the monitoring process.

Exhibit 9-1

Key Participants in the Monitoring Process

USDA Staff	Other Parties
• MFH Servicing Official • Architectural/Engineering staff (Program Support Staff (PSS)) • Environmental staff • Civil Rights staff • Office of General Counsel (OGC)	• Borrower • Management agent ◊ Manager (On-site or Off-site) ◊ Supervisor ◊ Project staff (e.g., leasing, maintenance) • Tenants

1. USDA Staff

Effective monitoring of borrower performance requires a coordinated effort on the part of Agency staff from several areas. While MFH Servicing Officials hold primary responsibility for monitoring borrowers and their projects, staff from other offices will often assist in performing monitoring reviews. For example, Program Support Staff (PSS) such as Architects/Engineers may assist when MFH Servicing Officials have specific concerns about a project. When performing reviews of the central office of a management agent with properties in several states, MFH Servicing Officials will need to coordinate with their counterparts from other servicing staff. Finally, if monitoring activities identify significant deficiencies, MFH Servicing Officials will often need to obtain the advice of staff from OGC.

2. Borrowers, Management Staff, and Tenants

While the Agency holds responsibility for performing monitoring activities, effective monitoring also requires the cooperation of the borrower and their management agent or representative. Their involvement during monitoring reviews is needed to provide access to records and to answer questions about project operations and procedures. Further, when deficiencies are discovered, the borrower, as well as the management agent, need to

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be informed so that prompt action can be taken to correct the problem. Borrowers notified of deficiencies are responsible for ensuring that the problems are corrected and for keeping the Agency informed about actions taken to address the problems.

Tenants are important participants in the monitoring process because they can provide valuable information about project operations.

B. Monitoring Methods and Activities

The Agency uses two basic types of monitoring methods:

- **Desk reviews.** These reviews involve examining project reports submitted by the borrower. Generally, MFH Servicing Officials perform these reviews.

- **On-site reviews.** These reviews are conducted at the project and involve the inspection of both project conditions and records. MFH Servicing Officials will often draw on the technical expertise of other staff to assist in performing these reviews.

The specific reviews that fall into each category are summarized in Exhibit 9-2. Each of these reviews is described in greater detail in subsequent sections of this chapter.

Exhibit 9-2

Agency Monitoring Reviews

Desk Reviews	On-site Reviews
Quarterly/Monthly reports	Post-occupancy review
Annual project financial report	Annual physical reviews
Occupancy trends/vacancy turnover	Triennial Supervisory Visit includes:
Unused rental assistance	On-Site review
Agency internal quality control	Occupancy review
Tenant subsidy review	Management review
	Full Physical Inspection
	Compliance review

C. Key Documents and Sources of Information

The Agency relies on a range of sources to perform its monitoring activities. These sources are summarized in Exhibit 9-3.

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Exhibit 9-3

Key Sources of Information for Agency Monitoring

Agency Records	Project Records	Other Sources
Project Case File • Loan agreement/resolution • Interest credit agreement • Rental assistance agreement • Affirmative Fair Housing Marketing Plan • Lease • Management certification • Management plan • *Form RD 3560-52, Promissory Note* • Annual financial statements • Borrower organizational documents • Plans and Specifications *Automated Systems* • AMAS • MFIS	• Notice of Payment Due Report • Project budgets/Utility ✓ Allowance • Annual financial report • Financial records • Tenant files (eligibility documentation) • Marketing records and applications • Waiting lists • Maintenance records • Occupancy policies • Occupancy rules • Tenant Certifications • VAWA Documents	• On-site visits by Agency staff • Reports from other Agency staff • Tenant reports/complaints • Reports/Information from local officials • Reports/Information from community members • Compliance monitoring and inspection reports received from other financing or subsidy sources involved with the property

1. Agency Records

The project case file (or electronic customer file (ECF)) and other Agency records provide information about the specific responsibilities of the borrower and the operation of the project. As discussed in previous chapters, program requirements vary depending on the type of project and the type of financing the borrower received. The case file (ECF) documents indicate the type of project and the specific terms of the Agency's financing. For example, these documents specify the replacement reserve requirements and the owner's return on investment. The case file (ECF) also contains the management certification and management plan, which provide key information about project operations.

Agency records include the automated systems used to administer the program. AMAS and MFIS contain information that aid in monitoring projects.

Official records contain legal evidence of all transactions between the Agency and the persons with whom it conducts business. For information about the required contents and organization of the borrower case file (ECF), see RD Instruction 2033-A.

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2. Project Records

Project records are documents that provide information about the on-going operation of the project. Notice of Payment Due Report (*Form RD 3560-29*), Multiple Family Housing Project Budget/Utility Allowance (*Form RD 3560-7*), and Tenant Certification (*Form RD 3560-8*) are examples. MFH Servicing Officials examine these records during monitoring reviews to evaluate project performance and compliance.

3. Other Sources

In addition to site visits conducted by MFH Servicing Officials or other staff to observe project operations, the Agency also draws on other sources to inform monitoring activities. Substantiated reports by tenants or community members noting inadequate conditions or improper practices are examples. Reports of performance problems in other states involving the same borrower or agent are also a source of concern. This type of information does not necessarily confirm that a problem is present, but indicates a need for further review of a project's operations.

9.5 PLANNING MONITORING ACTIVITIES

Planning monitoring activities involves scheduling routine reviews and determining the extent to which in-depth monitoring needs to be conducted. MFH Servicing Officials and Leadership Designees should review annually their plan to monitor their portfolio. Exhibit 9-2 indicates the reviews that are performed routinely and those that are in-depth reviews.

A. Routine Monitoring

Each year, MFH Servicing Officials must schedule routine monitoring reviews. These activities—together with the regular program administration activities performed by MFH Servicing Officials—ensure that all projects receive a basic level of oversight each year to check for evidence of deficiencies or potential problems.

In scheduling these activities, Leadership Designees need to ensure that the appropriate staff is available to perform these reviews. Annual physical reviews should be planned to coincide wherever possible with other activities that take staff to the vicinity of the projects. In cases where access to individual units is required for inspection, the borrower will be required to provide adequate notice to the tenants.

B. In-Depth Monitoring

When planning monitoring activities for the year, MFH Servicing Officials must determine which projects warrant in-depth reviews and the types of reviews needed. In-depth reviews are done periodically to check for continued project compliance. These

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reviews are also performed more frequently for projects experiencing distress or when there is clear evidence of compliance concerns.

MFH Servicing Officials may schedule these reviews to take place at any time during the year. They may also need to be scheduled on short notice during the year in response to evidence of problems. When scheduling these reviews, MFH Servicing Officials may need to coordinate with the other staff participating in the review (e.g., architectural staff).

9.6 PERFORMING MONITORING REVIEWS

A. Desk Reviews

Desk reviews are usually performed solely by the MFH Servicing Official and require little coordination with other staff. Performing these reviews generally involves three basic steps:

- **Preparing and reviewing background material.** MFH Servicing Officials should gather the project case records and assemble past reports and other relevant records. In addition to reviewing these documents, MFH Servicing Officials should review the relevant screens in AMAS and MFIS to gain an up-to-date understanding of the project's status and potential concerns.

- **Examining the borrower's monthly and quarterly reports.** MFH Servicing Officials then review the borrower's monthly or quarterly reports following the specific instructions in Section 2 of this chapter or using the instructions that accompany the Agency's review form. MFH Servicing Officials must make every effort to complete the review within the established time period. If additional information is needed to complete the review, MFH Servicing Officials will promptly contact the borrower to request additional information.

- **Notifying borrower of any findings.** If the review reveals deficiencies or compliance violations, the borrower must be promptly notified. The notice must describe the deficiencies and a period for corrective action. If a third party is involved in financing or providing subsidy to the property and a formal arrangement exists with this third party, the Agency will provide a copy of the notice to the third party source to share information concerning the Agency's findings.

Refer to Chapter 4 of this Handbook for details concerning financial reports.

B. On-site Reviews

On-site reviews take more preparation and planning than desk reviews. MFH Servicing Officials must follow the four steps below when performing on-site reviews. The actions at each step will vary depending on the type of review. The specific actions for individual reviews are discussed in Section 2 of this chapter.

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1. Preparing for the Visit

MFH Servicing Officials will notify the borrower at least 2 weeks prior to a visit. The notice will specify the types of preparation (if any) that the borrower must complete to assist with the review. The Agency retains the authority to visit the project without prior notice to observe conditions and operations and to conduct on-site reviews without the presence of the borrower or the borrower's agent.

The MFH Servicing Official should also coordinate with other staff who will participate in the review to clarify assignments and responsibilities. In cases where access to individual units is required for inspection, the borrower will be required to provide adequate notice to the tenants.

The MFH Servicing Official will also review the relevant Agency records and project reports to learn the project's current status and identify potential issues that should receive special attention during the review. Finally, the MFH Servicing Official should fill in the background information items on the monitoring instrument or reporting form.

2. Conducting the Visit

When conducting an on-site visit, MFH Servicing Officials should conduct an entrance interview with the manager and borrower, if available. During this meeting, the MFH Servicing Official will explain the purpose of the review, describe the major activities, and indicate the type of cooperation that will be needed from project staff.

When conducting the review, MFH Servicing Officials should follow the procedures described in Section 2 of this chapter and the instructions that accompany the monitoring tool. MFH Servicing Officials must carefully record their observations to ensure that problems are not missed or incorrectly identified.

Upon completing the review, the MFH Servicing Official should briefly consolidate their results and meet with the manager or borrower to present the initial findings from the review. The MFH Servicing Official should highlight any findings and/or violations at this meeting.

3. Notifying the Borrower

The MFH Servicing Official must prepare a written description of the review results for the project case file (ECF). They must also issue a letter to the borrower summarizing the conclusions of the review and indicate any follow-up actions the borrower is required to take.

This letter is sent to the borrower within 30 days of the site visit or inspection. This letter requests the borrower to respond with procedures and time frames for correcting the noted deficiencies within 30 days. However, if the deficiencies involve issues of health and safety, the borrower is required to resolve those specific issues within 10 days of the letter. The purpose of the letter is to:

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- Notify the borrower of review findings; and
- Provide time frames for resolving deficiencies.

As is the case with desk reviews, if a third party is involved in financing or providing subsidy to the property and a formal arrangement exists with this third party, the Agency will provide a copy of the notice to the third party source to share information concerning the Agency's findings.

4. Follow-Up Activities

If a review identifies deficiencies that require borrower action, the Agency must conduct follow-up actions as appropriate to ensure that the deficiencies are corrected. For information about findings and default situations, see HB-3-3560, Chapter 10. A copy of the letter is placed in the borrower's case file (ECF) and the applicable Findings or Violations must be entered on MFIS.

9.7 PROJECT CLASSIFICATION

The project classification system allows the Agency to focus on those projects that Loan Servicers consider truly at risk. The following paragraphs provide a brief description of how the Agency views the classification of the portfolio.

Loans may be reclassified in MFIS as findings and violations are determined or as project conditions improve.

CLASS D PROJECTS

Class D projects are in default and may be taken into inventory, be lost to the program, or cause the displacement of tenants. Defaults can be monetary or non-monetary. For information about monetary and non-monetary defaults, please refer to HB-3-3560, Chapter 10.

Projects in non-monetary default are those where a Loan Servicer has notified the borrower of a violation using the Agency's three processing letter process, as described in this chapter, and the borrower has not addressed the violation to the Loan Servicer's satisfaction within 60 days of the first servicing letter. The Loan Servicer, State Office, and National Office should be aware that the project is in jeopardy and should be available to provide further servicing assistance.

CLASS C PROJECTS

Class C projects are projects with identified findings or violations, which are not associated to a workout plan and/or transition plan. They include projects with violations where *Handbook Letter 301 (3560)* has been issued but 60 days have not passed. It is important to note that while the presence of a finding or violation is a normal occurrence in portfolio management, Loan Servicers will be concerned when findings and violations are carried for an extended period of time with no indication of resolution efforts. Projects under this classification for an extended period of time will alert Loan Servicers to one or more of the following:

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1. There may be workload or staffing issues related to resolving problems;

2. Findings may need to be elevated to violations to facilitate effective servicing; and

3. Assistance from the State Office or the National Office may be necessary to address the problem

CLASS B PROJECTS

A Class B designation indicates that the Agency has taken servicing steps and the borrower is cooperating to resolve identified findings or violations by associating a work-out plan and/or transition plan.

CLASS A PROJECTS

Class A projects have no unresolved findings or violations.

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SECTION 2: SERVICE OFFICE MONITORING

9.8 POST-OCCUPANCY REVIEW (90-DAY VISIT)

A. Purpose of the Review

The post-occupancy review verifies borrower compliance with program requirements for project occupancy during initial lease-up and looks at whether the procedures described in the Management Plan and Affirmative Fair Housing Marketing Plan are being followed. Specifically, the review examines how borrowers:

- Seek eligible tenants;
- Determine tenant eligibility;
- Determine the appropriate rent;
- Set up appropriate accounts; and
- Use initial operating capital

B. Key Areas Examined

The MFH Servicing Official examines the borrower's rent-up activities as detailed below.

- **Project records.** These include the actions that the borrower takes to attract qualified tenants, determine tenant eligibility, and determine correct rental rate. The project's management plan and Affirmative Fair Housing Market Plan contain the borrower's procedures for tenant selection and for determining the rental rate.

- **Tenant files.** The borrower must maintain files for each tenant. Tenant files must include such information as income verification, the lease, and documentation showing how tenant eligibility was established and how the rental rate was determined.

  To complete the review, the MFH Servicing Official will also need the project's waiting list (if applicable) and budget. These documents will be used to determine if the borrower is in compliance with the occupancy requirements set forth in Chapter 6 and the approved unit rental rates established in the project budget.

C. Timing

The post-occupancy review is conducted within 90 days after project operations begin, or within 90 days after a transfer closes to verify the transferee’s compliance with all applicable program requirements.

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D. Key Staff

MFH Servicing Officials perform the post-occupancy review.

E. Preparing for the Review

The MFH Servicing Official should complete the following steps before performing the review:

- **Step 1.** Determine if outstanding issues, areas of concern, or indicators of noncompliance exist by reviewing the borrower file documents and MFIS.

- **Step 2.** Notify borrower, in writing, of upcoming review. The borrower should receive *Handbook Letter 202 (3560), Notification Letter for Supervisory Visit* at least 2 weeks prior to the review date to ensure that the necessary records and staff are available. Modify the letter as needed for the Post Occupancy Review.

- **Step 3.** Obtain the Multi-Family Housing Project Supervisory Visit form from MFIS.

F. Completing the Review

The MFH Servicing Official should use the worksheet for the Multi-Family Housing On-Site Review (Part III) and the Worksheet for MFH Individual Tenant File Review portions of the Multi-Family Housing Project Supervisory Visit form for guidance. The borrower will have available the documentation requested by the MFH Servicing Official. The borrower may choose to be present during the review. The borrower's choice not to be present does not preclude the MFH Servicing Official from performing the review.

To complete the Post-Occupancy Review, the MFH Servicing Official must complete the following steps:

- Review the Management Plan and Affirmative Fair Housing Marketing Plan. This documentation is evidence that the borrower was aware of the procedures that were to be followed during initial rent-up or post-closing.

  Review tenant files, waiting lists (if applicable), and budget. The tenant files reviewed should include a sample of accepted and rejected applicants.

  The reviewer must determine the following:

  If requested documentation is present and adequate to perform the review;

  ◊ Borrower's compliance with established procedures for marketing the project, qualifying tenants, determining rents, using waiting lists, and rejecting applicants.

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- Summarize the post-occupancy review by completing the On-Site section of Part III of the Multi-Family Housing Project Supervisory Visit form.

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G. Exit Conference

Conduct an exit interview with the borrower to discuss the results of the review, possible cause of deficiencies, and required solutions.

H. MFIS

Enter the results of the post-occupancy review in MFIS, to include any Findings or Violations, if applicable and the activity completed date.

I. Follow-Up

If the review reveals deficiencies and/or compliance violations, prepare a letter to the borrower describing the deficiencies and a period for corrective action. If the borrower does not respond within the established timeframes, *Handbook Letter 301 (3560)*, as described in Chapter 10 of HB-3-3560, is to be sent within 15 days from the deadline initially given.

9.9 ANNUAL PHYSICAL INSPECTION

A. Purpose

Maintaining the physical condition of the secured property is the borrower's responsibility. The MFH Servicing Official monitors the physical condition of the project to ensure that the property maintains its value and that tenants have housing that is decent, safe, and sanitary.

B. Key Areas Examined

The MFH Servicing Official will inspect the project's grounds, exteriors, common areas, and occupied and vacant units following the methodology described in Section 9.9 F. A full physical inspection must be performed when the results of this review indicate that the project is not being maintained in accordance with the physical standards for the program.

C. Timing

Annual inspections are required for all properties with outstanding physical findings identified in MFIS unless a full physical inspection and supervisory visit are due. However, the MFH Servicing Official may schedule an annual inspection at any time if warranted.

D. Key Staff

MFH Servicing Officials will perform the annual physical inspection. An experienced MFH Servicing Official may accompany inexperienced staff during their visit to the property.

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Leadership Designees are authorized, at their discretion, to accept third party inspection results for annual inspections. The borrower or the borrower's representatives (including tax credit syndicators) are not considered a third party for this purpose. Examples of acceptable third parties are Department of Housing and Urban Development (HUD), Freddie Mac, Fannie Mae, tax credit agencies and housing finance agencies. MFH Servicing Officials must continue to populate MFIS with this inspection data.

E. Preparing for the Review

The MFH Servicing Official should complete the following steps before going to the project site to perform the review:

- **Step 1.** Determine if outstanding issues, areas of concern, or indicators of noncompliance with Agency requirements exist by reviewing the borrower case file (ECF), previous physical reviews, most recent inspection report, tenant complaints (if applicable), and MFIS.

- **Step 2.** Notify borrower, in writing, of up-coming inspection. The borrower must receive *Handbook Letter 202 (3560), Notification Letter for Supervisory Visit* at least 2 weeks prior to the review date to ensure that the necessary records and staff are available. Modify the letter as needed for the annual physical inspection. The borrower will, in turn, notify the tenants of the scheduled inspection.

- **Step 3.** Obtain the Multi-Family Housing Project Supervisory Visit form from MFIS.

F. Completing the Review

The MFH Servicing Official will use the Worksheet for MFH Exterior Physical Standards and the Worksheet for MFH Interior Physical Standards. The MFH Servicing Official will complete the following steps:

- Examine the project's grounds, exteriors, and common areas. The number of occupied units to be examined is the greater of 5 percent of all occupied units or at least two units. If the project has vacancies, the greater of 5 percent of vacant units or at least 2 vacant units must also be inspected. For example, a 48 unit project with 3 vacant units would require 2 occupied units and 2 vacant units to be inspected for a total of 4 units.

No. of Units to be Inspected Occupied Units + Vacant Units	
Occupied Units	Vacant Units
>5% or at least 2	>5% or at least 2

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- Review the extent of borrower compliance with the physical accessibility requirements. Review the ability of the project's current budgeting and capital planning to implement any improvements identified by the borrower's transition plan. For information on transition plans, see Chapter 3.

- Complete all parts of *Form RD 3560-11, Multi-Family Housing Physical Inspection Report*.

- Photograph any deficiencies noted during the examination.

  Findings and Violations: The reviewer reports a finding or violation on *Form RD 3560-11* as those items that were identified as a deficiency or a weakness.

  A "finding" is a failure to meet physical standards that indicate a widespread occurrence or pattern of a physical problem that should be corrected through routine procedures.

  A "violation" is a finding that is elevated either by its severity or the Agency's inability to obtain a resolution from routine servicing methods. A violation should be recorded only if the MFH Servicing Official intends to pursue the problem through the three-servicing-letter process. Elevating a finding to a violation will have an effect on the classification.

- Conduct an exit conference with the borrower. The exit conference allows the borrower to ask questions and to prepare an appropriate response to the findings and/or violations noted in the report. In this meeting the MFH Servicing Official and the borrower can discuss the requirements and time frames for resolving each finding and/or violation. Identify any health and safety issues, which must be resolved within 10 days of the MFH Servicing Official's written results of the inspection.

G. MFIS

Enter the results of the annual physical inspection into MFIS, to include any Findings or Violations, if applicable and the activity completed date.

H. Follow-Up

If the inspection reveals deficiencies or compliance violations, prepare a letter to the borrower describing the deficiencies and a period for corrective action. The letter requires that health and safety issues be resolved within 10 days. If the borrower does not respond within the established time frames, *Handbook Letter 301 (3560)* is to be sent within 15 days from the deadline initially given.

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9.10 TRIENNIAL SUPERVISORY VISIT

A. Purpose

A Supervisory Visit consists of three components – a full physical inspection, an on-site review and a compliance review.

Adequate maintenance is a crucial element in providing housing that is decent, safe, and sanitary, and ensuring that environmental and accessibility requirements are met. The Agency regularly conducts full physical inspections of its properties to ensure that they meet established program standards.

The purpose of the on-site review component is to determine the borrower's continued compliance with the management requirements, financial requirements and occupancy requirements for the project. This review also includes an examination of unit rents to ensure that they are being charged in accordance with the approved budget.

The purpose of the compliance review is for Agency staff to review the borrower's compliance with the Affirmative Fair Housing Marketing Plan and/or the Equal Opportunity requirements of Title VI of the Civil Rights Act of 1964, the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

B. Key Areas Examined

The MFH Servicing Official will inspect the project's grounds, exteriors, common areas, and a sample of dwelling units following the methodology described in Section 9.10 F.

The MFH Servicing Official reviews the borrower's occupancy procedures, rent charge calculations, the project's financial systems and controls, along with its maintenance and preventive maintenance programs.

When conducting a compliance review at a project and at the office of the borrower or management agent office, the MFH Servicing Official will focus on the following areas:

- Marketing procedures;
- Rental policies;
- Waiting list;
- Project and unit accessibility;
- Eviction policy; and

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- Other operating policies, as relevant.

C. Timing

Supervisory Visits must be conducted at least once every 3 years, after the initial Post Occupancy Review, completed prior to the end of the fiscal year and should be conducted more frequently for projects with management that is unfamiliar with Agency requirements, or for projects experiencing occupancy or operational difficulties.

D. Key Staff

MFH Servicing Officials, assisted by an Agency Architect as needed, perform supervisory visits. An experienced MFH Servicing Official may accompany inexperienced staff during their visit to the property.

To conduct a compliance review, the MFH Servicing Official must attend Civil Rights training (this may be completed on-line or virtually).

E. Preparing for the Supervisory Visit

The MFH Servicing Official should complete the following steps before going to the project site, or the office of the borrower or management agent to perform the Supervisory Visit:

- **Step 1.** Notify the borrower, in writing, of the upcoming Supervisory Visit. The borrower must receive *Handbook Letter 202 (3560) "Notification Letter for Supervisory Visit,"* at least 2 weeks prior to the visit to ensure the necessary records and staff are available. Since access to individual units will be required for inspection, the borrower or management agent must provide adequate notice to the tenants. If the MFH Servicing Official chooses to do the tenant file review prior to the visit, request the files be sent at this time.

- **Step 2.** Obtain Multi-Family Housing Project Supervisory Visit form from MFIS.

- **Step 3.** Desk Review. Review MFIS and the borrower's case file (ECF) to determine if outstanding issues, areas of concern, or indicators of noncompliance with Agency requirements and Civil Rights laws exist. The following documents should be included in this review:

  ◊ Physical inspection reports

  ◊ Tenants complaints (if applicable)

  ◊ Current Management Plan

  ◊ Borrower's operating regulations (e.g. grounds for eviction)

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◊ Affirmative Fair Housing Marketing Plan

◊ Work Out Plan (if applicable)

◊ Quarterly/monthly reports

◊ Current Annual Budget

◊ Current Balance Sheet

◊ Current Notice of Payment Due Report (project worksheet)

◊ MFIS Report FRM 2000 (Desk Review)

F. Completing the Review

Physical Inspection:

The MFH Servicing Official should use the Worksheet for MFH Exterior Physical Standards and the Worksheet for MFH Interior Physical Standards and Tenant Interviews portions of the Multi-Family Housing Project Supervisory Visit form from MFIS for guidance.

To complete the review, the MFH Servicing Official will:

- Examine the project's grounds, exteriors, common areas, and interior units. The number of units to be examined will be as follows:

Number of revenue producing units	Number of occupied units to be inspected
0-5 Units	All
6-30 Units	6 Units
31-74 Units	10 Units
75 or more Units	15 Units

Plus, if the project has vacancies, the greater of 5 percent of vacant units or at least 2 vacant units must also be inspected. For example, a 48 unit project with 3 vacant units would require 10 occupied units and 2 vacant units to be inspected for a total of 12 units.

- Complete all parts of the *Form RD 3560-11.*

- Review the extent of borrower compliance with the physical accessibility requirements of civil rights laws. Review the ability of the project's current budgeting and capital planning to implement any improvements identified by the borrower's transition plan.

- Photograph any deficiencies noted during the examination.

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On-Site Review:

The MFH Servicing Official should complete the On-Site Review portion of the Multi-Family Housing Project Supervisory Visit form from MFIS.

To perform the on-site review, the MFH Servicing Official must complete the following steps:

- **Review project records** including marketing materials, applications, and waiting lists. The MFH Servicing Official should determine whether the marketing materials indicate that the project is complying with the Affirmative Fair Housing Marketing Plan. The MFH Servicing Official should also determine whether the applications and waiting list records indicate that the borrower is complying with tenant selection requirements.

- **Review tenant files,** which should include such information as income verifications, back-up documentation, the leases, and documentation showing how the rental rates were determined. The sample files should include accepted and rejected applicants. Use Worksheet for MFH Individual Tenant File Review portion of the Multi-Family Housing Project Supervisory Visit form from MFIS to record your review. MFIS will select tenant files using the File Selection Criteria defined below:

  (a) MFIS will determine the number of files to be reviewed.

Number of revenue producing units	Number of files to be reviewed
0-5 Units	All
6-30 Units	6 Files
31-74 Units	10 Files
75 or more Units	15 Files

  (b) MFIS will identify the risk factors.

  Gross income < $3000
  Medical Deductions
  Initial Certification
  Move-out
  Eviction
  Most recent recertification

  (c) If there are an insufficient number of files using the risk factors, then MFIS will randomly select the remaining files.

  - For HUD Section 8 and Housing Choice vouchers, Tenant Subsidy Codes 2 & 6, a tenant file review is NOT required by the Agency.

  The reviewer must determine whether:

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◊ The borrower is maintaining adequate documentation; and

◊ The borrower is complying with program requirements for marketing the project, qualifying tenants, determining rents, using waiting lists, and rejecting applicants.

◊ If discrepancies are observed and determined to be trends in the tenant file reviews, a full review of all tenant files will be required within 90 days to determine further servicing such as collection of unauthorized assistance or obtain proper verifications.

- **Review borrower compliance** with management requirements, financial requirements and occupancy requirements for the project.

  The MFH Servicing Official will review the following:

  - Site Staff
  - Maintenance Systems
  - Capital Planning and cash flow
  - Cash Controls
  - Cost Controls
  - Insurance and Reserve Accounts
  - Identity of Interest
  - Occupancy Review
  - Tenant/Management Relations
  - Violence Against Women Act (Attachment 6-K, Section R)

  The MFH Servicing Official must complete the On-Site Review section of the Multi-Family Housing Project Supervisory Visit form.

<u>Compliance Review</u>:

To perform the compliance review, the MFH Servicing Official will:

- Review the management plan to determine project management's method of informing tenants and applicants regarding requests for reasonable accommodations.
- Review the lease agreement, application, and other documentation used by the borrower to determine if policies and procedures represent barriers to occupancy.

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- If a tenant is an ineligible occupant of a fully accessible unit, determine if there is an executed lease attachment that requires the tenant to move if an individual needing the handicapped features applies for occupancy.

- Inspect the project to determine if there are physical barriers, and compare it to the self-evaluation and transition plan to determine if those barriers are addressed in the plan and are scheduled to be removed.

- Where transition plans are scheduled to remove barriers over more than a one-year period, review the transition plan and the most recently approved budget to ensure that borrower budgeting and the project's financial condition is supportive of the transition plan as written. Transition plans should include the potential cost of removing identified barriers.

- Interview tenants to determine if the borrower has provided information and made reasonable accommodations upon request by the tenant.

- Interview tenants in the fully accessible units to determine if the tenant has need of the accessibility features of the unit and is an eligible occupant.

G. Exit Conference

Upon completing the supervisory visit, the MFH Servicing Official should conduct an exit conference with the borrower to address findings, cause of findings, and possible resolutions. In this meeting the MFH Servicing Official and the borrower can discuss the requirements and time frames for resolving each finding and/or violation. Identify any health and safety issues, which must be addressed within 10 days of the MFH Servicing Official's written results of the inspection.

H. MFIS

Enter the results of the inspection into MFIS, to include any Findings or Violations, if applicable and the activity completed date.

I. Borrower Notification of Review Results

The MFH Servicing Official must prepare a written description of the review results for the project case file (ECF). They must also issue a letter to the borrower summarizing the conclusions of the supervisory visit and indicate specific follow-up actions the borrower is required to take.

This letter is sent to the borrower within 30 days of the supervisory visit. This letter requests the borrower to respond with procedures and time frames for correcting the noted deficiencies within 30 days. However, if the noted findings involve issues of health and safety, the borrower is required to resolve those specific issues within 10 days of the letter.

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If the results of a physical inspection indicate a finding or violation pertaining to "Common Area Accessibility," "Fully Accessible Units," or other relevant physical or accessibility standards, the MFH Servicing Official should include the specific language in communications with the borrower as shown in Exhibit 9-4.

Exhibit 9-4
Sample Language – Civil Rights Violations Detected During Physical Inspections

"Recent Agency monitoring of the subject project indicates that you are not currently meeting your responsibilities under applicable Civil Rights laws. Since project operating or reserve account funds may be required to address this situation, we request that you advise the Agency of how you intend to comply with the law. In addition to any penalties, liabilities, or loss of tax credits that may result from legal action brought against you by third parties, continued noncompliance may result in your ineligibility to receive further loan funds from the Agency. You failed to meet the following MFH physical standard(s):

1. Common Area Accessibility (Specify)
2. Fully Accessible Units (Specify)
3. Other (Specify)."

If the results of the supervisory visit indicate noncompliance with other Civil Rights laws the MFH Servicing Official should also include the specific language regarding noncompliance as shown in Exhibit 9-5.

Exhibit 9-5

Sample Language to Use When Compliance Reviews Uncover Violations to Civil Rights Laws

"Recent Agency monitoring of the subject project indicates that you are not currently meeting your responsibilities under applicable Civil Rights laws. Since project operating or reserve account funds may be required to address this situation, we request that you advise the Agency of how you intend to comply with the law. In addition to any penalties, liabilities, or loss of tax credits that may result from legal action brought against you by third parties, continued noncompliance may result in your ineligibility to receive further loan funds from the Agency. You are in noncompliance with the following: (Specify)."

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J. Follow Up

If the borrower does not respond within the established timeframes, Handbook Letter 301 (3560) in Chapter 10 of HB-3-3560 should be sent to the borrower within 15 days from the deadlines initially given.

If a third party is involved in financing or providing subsidy to the property and a formal arrangement exists with this third party, the Agency will provide a copy of the notice to the third party source to share information concerning the Agency's findings.

The MFH Servicing Official must notify the Civil Rights Office if borrowers fail to bring themselves into compliance with Civil Rights Laws or fail to submit an acceptable transition plan. The Leadership Designee will forward the issue of noncompliance to the Civil Rights Office. The Civil Rights Office will notify the Leadership Designee if further review and processing of the finding will either resolve the finding or require that it be forwarded to the Justice Department to resolve the noncompliance issue. The Civil Rights Office will notify the Leadership Designee of the disposition of the finding of noncompliance.

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SECTION 3: AGENCY MONITORING FOR LABOR HOUSING PROJECTS

9.11 OFF-FARM LABOR HOUSING

Off-Farm Labor Housing projects should be monitored in accordance with the requirements established in this chapter for other multi-family housing projects.

9.12 ON-FARM LABOR HOUSING

On-Farm Labor Housing projects should be reviewed by the Agency at least once every three years. The MFH Servicing Official should complete the Supervisory Visit Worksheets from MFIS. During the monitoring visit, MFH Servicing Officials should review:

A. Eligibility Documentation

Borrowers should properly document that each resident is eligible to live in the On-Farm Labor Housing unit. At a minimum the borrower should have an executed lease or employment contract with each tenant and each tenant should meet the eligibility requirements established for On-Farm Labor Housing tenants in Section 9 of Chapter 6 of this Handbook.

B. Financial Information

The borrower must document that the on-farm labor housing unit(s) are being operating in a nonprofit manner. At a minimum the borrower should develop an operating budget that demonstrates revenues equal expenses and the borrower is not receiving a return from the property.

C. Operating Plan

The review of the operating plan should also ensure that the property is being managed in a nonprofit manner and that tenant requests and grievances are being handled in a timely manner and in accordance with the management plan.

D. Loan Agreement

The review of the loan agreement should ensure that the borrower is in compliance with the agreement made to the Agency to provide adequate housing to the employees in the borrower's employment and not to charge rent, unless otherwise approved by the Agency.

E. Security Deposits

If the borrower has charged security deposits to the tenants, then the review should ensure that security deposits are being managed in accordance with state and/or local law.

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F. Payment of Taxes and Insurance

The review of taxes and insurance should ensure that taxes are being paid in a timely manner and at the very minimum to ensure that the borrower has adequate insurance in place to cover replacement of the property in the event of a loss.

SECTION 4: AGENCY OVERSIGHT OF SERVICING ACTIVITIES

Once the Servicing Team has conducted routine oversight and reviewed its portfolio, the Leadership Designee has a responsibility for additional oversight in a broad sense. The goals and responsibilities of the Agency are described below.

The Leadership Designee will use MFIS as the database for maintaining and analyzing project financial information as well as recording and tracking project supervisory activity and servicing efforts.

9.13 PORTFOLIO MANAGEMENT GOALS

Proper asset management of the Agency's multi-family housing portfolio begins with a thorough evaluation of the entire portfolio to obtain a clear understanding of existing and potential problems. Close monitoring, timely follow-up, and a consistent administration of the regulations will be beneficial in the resolution of problems and will contribute to the stability of the program.

Staff, at all levels, need to be better prepared to address the challenges relating to their portfolio. Staff must be provided with training, resources, and support to meet these challenges. The mission and goals, and plan of action for effective loan servicing and portfolio management are described below. For tracking adherence to these goals, Leadership Designees should look at the appropriate MFIS or AMAS report unless specified otherwise.

1. RECEIVERSHIP PROPERTIES. *Reduce Receivership Periods to No More Than 12 Months*

(Measurement Tool: MFIS TRK 2000 – Servicing Effort Tracking Report)

The oversight process of a property held in receivership by the Agency requires close monitoring and supervision by the MFH staff. This will include the review of property financial records such as monthly reports, year-end reports, and annual audits. Additionally, staff is responsible for review and approval of the payment of certain expenses, such as management fee, taxes and insurance.

Receivership properties may have special needs and may need to be serviced within the parameters of a workout plan. Others will require sales and/or other liquidation plans.

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To transition out of the receivership, it will be necessary to focus efforts on obtaining new substitute general partners, transfers of ownership, or to liquidate accounts.

MFH Servicing Officials should input servicing data into the comment section of MFIS to provide updated status.

2.* INVENTORY PROPERTIES*: Reduce Inventory Property Holding Periods to No More Than 12 Months

(Measurement Tool: MFH Servicing Officials will input comments to update the status of inventory properties in MFIS on a monthly basis. The Leadership Designee will review the status of inventory properties by compiling AMAS Reports and then reviewing MFIS TRK 2000.)

State Offices must review their inventory property portfolio and take necessary actions to effectively dispose of these properties. To accomplish this, all efforts should be given to marketing the properties, including reducing the price, sealed bids, or sale as a non-program property. All inventory properties should be managed and made ready for sale in the most expeditious manner using the authorities in 7 CFR part 3560, subpart K.

The National Office should be contacted for assistance in the sale of a property experiencing marketing difficulties.

3. DELINQUENT LOANS: ***Maintain a Delinquency Rate of Two Percent or Less***

(Measurement Tool: AMAS RC 545 Report)

MFH Servicing Officials or Leadership Designees with delinquency rates that exceed two percent are required to work with borrowers and take appropriate servicing actions to reduce their delinquency rates to two percent or less.

Borrowers who are consistently delinquent require aggressive servicing and counseling regarding late payments. If long-term delinquency is the result of pending litigation for liquidation, appropriate officials should be notified and encouraged to expedite such litigation. When MFH Servicing Officials are experiencing difficulties with litigation officials or when the loan is part of a long-term work-out agreement, the National Office should be contacted for assistance.

A number of long-term delinquencies are the result of inactive accounts with loan balances remaining after the asset is liquidated (i.e., foreclosure, sale, or transfer for less than the debt, compromise offer, bankruptcy, etc.). These accounts need to be settled due to their negative impact on the overall multi-family housing delinquency rate. State Offices are to immediately request assistance of OGC, the Assistant U.S. Attorney, and/or the National Office when accounts in this category are determined to exist.

Any state with average delinquency rates above the two percent national average will be closely monitored and contacted by the National Office to determine what efforts are

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being made to reduce the delinquency, and to identify whether assistance or training is needed. Delinquency status reports may be required from those states identified as having problems. Similarly, any states exhibiting a trend in increasing delinquencies may be required to submit an explanation or a plan of action. Any instances of MFH Servicing Officials holding payments and not processing them in a timely manner must be discontinued immediately. All payments are to be processed when received.

4. <u>OPERATING BUDGETS/UTILITY ALLOWANCES</u>: *Take Appropriate Action on All Budgets/ Utility Allowances Prior to the Beginning of a Project's Fiscal Year*

(Measurement Tool: MFIS TRK 3000 – Tracking Step Summary Report)

Budgets are to be reviewed and approved in MFIS prior to the start of the borrower's fiscal year. If not received or if unacceptable, a finding and a follow-up date must be entered in MFIS. MFH Servicing Officials must take action on all budgets within 60 days of receipt.

5.* <u>ANNUAL FINANCIAL REVIEWS</u>*: Complete All Year-End Financial Reviews Within the Required Time Frame

(Measurement Tool*:* MFIS TRK 3000 – Tracking Step Summary Report)

The "Actuals" listed on *Form RD 3560-7* and *Form RD 3560-10,* and the audit are to be reviewed and any findings entered in MFIS within 60 days of receipt. The borrower is to be notified of the results of the review and MFIS is to be updated accordingly. If financial information is not received or is unacceptable, a finding and a follow-up date must be entered in MFIS.

6. <u>ANNUAL PHYSICAL INSPECTIONS</u>: *Complete All Required Annual Physical Inspections.*

(Measurement Tool: MFIS TRK 3000 – Tracking Step Summary Report)

The purpose of the annual physical inspection is to determine whether or not there are problems that may require immediate attention. In addition, a determination should be made if the exterior and common areas are accessible as required by applicable Federal law. All findings and follow-ups must be entered into MFIS.

7. <u>SUPERVISORY VISITS</u>: *Complete All Required Supervisory Visits and Compliance Reviews.*

(Measurement Tool: MFIS TRK 3000 – Tracking Step Summary Report)

The Supervisory Visit is the Agency's primary tool to complete in-depth analysis of the borrower operations with regard to Management Plan/Agreement, Fair Housing, tenant eligibility, file review, budget compliance, building security and maintenance. The

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borrower is to be notified of findings and deficiencies and given a timetable to correct all problems. Any summary level findings or violations must be entered into MFIS.

8. **REGIONAL OVERSIGHT OF MFIS DATA:** ***MFH Regional staff responsibility is to select and review 5 percent of projects receiving the Supervisory Visit during the year and to ensure that all the data elements in MFIS have been input.***

MFH Regional staff must continuously monitor supervisory activities and borrower status to ensure that each project is receiving timely and effective supervision. MFIS will be used to accomplish these monitoring responsibilities.

When used correctly, MFIS enables the Agency to effectively manage the multi-family housing portfolio and ensure the proper use of Federal housing resources. Agency staff has immediate access to portfolio information to make better program management decisions, and more effectively deploy limited resources. With the implementation of MFIS, the ability to review portfolio activity now extends to borrowers and management agents as well as Agency staff.

MFH Servicing Officials are required to input the current status of all servicing actions into MFIS. Leadership Designees must monitor the MFIS activities of MFH Servicing Officials to ensure that data is accurate, consistent, timely, and complete and that regulatory authorities are effectively used to manage the portfolio and determine that Agency resources are effectively used to obtain compliance.

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SECTION 5: PROGRAM INITIATIVES AND OVERSIGHT

9.14 WAGE AND BENEFIT MATCHING

States are required to obtain wage and benefit matching agreements with State Departments of Labor (SDOL) and to fully implement and utilize income matching of tenants applying for assistance and rental subsidies under the Multi-Family Housing programs.

Agency staff will:

- Execute a Memorandum of Understanding (MOU) or other appropriate agreement with the state agency charged with administering information required to be kept by the US Department of Labor (DOL) on wage earnings and benefits. The purpose of the MOU is to improve the controls over income certifications and subsidy payment accuracy by providing an independent source for verifying incomes of participants. Before entering into such agreements, states are reminded that the advice and consent of the Office of the General Counsel (OGC) must be obtained.

- Aggressively pursue implementation of MOUs. If assistance is needed to overcome implementation barriers such as statutory prohibitions, automation issues, or a lack of cooperation from the state agency, the Deputy Administrator for Multi-Family Housing Programs should be contacted.

- Approve computer-matching arrangements. The administrative oversight required for a fully interactive wage and benefit-matching system involves considerable resources to meet the stringent administrative oversight required by law.

    1. Where two or more Agency automated systems are to be linked to merge data, the advice and consent of the Deputy Administrator, Multi-Family Housing must be obtained prior to implementation of such a system. (Example: Rural Development may arrange to access a State Wage and Benefit Information Collection Agency's database and pull up information on Agency hardware platforms. Rural Development can then manually compare the results on computer screen or printout with Agency data.)

    2. When the data from two or more agencies is being merged to facilitate efficient comparison between incomes and benefits reported via use of automated software routines comparing database records, approval by the Department of Agriculture's Data Integrity Board is required. In addition, publication of the action in the Federal Register and notification to Congress is required.

- Determine when and how often to conduct wage and benefit matches. Leadership Designees will establish routines to require and ensure that wage matches are performed each year on at least 10 percent of all initial and subsequent tenant certifications of those households earning income, for those residents scheduled to be interviewed prior to conducting supervisory visits, and for projects where the supervisory visits reveal

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significant discrepancies. (Normally, wage and benefit matches will not exceed a 20 percent level.) Other incidences when wage and benefit matches may be obtained, but are not required, are for tenant households who are moving into projects for the first time, for tenants or applicants claiming zero or unreasonably low incomes, and for existing tenants where the management agent or the servicing official deems wage matching appropriate.

- Wage and benefit matching for MFH programs includes Labor Housing residents whose eligibility or receipt of subsidy is determined in whole or in part on wage and benefit data.

- Establish notification routines for initiating MFH wage and benefit matching. States may use the notices to borrowers, management agents, and residents, set out in **Appendix 4** of this Handbook, as guides in implementing the wage and benefit matching system for MFH programs.

- Identify illegal or improper assistance and service suspected or confirmed abuses in the MFH program. If the DOL verification and investigation reveals that a tenant has submitted inaccurate or false information regarding household income, the servicing staff is required to notify the borrower of the findings. The borrower must attempt to correct the tenant certification and/or seek restitution of any improperly received rental assistance. See **Appendix 4** of this Chapter for guidance in notifying the borrower of any discrepancies discovered. The borrower will provide the tenant a notice of lease violation and an opportunity for repayment. If the tenant refuses or is unable to repay, the borrower will initiate eviction proceedings. If the tenant moves out of the unit without repaying, the borrower will provide the Agency all relevant tenant records so the Agency can begin the process of recouping the improper assistance through the use of US Treasury offsets

  Leadership Designees can contact the Deputy Chief Financial Office, Program Reporting Branch of the St. Louis Office to request assistance in further servicing and collection processing.

- The Agency will confirm that the benefits received under the current tenant certification period are accurate. The Agency does not intend to require past tenant certifications to be reviewed for accuracy by wage and benefit matching unless there is evidence of substantial abuse and the amount of the past-unauthorized assistance exceeds $500. In addition, any recovery efforts must not begin without first having been assured that tenants have had the opportunity to review the accuracy of the information and appeal any disagreements in accordance with the provisions of CFR 3560.160.

Report to the National Office on progress in obtaining MOUs.

States listed in **Attachment 9-A** that do not have MOUs in place (except those where State Law prohibits wage matching) must submit progress reports on actions taken to implement

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an MOU by memorandum or e-mail to the Multi-Family Housing Asset Management Division (AMD).

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9.15 UNUSED RENTAL ASSISTANCE

It is the intent of the Agency to ensure effective use of Rental Assistance (RA). To maximize utilization of unused RA, Field Operations Division (FOD) staff are responsible for identifying unused RA to be transferred according to Agency priorities. FOD leadership is responsible for monitoring effective use of unused RA.

A. Unused Rental Assistance Reports

Leadership Designees must report semi-annually on the status of the RA units unused for 6 months or more utilizing the Rental Assistance Monitoring SharePoint site. The basis for this information comes from MFIS Report PRJS4200, "Occupancy Trend." In addition to vacancies, the report identifies unused RA units as of the 1st day of the reporting period.

When identifying RA units being unused for six months, evaluations need to be made to determine if RA units are unused because of tenant turnover. This is particularly true in the case of one or two RA units appearing eligible for possible transfer. MFIS Report PRJS4200, "Occupancy Trend" identifies the possible number of RA units available for transfer. This number is the fewest unused RA units for the past six-month period. A review of the current month's occupancy is necessary to determine if there are any applicants/tenants who may need the RA unit in the next month.

A review of MFIS Report PRJ2000, "Project Worksheet" and PRJS4200, "Occupancy Trend" is needed to determine the impact of unused RA by the following situations:

1. Tenants vacating
2. Tenants moving in
3. Tenants paying overage
4. Percentage of occupancy
5. Number of vacant units

After the review and analysis of the reports, the property should be contacted if there is any uncertainty about the cause of the RA unit being unused.

Regulation 3560.257(c) requires that "…borrowers must assign available rental assistance units as soon as…units become available". If there is substantial traffic in and out of the property, analyze closely to see if the RA that was unused was again re-used in subsequent months within the 6-month period.

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Pay particular attention to this in cases where there is substantial activity, and one or two units are identified as unused. This is the effect of "turnover": RA can appear to be unused where there is substantial tenant traffic, when in fact it may be an overlap of unused RA units.

B. Evaluation of Report

Leadership Designees will review the Rental Assistance Monitoring SharePoint site to monitor completion. If the Leadership Designee determines that Servicing Officials are not aggressively utilizing the unused RA, the Leadership Designee may determine the placement of unused RA units, including transfer to rent overburdened tenants to effectively utilize unused RA.

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SECTION 6: SPECIAL PROCEDURES FOR DECLARED DISASTERS

In the event of a natural or man-made disaster declared by the President of the United States, the Agency may authorize certain actions to be undertaken or certain regulatory provisions that may be waived for MFH borrowers who make their housing available for disaster evacuees.

9.16 PRESIDENTIALLY-DECLARED DISASTERS

In the event of a disaster, the Federal Emergency Management Agency (FEMA) identifies counties affected by the disaster and makes available money or direct assistance to individuals whose property has been damaged or destroyed and whose losses are not covered by insurance.

The Agency has developed Special Actions and Waivers that may be implemented in the event of such disasters for tenants who are residents of the affected counties and owners of Rural Development-financed properties located in the affected counties. For disasters that impact at least 500,000 people, special disaster-related Servicing Actions will be put into effect as outlined below.

A. Definition of Evacuees

For purposes of the Section 515 and Section 514 loan programs, "disaster evacuees" are defined as residents of counties included in the declared disaster area identified by FEMA. In order to qualify as a recipient of Rural Development multi-family housing assistance and receive the benefits identified below (Special Actions and Waivers), a disaster evacuee must present evidence to the property manager of having resided in the affected county. This evidence may be a driver's license, utility bill, mortgage statement, lease, etc., or the property manager may verify the address, date of birth etc., from a credit agency.

By definition, a resident in a Rural Development financed property located in a disaster county is a "disaster evacuee" and may be entitled to benefits from Special Actions identified below. For example, an existing tenant may suffer a job loss due to the disaster, which could result in receipt of emergency rent assistance provided by another governmental agency.

B. Use of Rural Development Rental Assistance Program

A disaster evacuee who is receiving rent assistance from any governmental agency is not eligible to receive benefits from the Rural Development Rental Assistance Program. If the evacuee is not receiving rent assistance from another government agency, the property manager should apply the standard eligibility tests for the evacuee to receive Rural Development Rental Assistance. If the manager is unable to obtain verifications of income or employment because of the disaster, no Rental Assistance can be provided.

C. Reporting Property Damage

In the event of a disaster, to report damage to MFH property, the MFH Servicing Official will update the Disaster Affected Areas Report located on the Field Operations Division – Emergency Management SharePoint site. The report should include information received from the owner or their representative utilizing the degree of damage based on Attachment 9-C, Degree of Damage Metrics.

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9.17 SPECIAL ACTIONS AND WAIVERS

Regardless of the size of the affected population, Leadership Designees have authority to implement the following procedures without National Office approval:

1. Applicants may receive a Letter of Priority Entitlement (LOPE) issued by USDA Rural Development or may provide the property owners with documentation of being registered with the FEMA in lieu of a LOPE letter.
2. If an applicant does rent a Rural Development-financed property, the FEMA registration number must be entered into Multi-Family Information System (MFIS). Within *90 days*, field staff will need to conduct a random sampling of tenant files to assure that the FEMA data was input into MFIS correctly.
3. Allow for imputed income from assets due to homeownership affected by the disaster.
4. Zero income applicants will be allowed to reside in apartment units; rental assistance (if available) will be made available to the applicant.
5. Collection of security deposit per 7 CFR 3560.204 may be waived, if requested by the owner of the property.
6. Owners of elderly designated properties may rent to age ineligible applicants for *6 months* from the date of the Leadership Designee decision.
7. Annual lease required per 7 CFR 3560.156 (b)(2) is waived and leases may be issued on a month-to-month basis.

Special Actions and Waivers that may be provided by the Agency and the Servicing Requirements that must be implemented by MFH Servicing Officials are listed below.

A. Tenants Displaced from Rural Development Financed Multi-family Properties

For existing MFH tenants displaced by the disaster, the Agency has several authorities available to minimize the impact of the devastation.

Special Action	**Servicing Requirements**
1. Current USDA RD multifamily tenants displaced by the disaster may apply for occupancy at any Rural Development financed property as a "displaced tenant." In accordance with 7 CFR 3560.154 (g) (2)(ii), they will be placed, first come-first served, on the waiting list in their same income category, with or without a Letter of Priority Entitlement (LOPE letter). They may receive priority placement in vacant units or the next available unit if no vacancies exist in their same income category. Under this circumstance, the tenant required to move is entitled to or could benefit from the special actions and waivers identified in this section.	In accordance with this special action, MFH Servicing Officials will be authorized to issue a Letter of Priority Entitlement (LOPE) (Handbook Letter 201) to displaced tenants. The MFH Servicing Official will add and update MFIS Servicing Efforts with the LOPE effort (#3021). MFH Servicing Official may recommend to the displaced tenant to register with FEMA.

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Special Action	Servicing Requirements
2. Some existing tenants may have been receiving Rental Assistance (RA) in units made uninhabitable by the disaster. While the Agency cannot provide RA to a tenant unless they occupy an eligible Rural Development financed property, the Agency can allow the transfer of the tenant's RA unit to an eligible Rural Development property where the tenant could then continue to receive RA. Any such arrangement needs to be agreed to by all parties and be designed to return the RA, and the tenant if they chose, back to their original apartment unit.	In accordance with this special action, MFH Servicing Officials will be authorized to arrange temporary transfers of RA from properties made uninhabitable by the disaster to properties in surrounding areas that have vacancies in habitable units, as follows: a. The owners must enter into an agreement whereby RA units, in an amount equal to or less than the number of vacant units in the receiving property, are transferred for a period of time until the units in the damaged property can be made habitable. When the units are habitable, the RA units will be transferred back to the original property. RA units may be transferred as a group or one at a time. b. First priority for the use of transferred units is RA tenants moving from the damaged property. The tenants would be accommodated first come-first served from the waiting list in their same income category in accordance with 7 CFR 3560.154 (g)(2)(ii). These displaced tenants would receive priority over any other applicant or existing tenant. c. Displaced tenants receiving the transferred RA must sign an attachment to their lease indicating that they understand that the RA unit will be returned to its original property when the damaged apartment unit has been made habitable. At that time, the displaced tenant could also return and continue to receive RA. This agreement would be subject to the tenant remaining eligible and the tenant wishing to return to their original unit. However, if the tenant chooses to stay, they could not be assured RA and the borrower would charge an appropriate rent based on any subsidy available to that property.

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B. Assistance for Rural Development Financed Properties Destroyed or Damaged

In properties where all or a substantial number of the units become uninhabitable, the Agency has several authorities available to minimize the financial impact of the disaster.

Special Action	Servicing Requirements
1. If borrowers are unable to transmit tenant certification information due to communication problems relating to the disaster, the Agency may waive overage charges due to late submission. The borrower should contact the MFH Servicing Official to advise them of any problems with transmitting information to the Agency.	The Leadership Designee may waive overage charges.
2. If borrowers are temporarily unable to make loan payments, the Agency may waive late fees to reduce any extra financial burden.	The Leadership Designee may waive late fees.
3. The Agency may enter into servicing workout plans to assist properties whose financial viability has been disrupted. Workout plans as described in 7 CFR 3560.453 can include a variety of actions to lower operating costs. These include reducing contributions to the reserve account or lowering loan payments. Reamortization of the account can be used to bring the account current once the repair is completed. Servicing workout plans would also bring into consideration any borrower receipt of insurance benefits.	The Agency should work with the Borrower to determine an appropriate workout plan.
4. Provided borrowers are making a good faith effort to repair any apartment units made uninhabitable by the disaster, interest credit may remain in effect.	The Agency should review the situation after 180 days to assess progress in rehabilitating damaged units.

C. Non-Rural Development Tenants

Disaster evacuees who were not tenants in Rural Development multifamily housing properties may apply for housing in Rural Development financed properties. Non-Rural Development tenants may be eligible for priority placement if they have registered with FEMA and have a FEMA registration number. Borrowers, at their discretion, may apply or waive their standard tenant screening requirements. Borrowers must, however, continue to comply with all Fair Housing regulations and the selection criteria cannot be arbitrary or discriminatory.

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Special Action	Servicing Requirements
1. Borrowers who house disaster evacuees are required to utilize tracking identification numbers of other government agencies if the evacuee has received federal disaster assistance. If a disaster evacuee applicant rents in a Rural Development-financed property, the FEMA registration number must be entered into Multi-Family Information system (MFIS).	In disaster situations where more than 500,000 people are affected, Agency officials should ensure that: 1. The property manager inquires about and obtains verification of receipt by an evacuee of any rent assistance provided by any governmental Agency, such as Transition Housing Assistance offered by FEMA. If such assistance is received in a lump sum, it will be treated as exempt income for rent calculation purposes. If such assistance is regular and on-going, the assistance will be counted as income, *regardless of the size of the disaster*. These amounts should appear on the Tenant Certification, Form RD 3560-8; 2. If a tenant receives a rental voucher (similar to a HUD voucher), then the property manager should code Form RD 3560-8, Part II, field 6 "Tenant Subsidy Code" as "4 – Other Public RA." 3. Managers must obtain such verification within 90 days of occupancy; 4. Borrowers must place in the tenant's file a copy of the FEMA award notification or other corroborating evidence that the tenant is registered to receive benefits from FEMA; 5. Managers must indicate on the Tenant Certification the appropriate disaster code (as provided by Rural Development) for each evacuee housed in the property. Managers must include the correct FEMA registration number on the Tenant Certification form. 6. MFH Servicing Officials must conduct a random sampling of evacuee files within 90 days of occupancy to assure that the evacuee provided all required certifications, that the FEMA and the correct disaster code was input to MFIS correctly, and follow-up with corrective actions within 30 days; 7. Borrowers should notify disaster evacuees of any available emergency Rural Development assistance upon notification from Rural Development;

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Special Action	Servicing Requirements
	8. MFH Servicing Officials must conduct a random sampling of evacuee files within 180 days to review rent charges to all evacuees to ensure borrowers are not collecting rent amounts in excess of the tenant's net tenant contribution and review properties that have an unusually high number of tenants classified as disaster evacuees (in cases where emergency rental assistance has been provided).
2. Allow for imputed income from assets due to homeownership affected by the disaster.	
3. Zero income applicants may be allowed to reside in apartment units, if rental assistance or other subsidy is available.	
4. Collection of security deposit per 7 CFR 3560.204 may be waived, if requested by the owner of the property.	
5. Owners of elderly designated properties may rent to age-ineligible applicants for six months from the date of the waiver.	In disaster situations regardless of the number of people affected, MFH Servicing Officials must review a random sample of evacuee files within 180 days of evacuee occupancy to ensure that the age-ineligible evacuees are no longer residents of the elderly designated properties.
6. If requested, the Agency may waive 7 CFR 3560.576 (b)(2) and (e) to allow Off Farm Labor Housing owners to accept non-farm applicants and allow for income to be received from sources other than from farm labor employment.	In disaster situations regardless of the number of people affected, MFH Servicing Officials must review a random sample of evacuee files within 180 days of evacuee occupancy to ensure that the ineligible evacuees are no longer residents of the farm labor housing property.
7. Annual lease required per 7 CFR 3560.156 (b)(2) may be waived and leases may be issued on a month-to-month basis.	

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ATTACHMENT 9-A

State Wage and Benefit Matching Agreements

(As of April 2006)

State	Matching Agreements	Matching Impediment	Actively Matching	Disclosure Allowed
Alabama	Yes	N/A	Yes	Yes
Alaska	Yes	N/A	No	No
Arizona	Yes	N/A	Yes	Yes
Arkansas	No	C	N/A	N/A
California	Yes	N/A	Yes	No
Colorado	Yes	N/A	Yes	No
Connecticut	No	B	N/A	N/A
Delaware	Yes	N/A	Yes	No
Florida	Yes	N/A	Yes	Yes
Georgia	Yes	N/A	Yes	Yes
Hawaii	No	C	No	No
Idaho	Yes	N/A	Yes	Yes
Illinois	Yes	N/A	Yes	No
Indiana	Yes	N/A	Yes	No
Iowa	Yes	N/A	Yes	No
Kansas	Yes	N/A	Yes	No
Kentucky	No	B	N/A	N/A
Louisiana	Yes	N/A	Yes	No
Maine	Yes	N/A	Yes	No
Maryland	Yes	N/A	Yes	No
Massachusetts	No	A	N/A	N/A
Michigan	No	A	N/A	N/A
Minnesota	Yes	N/A	Yes	No
Mississippi	No	C	N/A	N/A
Missouri	Yes	N/A	Yes	No
Montana	Yes	N/A	Yes	N/A
Nebraska	Yes	N/A	Yes	No
Nevada	Yes	N/A	No	No
New Hampshire	No	A	N/A	N/A
New Jersey	Yes	N/A	Yes	No
New Mexico	No	C	N/A	N/A
New York	No	C	N/A	N/A
North Carolina	Yes	N/A	Yes	N/A
North Dakota	No	A	N/A	N/A
Ohio	No	A	N/A	N/A
Oklahoma	No	A	N/A	N/A
Oregon	Yes	N/A	Yes	No
Pennsylvania	No	C	N/A	N/A
Puerto Rico	No	A	N/A	N/A
Rhode Island	No	A	N/A	N/A
South Carolina	No	C	N/A	N/A
South Dakota	Yes	N/A	Yes	No

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State	Matching Agreements	Matching Impediment	Actively Matching	Disclosure Allowed
Tennessee	Yes	N/A	No	No
Texas	Yes	N/A	Yes	No
Utah	Yes	N/A	Yes	No
Vermont	No	C	N/A	N/A
Virginia	Yes	N/A	Yes	No
Washington	Yes	N/A	Yes	No
West Virginia	Yes	N/A	Yes	No
Wisconsin	Yes	N/A	Yes	Yes
Wyoming	Yes	N/A	Yes	No

A = State Law prohibited agreement
B = RD State Office could not reach acceptable agreement with State DOL
C = RD State Office working with State DOL to reach an acceptable agreement. Quarterly reporting as to the status of reaching an acceptable agreement to the National Office is required.

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ATTACHMENT 9-B

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ATTACHMENT 9-C

Degree of Damage	Definition
Affected	The building(s) has cosmetic damage only. • Damage that does not adversely impact the functionality of the building. • No damage that affects unit habitability.
Minor	The building(s) is damaged and requires minimal repairs. • No structural damage to the building. • No damage that affects unit habitability.
Major	The building(s) has sustained significant damage and requires extensive repairs. • Structural damage or damage that created areas that are no longer decent, safe and sanitary. • Damage that affects unit habitability.
Destroyed	The building(s) is a total loss.
Inaccessible	Damage to building(s) that cannot be visually verified.

Degree of Damage Metrics

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Appendix 1

For the complete 7 CFR Part 3560, refer to the National Archives and Records Administration Electronic Code of Federal Regulations (eCFR) found at https://www.ecfr.gov/current/title-7/subtitle-B/chapter-XXXV/part-3560.

The eCFR is a web version of the Code of Federal Regulations (CFR) that is updated simultaneously with any published revisions. Please use the link above for the most up to date version of the 7 CFR 3560.

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APPENDIX 2

7 CFR Part 11—NATIONAL APPEALS DIVISION

Subpart A – National Appeals Division Rules of Procedure

Sec.

11.1 Definitions.
11.2 General Statement.
11.3 Applicability.
11.4 Inapplicability of other laws and regulations.
11.5 Informal review of adverse decisions.
11.6 Director review of agency determination of appealability and right of participants to Division hearing.
11.7 Ex parte communications.
11.8 Division hearings.
11.9 Director review of determinations of Hearing Officers.
11.10 Basis for determinations.
11.11 Reconsideration of Director determinations.
11.12 Effective date and implementation of final determinations of the Division.
11.13 Judicial review.
11.14 Filing of appeals and computation of time.

AUTHORITY: 5 U.S.C. 301; Title II, Subtitle H, Pub. L. 103-354, 108 Stat. 3228 (7 U.S.C. 6991 *et seq.)*; Reorganization Plan No. 2 of 1953 (5 U.S.C. App.).

§ 11.1 Definitions.

For purposes of this part:

Adverse decision means an administrative decision made by an officer, employee, or committee of an agency that is adverse to a participant. The term includes a denial of equitable relief by an agency or the failure of an agency to issue a decision or otherwise act on the request or right of the participant within timeframes specified by agency program statutes or regulations or within a reasonable time if timeframes are not specified in such statutes or regulations. The term does not include a decision over which the Board of Contract Appeals has jurisdiction.

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***Agency* means:**

1. The Agricultural Stabilization and Conservation Service (ASCS);
2. The Commodity Credit Corporation (CCC);
3. The Farm Service Agency (FSA);
4. The Federal Crop Insurance Corporation (FCIC);
5. The Natural Resources Conservation Service (NRCS);
6. The Risk Management Agency (RMA);
7. The Rural Business-Cooperative Service (RBS);
8. Rural Development (RD);
9. The Rural Housing Service (RHS);
10. The Rural Utilities Service (RUS) (but not for programs authorized by the Rural Electrification Act of 1936 or the Rural Telephone Bank Act, 7 U.S.C. 901 et seq.);
11. The Soil Conservation Service (SCS);
12. A State, county, or area committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)); and
13. Any predecessor or successor agency to the above-named agencies, and any other agency or office of the Department which the Secretary may designate.

Agency record means all the materials maintained by an agency related to an adverse decision which are submitted to the Division by an agency for consideration in connection with an appeal under this part, including all materials prepared or reviewed by the agency during its consideration and decisionmaking process, but shall not include records or information not related to the adverse decision at issue. All materials contained in the agency record submitted to the Division shall be deemed admitted as evidence for purposes of a hearing or a record review under §11.8.

Agency representative means any person, whether or not an attorney, who is authorized to represent the agency in an administrative appeal under this part.

Appeal means a written request by a participant asking for review by the National Appeals Division of an adverse decision under this part.

Appellant means any participant who appeals an adverse decision in accordance with this part. Unless separately set forth in this part, the term "appellant" includes an authorized representative.

Authorized representative means any person, whether or not an attorney, who is authorized in writing by a participant, consistent with §11.6(c), to act for the participant in an administrative appeal under this part. The authorized representative may act on behalf of the participant except when the provisions of this part require action by the participant or appellant personally.

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Case record means all the materials maintained by the Secretary related to an adverse decision. The case record includes both the agency record and the hearing record.

Days means calendar days unless otherwise specified.

Department means the United States Department of Agriculture (USDA).

Director means the Director of the Division or a designee of the Director.

Division means the National Appeals Division established by this part.

Equitable relief means relief which is authorized under section 326 of the Food and Agriculture Act of 1962 (7 U.S.C. 1339a) and other laws administered by the agency.

Ex parte communication means an oral or written communication to any officer or employee of the Division with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports, or inquiries on Division procedure, in reference to any matter or proceeding connected with the appeal involved.

Hearing, except with respect to §11.5, means a proceeding before the Division to afford a participant the opportunity to present testimony or documentary evidence or both in order to have a previous determination reversed and to show why an adverse determination was in error.

Hearing Officer means an individual employed by the Division who conducts the hearing and determines appeals of adverse decisions by any agency.

Hearing record means all documents, evidence, and other materials generated in relation to a hearing under §11.8.

Implement means the taking of action by an agency of the Department in order fully and promptly to effectuate a final determination of the Division.

Participant means any individual or entity who has applied for, or whose right to participate in or receive, a payment, loan, loan guarantee, or other benefit in accordance with any program of an agency to which the regulations in this part apply is affected by a decision of such agency. The term does not include persons whose claim(s) arise under:

1. Programs subject to various proceedings provided for in 7 CFR part 1;

2. Programs governed by Federal contracting laws and regulations (appealable under other rules and to other forums, including to the Department's Board of Contract Appeals under 7 CFR part 24);

3. The Freedom of Information Act (appealable under 7 CFR part 1, subpart A);

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4. Suspension and debarment disputes, including, but not limited to, those falling within the scope of 7 CFR parts 1407 and 3017;
5. Export programs administered by the Commodity Credit Corporation;
6. Disputes between reinsured companies and the Federal Crop Insurance Corporation;
7. Tenant grievances or appeals prosecutable under the provisions of 7 CFR part 1944, subpart L, under the multi-family housing program carried out by RHS;
8. Personnel, equal employment opportunity, and other similar disputes with any agency or office of the Department which arise out of the employment relationship;
9. The Federal Tort Claims Act, 28 U.S.C. 2671 et seq., or the Military Personnel and Civilian Employees Claims Act of 1964, 31 U.S.C. 3721;
10. Discrimination complaints prosecutable under the nondiscrimination regulations at 7 CFR parts 15, 15a, 15b, 15e, and 15f; or
11. Section 361, et seq., of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1361, et seq.) involving Tobacco Marketing Quota Review Committees.

Record review means an appeal considered by the Hearing Officer in which the Hearing Officer's determination is based on the agency record and other information submitted by the appellant and the agency, including information submitted by affidavit or declaration.

Secretary means the Secretary of Agriculture.

§ 11.2 General statement.

(a) This part sets forth procedures for proceedings before the National Appeals Division within the Department. The Division is an organization within the Department, subject to the general supervision of and policy direction by the Secretary, which is independent from all other agencies and offices of the Department, including Department officials at the state and local level. The Director of the Division reports directly to the Secretary of Agriculture. The authority of the Hearing Officers and the Director of the Division, and the administrative appeal procedures which must be followed by program participants who desire to appeal an adverse decision and by the agency which issued the adverse decision, are included in this part.

(b) Pursuant to section 212(e) of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Pub. L. 103-354 (the Act), 7 U.S.C. 6912(e), program participants shall seek review of an adverse decision before a Hearing Officer of the Division, and may seek further review by the Director, under the provisions of this part prior to seeking judicial review.

§ 11.3 Applicability.

(a) Subject matter. The regulations contained in this part are applicable to adverse decisions made by an agency, including, for example, those with respect to:

1. Denial of participation in, or receipt of benefits under, any program of an agency;
2. Compliance with program requirements;

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3. The making or amount of payments or other program benefits to a participant in any program of an agency; and
4. A determination that a parcel of land is a wetland or highly erodible land.

(b) Limitation. The procedures contained in this part may not be used to seek review of statutes or USDA regulations issued under Federal Law.

§ 11.4 Inapplicability of other laws and regulations.

(a) Reserved.

(b) The Federal Rules of Evidence, 28 U.S.C. App., shall not apply to proceedings under this part.

§ 11.5 Informal review of adverse decisions.

(a) Required informal review of FSA adverse decisions. Except with respect to farm credit programs, a participant must seek an informal review of an adverse decision issued at the field service office level by an officer or employee of FSA, or by any employee of a county or area committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act, 16 U.S.C. 590h(b)(5), before NAD will accept an appeal of a FSA adverse decision. Such informal review shall be done by the county or area committee with responsibility for the adverse decision at issue. The procedures for requesting such an informal review before FSA are found in 7 CFR part 780. After receiving a decision upon review by a county or area committee, a participant may seek further informal review by the State FSA committee or may appeal directly to NAD under §11.6(b).

(b) Optional informal review. With respect to adverse decisions issued at the State office level of FSA and adverse decisions of all other agencies, a participant may request an agency informal review of an adverse decision of that agency prior to appealing to NAD. Procedures for requesting such an informal review are found at 7 CFR part 780 (FSA), 7 CFR part 614 (NRCS), 7 CFR part 1900, subpart B (RUS), 7 CFR part 1900, subpart B (RBS), and 7 CFR part 1900, subpart B (RHS).

(c) Mediation. A participant also shall have the right to utilize any available alternative dispute resolution (ADR) or mediation program, including any mediation program available under title V of the Agricultural Credit Act of 1987, 7 U.S.C. 5101 et seq., in order to attempt to seek resolution of an adverse decision of an agency prior to a NAD hearing. If a participant:

1. Requests mediation or ADR prior to filing an appeal with NAD, the participant stops the running of the 30-day period during which a participant may appeal to NAD under §11.6(b)(1), and will have the balance of days remaining in that period to appeal to NAD once mediation or ADR has concluded.

2. Requests mediation or ADR after having filed an appeal to NAD under §11.6(b), but before the hearing, the participant will be deemed to have waived his right to have a

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hearing within 45 days under §11.8(c)(1) but shall have a right to have a hearing within 45 days after conclusion of mediation or ADR.

§ 11.6 Director review of agency determination of appealability and right of participants to Division hearing.

(a) Director review of agency determination of appealability.

1. Not later than 30 days after the date on which a participant receives a determination from an agency that an agency decision is not appealable, the participant must submit a written request personally signed by the participant to the Director to review the determination in order to obtain such review by the Director.

2. The Director shall determined whether the decision is adverse to the individual participant and thus appealable or is a matter of general applicability and thus not subject to appeal, and will issue a final determination notice that upholds or reverses the determination of the agency. This final determination is not appealable. If the Director reverses the determination of the agency, the Director will notify the participant and the agency of that decision and inform the participant of his or her right to proceed with an appeal.

3. The Director may delegate his or her authority to conduct a review under this paragraph to any subordinate official of the Division other than a Hearing Officer. In any case in which such review is conducted by such a subordinate official, the subordinate official's determination shall be considered to be the determination of the Director and shall be final and not appealable.

(b) Appeals of adverse decisions.

1. To obtain a hearing under §11.8, a participant personally must request such hearing not later than 30 days after the date on which the participant first received notice of the adverse decision or after the date on which the participant receives notice of the Director's determination that a decision is appealable. In the case of the failure of an agency to act on the request or right of a recipient, a participant personally must request such hearing not later than 30 days after the participant knew or reasonably should have known that the agency had not acted within the timeframes specified by agency program regulations, or, where such regulations specify no timeframes, not later than 30 days after the participant reasonably should have known of the agency's failure to act.

2. A request for a hearing shall be in writing and personally signed by the participant, and shall include a copy of the adverse decision to be reviewed, if available, along with a brief statement of the participant's reasons for believing that the decision, or the agency's failure to act, was wrong. The participant also shall send a copy of the request for a hearing to the agency, and may send a copy of the adverse decision to be reviewed to the

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agency, but failure to do either will not constitute grounds for dismissal of the appeal. Instead of a hearing, the participant may request a record review.

(c) If a participant is represented by an authorized representative, the authorized representative must file a declaration with NAD, executed in accordance with 28 U.S.C. 1746, stating that the participant has duly authorized the declarant in writing to represent the participant for purposes of a specified adverse decision or decisions, and attach a copy of the written authorization to the declaration.

§ 11.7 Ex parte communications.

(a) Ex parte communications.

(1) At no time between the filing of an appeal and the issuance of a final determination under this part shall any officer or employee of the Division engage in ex parte communications regarding the merits of the appeal with any person having any interest in the appeal pending before the Division, including any person in an advocacy or investigative capacity. This prohibition does not apply to:

Discussions of procedural matters related to an appeal; or

Discussions of the merits of the appeal where all parties to the appeal have been given notice and an opportunity to participate.

(2) In the case of a communication described in paragraph (a)(1)(ii) of this section, a memorandum of any such discussion shall be included in the hearing record.

(b) No interested person shall make or knowingly cause to be made to any officer or employee of the Division an ex parte communication relevant to the merits of the appeal.

(c) If any officer or employee of the Division receives an ex parte communication in violation of this section, the one who receives the communication shall place in the hearing record:

1. All such written communications;

2. Memoranda stating the substance of all such oral communications; and

3. All written responses to such communications, and memoranda stating the substance of any oral responses thereto.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section the Hearing Officer or Director may, to the extent consistent with the interests of justice and the policy of the underlying program, require the party to show cause why such party's claim or interest in the appeal should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

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§ 11.8 Division hearings.

(a) General rules.

1. The Director, the Hearing Officer, and the appellant shall have access to the agency record of any adverse decision appealed to the Division for a hearing. Upon request by the appellant, the agency shall provide the appellant a copy of the agency record.

2. The Director and Hearing Officer shall have the authority to administer oaths and affirmations, and to require, by subpoena, the attendance of witnesses and the production of evidence. A Hearing Officer shall obtain the concurrence of the Director prior to issuing a subpoena.

    i. A subpoena requiring the production of evidence may be requested and issued at any time while the case is pending before the Division.

    ii. An appellant or an agency, acting through any appropriate official, may request the issuance of a subpoena requiring the attendance of a witness by submitting such a request in writing at least 14 days before the scheduled date of a hearing.

    The Director or Hearing Officer shall issue a subpoena at least 7 days prior to the scheduled date of a hearing.

    iii. A subpoena shall be issued only if the Director or a Hearing Officer determined that:

    . For a subpoena of documents, the appellant or the agency has established that production of documentary evidence is necessary and is reasonably calculated to lead to information which would affect the final determination or is necessary to fully present the case before the Division; or

    A. For a subpoena of a witness, the appellant or the agency has established that either a representative of the Department or a private individual possesses information that is pertinent and necessary for disclosure of all relevant facts which could impact the final determination, that the information cannot be obtained except through testimony of the person, and that the testimony cannot be obtained absent issuance of a subpoena.

    iv. The party requesting issuance of a subpoena shall arrange for service. Service of a subpoena upon a person named therein may be made by registered or certified mail, or in person. Personal service shall be made by personal delivery of a copy of the subpoena to the person named therein by any person who is not a party and who is not less than 18 years of age. Proof of service shall be made by filing with

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the Hearing Officer or Director who issued the subpoena a statement of the date and manner of service and of the names of the persons served, certified by the person who made the service in person or by return receipts for certified or registered mail.

v. A party who requests that a subpoena be issued shall be responsible for the payment of any reasonable travel and subsistence costs incurred by the witness in connection with his or her appearance and any fees of a person who serves the subpoena in person. The Department shall pay the costs associated with the appearance of a Department employee whose role as a witness arises out of his or her performance of official duties, regardless of which party requested the subpoena.

The failure to make payment of such charges on demand may be deemed by the Hearing Officer or Director as sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

vi. If a person refuses to obey a subpoena, the Director, acting through the Office of the General Counsel of the Department and the Department of Justice, may apply to the United States District Court in the jurisdiction where that person resides to have the subpoena enforced as provided in the Federal Rules of Civil Procedure (28 U.S.C. App.).

3. Testimony required by subpoena pursuant to paragraph (a)(2) of this section may, at the discretion of the Director or a Hearing Officer, be presented at the hearing either in person or telephonically.

(b) Hearing procedures applicable to both record review and hearings.

1. Upon the filing of an appeal under this part of an adverse decision by any agency, the agency promptly shall provide the Division with a copy of the agency record. If requested by the applicant prior to the hearing, a copy of such agency record shall be provided to the appellant by the agency within 10 days of receipt of the request by the agency.

2. The Director shall assign the appeal to a Hearing Officer and shall notify the appellant and agency of such assignment. The notice also shall advise the appellant and the agency of the documents required to be submitted under paragraph (c)(2) of this section, and notify the appellant of the option of having a hearing by telephone.

3. The Hearing Officer will receive evidence into the hearing record without regard to whether the evidence was known to the agency officer, employee, or committee making the adverse decision at the time the adverse decision was made.

(c) Procedures applicable only to hearings.

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1. Upon a timely request for a hearing under §11.6(b), an appellant has the right to have a hearing by the Division on any adverse decision within 45 days after the date of receipt of the request for the hearing by the Division.

2. The Hearing Officer shall set a reasonable deadline for submission of the following documents:

    i. By the appellant:

        A. A short statement of why the decision is wrong;

        B. A copy of any document not in the agency record that the appellant anticipates introducing at the hearing; and

        C. A list of anticipated witnesses and brief descriptions of the evidence such witnesses will offer.

    ii. By the agency:

        . A copy of the adverse decision challenged by the appellant;

        A. A written explanation of the agency's position, including the regulatory or statutory basis therefor;

        B. A copy of any document not in the agency record that the agency anticipates introducing at the hearing; and

        C. A list of anticipated witnesses and brief descriptions of the evidence such witnesses will offer.

    iii. Not less than 14 days prior to the hearing, the Division must provide the appellant, the authorized representative, and the agency a notice of hearing specifying the date, time, and place of the hearing. The hearing will be held in the State of residence of the appellant, as determined by the Hearing Officer, or at a location that is otherwise convenient to the appellant, the agency, and the Division. The notice also shall notify all parties of the right to obtain an official record of the hearing.

    iv. Pre-hearing conference. Whenever appropriate, the Hearing Officer shall hold a pre-hearing conference in order to attempt to resolve the dispute or to narrow the issues involved. Such pre-hearing conference shall be held by telephone unless the Hearing Officer and all parties agree to hold such conference in person.

    v. Conduct of the hearing.

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i. A hearing before a Hearing Officer will be in person unless the appellant agrees to a hearing by telephone.

ii. The hearing will be conducted by the Hearing Officer in the manner determined by the Division most likely to obtain the facts relevant to the matter or matters at issue. The Hearing Officer will allow the presentation of evidence at the hearing by any party without regard to whether the evidence was known to the officer, employee, or committee of the agency making the adverse decision at the time the adverse decision was made.

The Hearing Officer may confine the presentation of facts and evidence to pertinent matters and exclude irrelevant, immaterial, or unduly repetitious evidence, information, or questions. Any party shall have the opportunity to present oral and documentary evidence, oral testimony of witnesses, and arguments in support of the party's position; controvert evidence relied on by any other party; and question all witnesses. When appropriate, agency witnesses requested by the appellant will be made available at the hearing. Any evidence may be received by the Hearing Officer without regard to whether that evidence could be admitted in judicial proceedings.

iii. An official record shall be made of the proceedings of every hearing. This record will be made by an official tape recording by the Division. In addition, either party may request that a verbatim transcript be made of the hearing proceedings and that such transcript shall be made the official record of the hearing. The party requesting a verbatim transcript shall pay for the transcription service, shall provide a certified copy of the transcript to the Hearing Officer free of charge, and shall allow any other party desiring to purchase a copy of the transcript to order it from the transcription service.

vi. Absence of parties.

. If at the time scheduled for the hearing either the appellant or the agency representative is absent, and no appearance is made on behalf of such absent party, or no arrangements have been made for rescheduling the hearing, the Hearing Officer has the option to cancel the hearing unless the absent party has good cause for the failure to appear. If the Hearing Officer elects to cancel the hearing, the Hearing Officer may:

A. Treat the appeal as a record review and issue a determination based on the agency record as submitted by the agency and the hearing record developed prior to the hearing date;

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B. Accept evidence into the hearing record submitted by any party present at the hearing (subject to paragraph (c)(6)(ii) of this section), and then issue a determination; or

C. Dismiss the appeal.

i. When a hearing is canceled due to the absence of a party, the Hearing Officer will add to the hearing record any additional evidence submitted by any party present, provide a copy of such evidence to the absent party or parties, and allow the absent party or parties 10 days to provide a response to such additional evidence for inclusion in the hearing record.

ii. Where an absent party has demonstrated good cause for the failure to appear, the Hearing Officer shall reschedule the hearing unless all parties agree to proceed without a hearing.

vii. Post-hearing procedure.

The Hearing Officer will leave the hearing record open after the hearing for 10 days, or for such other period of time as the Hearing Officer shall establish, to allow the submission of information by the appellant or the agency, to the extent necessary to respond to new facts, information, arguments, or evidence presented or raised at the hearing. Any such new information will be added by the Hearing Office to the hearing record and sent to the other party or parties by the submitter of the information. The Hearing Officer, in his or her discretion, may permit the other party or parties to respond to this post-hearing submission.

(d) *Interlocutory review*. Interlocutory review by the Director of rulings of a Hearing Officer are not permitted under the procedures of this part.

(e) *Burden of proof*. The appellant has the burden of proving that the adverse decision of the agency was erroneous by a preponderance of the evidence.

(f) *Timing of issuance of determination*. The Hearing Officer will issue a notice of the determination on the appeal to the named appellant, the authorized representative, and the agency not later than 30 days after a hearing or the closing date of the hearing record in cases in which the Hearing Officer receives additional evidence from the agency or appellant after a hearing. In the case of a record review, the Hearing Officer will issue a notice of determination within 45 days of receipt of the appellant's request for a record review. Upon the Hearing Officer's request, the Director may establish an earlier or later deadline. A notice of determination shall be accompanied by a copy of the procedures for filing a request for Director review under §11.9. If the determination is not appealed to the Director for review under §11.9, the notice provided by the Hearing Officer shall be considered to be a notice of a final determination under this part.

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§ 11.9 Director review of determinations of Hearing Officers.

(a) Requests for Director review.

0. Not later than 30 days after the date on which an appellant receives the determination of a Hearing Officer under §11.8, the appellant must submit a written request, signed personally by the named appellant, to the Director to review the determination in order to be entitled to such review by the Director. Such request shall include specific reasons why the appellant believes the determination is wrong.

1. Not later than 15 business days after the date on which an agency receives the determination of a Hearing Officer under §11.8, the head of the agency may make a written request that the Director review the determination. Such request shall include specific reasons why the agency believes the determination is wrong, including citations of statutes or regulations that the agency believes the determination violates. Any such request may be made by the head of an agency only, or by a person acting in such capacity, but not by any subordinate officer of such agency.

2. A copy of a request for Director review submitted under this paragraph shall be provided simultaneously by the submitter to each party to the appeal.

(b) Notification of Parties. The Director promptly shall notify all parties of receipt of a request for review.

(c) Responses to request for Director review. Other parties to an appeal may submit written responses to a request for Director review within 5 business days from the date of receipt of a copy of the request for review.

(c) Determination of Director.

1. The Director will conduct a review of the determination of the Hearing Officer using the agency record, the hearing record, the request for review, any responses submitted under paragraph (c) of this section, and such other arguments or information as may be accepted by the Director, in order to determine whether the decision of the Hearing Officer is supported by substantial evidence. Based on such review, the Director will issue a final determination notice that upholds, reverses, or modifies the determination of the Hearing Officer. The Director's determination upon review of a Hearing Officer's decision shall be considered to be the final determination under this part and shall not be appealable. However, if the Director determines that the hearing record is inadequate or that new evidence has been submitted, the Director may remand all or a portion of the determination to the Hearing Officer for further proceedings to complete the hearing record or, at the option of the Director, to hold a new hearing.

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2. The Director will complete the review and either issue a final determination or remand the determination not later than—

    (a) 10 business days after receipt of the request for review, in the case of a request by the head of an agency; or

    (b) 30 business days after receipt of the request for review, in the case of a request by an appellant.

3. In any case or any category of cases, the Director may delegate his or her authority to conduct a review under this section to any Deputy or Assistant Directors of the Division. In any case in which such review is conducted by a Deputy or Assistant Director under authority delegated by the Director, the Deputy or Assistant Director's determination shall be considered to be the determination of the Director under this part and shall be final and not appealable.

(e) Equitable relief. In reaching a decision on an appeal, the Director shall have the authority to grant equitable relief under this part in the same manner and to the same extent as such authority is provided an agency under applicable laws and regulations.

§ 11.10 Basis for determinations.

(a) In making a determination, the Hearing Officers and the Director are not bound by previous findings of facts on which the agency's adverse decision was based.

(b) In making a determination on the appeal, Hearing Officers and the Director shall ensure that the decision is consistent with the laws and regulations of the agency, and with the generally applicable interpretations of such laws and regulations.

(c) All determinations of the Hearing Officers and the Director must be based on information from the case record, laws applicable to the matter at issue, and applicable regulations published in the Federal Register and in effect on the date of the adverse decision or the date on which the acts that gave rise to the adverse decision occurred, whichever date is appropriate under the applicable agency program laws and regulations.

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§ 11.11 Reconsideration of Director determinations.

(a) Reconsideration of a determination of the Director may be requested by the appellant or the agency within 10 days of receipt of the determination. The Director will not consider any request for reconsideration that does not contain a detailed statement of a material error of fact made in the determination, or a detailed explanation of how the determination is contrary to statute or regulation, which would justify reversal or modification of the determination.

(b) The Director shall issue a notice to all parties as to whether a request for reconsideration meets the criteria in paragraph (a) of this section. If the request for

reconsideration meets such criteria, the Director shall include a copy of the request for reconsideration in the notice to the non-requesting parties to the appeal. The non-requesting parties shall have 5 days from receipt of such notice from the Director to file a response to the request for reconsideration with the Director.

(c) The Director shall issue a decision on the request for reconsideration within 5 days of receipt of responses from the non-requesting parties. If the Director's decision upon reconsideration reverses or modifies the final determination of the Director rendered under §11.9(d), the Director's decision on reconsideration will become the final determination of the Director under §11.9(d) for purposes of this part.

§ 11.12 Effective date and implementation of final determinations of the Division.

(a) On the return of a case to an agency pursuant to the final determination of the Division, the head of the agency shall implement the final determination not later than 30 days after the effective date of the notice of the final determination.

(b) A final determination will be effective as of the date of filing of an application, the date of the transaction or event in question, or the date of the original adverse decision, whichever is applicable under the applicable agency program statutes or regulations.

§ 11.13 Judicial review.

(a) A final determination of the Division shall be reviewable and enforceable by any United States District Court of competent jurisdiction in accordance with chapter 7 of title 5, United States Code.

(b) An appellant may not seek judicial review of any agency adverse decision appealable under this part without receiving a final determination from the Division pursuant to the procedures of this part.

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§ 11.14 Filing of appeals and computation of time.

(a) An appeal, a request for Director Review, or any other document will be considered "filed" when delivered in writing to the Division, when postmarked, or when a complete facsimile copy is received by the Division.

(b) Whenever the final date for any requirement of this part falls on a Saturday, Sunday, Federal holiday, or other day on which the Division is not open for the transaction of business during normal working hours, the time for filing will be extended to the close of business on the next working day.

(c) The time for filing an appeal, a request for Director review, or any other document expires at 5:00 p.m. local time at the office of the Division to which the filing is submitted on the last day on which such filing may be made.

§ 11.15 Participation of third parties and interested parties in Division proceedings.

In two situations, parties other than the appellant or the agency may be interested in participating in Division proceedings. In the first situation, a Division proceeding may in fact result in the adjudication of the rights of a third party, e.g., an appeal of a tenant involving a payment shared with a landlord, an appeal by one recipient of a portion of a payment shared by multiple parties, an appeal by one heir of an estate. In the second situation, a party may desire to receive notice of and perhaps participate in an appeal because of the derivative impact the appeal determination will have on that party, e.g., guaranteed lenders and reinsurance companies. The provisions in this section set forth rules for the participation of such third and interested parties.

(a) Third parties. When an appeal is filed, the Division shall notify any potential third party whose rights may be adjudicated of its right to participate as an appellant in the appeal. This includes the right to seek Director review of the Hearing Officer determination. Such third parties may be identified by the Division itself, by an agency, or by the original appellant. The Division shall issue one notice to the third party of its right to participate, and if such party declines to participate, the Division determination will be binding as to that third party as if it had participated. For purposes of this part, a third party includes any party for which a determination of the Division could lead to an agency action on implementation that would be adverse to the party thus giving such party a right to a Division appeal.

(b) Interested parties. With respect to a participant who is a borrower under a guaranteed loan or an insured under a crop insurance program, the respective guaranteed lender or reinsurance company having an interest in a participant's appeal under this part may participate in the appeal as an interested party, but such participation does not confer the status of an appellant upon the guaranteed lender or reinsurance company such that it may request Director review of a final determination of the Division.

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APPENDIX 3

FORMS REFERENCED IN THIS HANDBOOK

Below is a list of forms that are mentioned in the text of this handbook. Since the Rural Development forms may change more frequently than the handbook, users are encouraged to obtain the most updated copy of these forms from the Rural Development Resources home page (https://www.rd.usda.gov/resources) for their own reference.

Form FEMA 81-93, Standard Flood Hazard Determination
Form G-845S, Verification for SAVE Agencies
Form HUD 935.2, Affirmative Fair Housing Marketing Plan
Form HUD 2530, Previous Participation Certification
Form RD 400-8, Compliance Review
Form RD 426-2, Property Insurance Mortgagee Clause (w/o control)
Form RD 444-27A, Amendment to RA Agreement
Form RD 1924-13, Estimate and Certificate of Actual Cost
Form RD 3550-6, Notice of Special Flood Hazards, Flood Insurance Purchase Requirements, and Availability of Federal Disaster Relief Assistance
Form RD 3560-7, Multiple Family Housing Project Budget/Utility Allowance
Form RD 3560-8, Tenant Certification
Form RD 3560-9, Interest Credit and Rental Assistance Agreement
Form RD 3560-10, Borrower Balance Sheet
Form RD 3560-11, MFH Physical Inspection Report
Form RD 3560-12, Request for Authorization to Withdraw Reserve Funds
Form RD 3560-13, Management Certification
Form RD 3560-27, Rental Assistance Agreement
Form RD 3560-29, Notice of Payment Due Report
Form RD 3560-30, No Identity of Interest Certificate
Form RD 3560-31, Identity of Interest Disclosure/Qualification Certificate
Form RD 3560-51, Obligation Fund Analysis
Form RD 3560-52, Promissory Note
Form RD 3560-53, Cancellation of U.S. Treasury Check and/or Obligation
Form RD 3560-55, MFH Transfer of RA

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APPENDIX 4

HANDBOOK LETTERS REFERENCED IN THIS HANDBOOK

Handbook Letter 201 (3560), Letter of Priority Entitlement (LOPE)
2. Handbook Letter 202 (3560), Notification Letter for Supervisory Visit
Handbook Letter 203 (3560) Notice To Tenants (Members) Of Proposed Rent (Occupancy Charge) And Utility Allowance Change
Handbook Letter 204 (3560) Notice of Approved Rent (Occupancy Charge) and Utility Allowance Change
Handbook Letter 205 (3560) Letter to Borrowers or Management Agent
Handbook Letter 206 (3560) Letter to Tenants
Handbook Letter 207 (3560) Letter to Notify Borrower or Management Agent of a Potential Wage or Benefit Discrepancy Which Requires Review

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Handbook Letter 201 (3560)

REFERENCE: HB-2-3560 Chapter 6

PURPOSE: Letter of Priority Entitlement (LOPE)

RURAL DEVELOPMENT
[*LOCATION*]

DATE: [*insert today's date*]

SUBJECT: LETTER OF PRIORITY ENTITLEMENT (LOPE) FOR:

[*insert Name of Tenant/Family*]
[*insert Tenant/Family's Address*]

Dear Tenant:

[*Suggested language for prepayment*]

The Owner(s) of [*name, address to include city, state and zip code of prepaying property*] has been granted permission to pay off their Rural Development Loan on [*name of property*]. This means that you are entitled to priority placement on the waiting list of any Rural Development Section 515 Rural Rental Housing property, should you be displaced due to of rent increases, as a result this prepayment. This letter may also serve to give you preference in non-Rural Development properties and rental programs served by the Department of Housing and Urban Development (HUD) if their occupancy policy allows. Please present this Letter of Priority Entitlement to your new landlord.

[*Or*]

As a result of the [*insert description of natural disaster, uninhabitable situation*] for the above reference property you are entitled to priority for placement on waiting lists of any 515 rural rental housing property, that has units for which you are eligible to occupy. There is no geographic limit on this entitlement. This letter may also serve to give you preference in non-Rural Development properties and rental programs served by the Department of Housing and Urban Development (HUD) if their occupancy policy allows. Please present this Letter of Priority Entitlement to your new landlord. Dear Rural Development or Housing and Urban Development (HUD) Property Owners:
The tenant named above is currently living in the Rural Development 515 multifamily housing

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property for which [*insert reason for LOPE letter i.e., authorized prepayment or uninhabitable or natural disaster*]. In accordance with 7 CFR 3560.11, this letter must be used within 120 days from the above date to give this tenant/family priority placement on your waiting list(s). The only other tenants who may receive priority over this tenant/family are those who have already entered your waiting list with a letter similar to this one or handicapped tenants who need the particular design features of a vacant apartment. The above-named tenant/family is to remain in this position on your waiting list until they receive an apartment or the list is purged in accordance with a Rural Development-approved policy. After 120 days, they may continue to be placed on waiting lists for apartments for which they are eligible, but without priority.

NOTE: This priority places the above-named tenant/family at the top of the waiting list based on their income category, regardless of their eligibility for apartment size so long as your property has at least one apartment, presently occupied or not, for which this tenant/family is eligible. If this tenant/family occupies an apartment for which size or type they are not eligible for, the lease must read that this tenant/family will move to the first appropriate apartment available.

If this tenant/family is receiving Rental Assistance (RA) at the prepaying property, they will continue to receive RA at your property if it is a property operating under Plan II of the Section 515 program. If you do not have a unit of unused RA to assign to this tenant/family, you will be allocated one unit for this purpose.

If the current security deposit is returnable to the tenant/family but has not been released to the tenant/family by the move-in date, it should be assigned directly to you by the prepaying property if allowed by the laws of the State. Otherwise, you may have to wait to receive the security deposit until it is returned to this tenant/family.

Tenant Data:

Composition of Family _____
Tenant/Family/Elderly/Handicapped_____
Unit-Size Eligibility_____
Last Verified Income _____ as of _____
RA: _____
Section 8 Voucher: _____
Current Security Deposit: _____

If you have any questions, please contact the Servicing Office at the address below:

[*RD Servicing Official signature and title*]

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Handbook Letter 202 (3560)

REFERENCE: HB-2-3560 Chapter 9

PURPOSE: Notification Letter for Supervisory Visit

RURAL DEVELOPMENT
[*LOCATION*]

Date: [*insert today's date*]

[*Name of borrower*]

[*Address of borrower*]

Dear [*insert borrower's last name(s), (Mr., Ms., Mrs.)*]

Rural Development Servicing Office staff will be conducting a supervisory visit of [*name of rural rental or cooperative project*] located in the town of [*city*].

Your project review is scheduled for [*date of visit*], at [*time*] in the project [*office or manager's office*]. We would like to meet with the project [*management agent, owner, board of directors or board president, bookkeeper, resident manager, etc.*] at the time shown.

Please have the following records available for review:

- All project account records including bookkeeper records and others pertaining to the project, such as:
  - ◊ General operating account
  - ◊ Tax and insurance escrow accounts
  - ◊ Reserve account
  - ◊ Security deposit or membership fee account
  - ◊ Patronage capital account (if applicable)
  - ◊ Management reserve account, (if applicable)
  - ◊ Checking account
  - ◊ Savings account

- The individual tenant or member files

- Waiting lists
  - ◊ Applications of those on the waiting lists
  - ◊ Applications of those determined ineligible for occupancy

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- Management plan and management agreement/certification

- Evidence of the effort made in the last 12 months to meet the objectives in your Affirmative Fair Housing Marketing Plan.

- A copy of the tenant lease or occupancy agreement used, with written evidence of your attorney's approval, Rural Development's approval, and HUD's approval (if HUD Section 8 is utilized).

- The mailing address for the project

If you have any questions, please contact this office.

Sincerely,

[*Rural Development servicing official's signature and title*]

ENCLOSURE

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Handbook Letter 203 (3560)

REFERENCE: HB-2-3560 Chapter 4

PURPOSE: Notice to Tenants (Members) of Proposed Rent (Occupancy Charge) and Utility Allowance Change

---

NOTICE TO TENANTS (MEMBERS) OF PROPOSED RENT (OCCUPANCY CHARGE) AND UTILITY ALLOWANCE CHANGE

_____
Date Posted

You as a tenant (member) are hereby notified that, subject to Rural Development approval, rents (occupancy charge) and utility allowances will be changed effective _____ (at least 60 days from this posting or other timeframe if required by State law)
_____ (Project Owner Name)
has filed with Rural Development, United States Department of Agriculture, a request for approval of a change in the monthly rent (occupancy charge) rates and/or utility allowances of the (Name of apartment complex) for the following reasons:

1.
2.
3.
4.

Planned rent (occupancy charge) changes are as follows:

Unit Size	**Present Rent (Occupancy Charge)**		**Proposed Rent (Occupancy Charge)**		**Amount Changed**
	Basic	**Note Rate**	**Basic**	**Note Rate**	
Efficiency					
1-Bedroom					
2-Bedroom					
3-Bedroom					
4-Bedroom					
5-Bedroom					

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Planned utility allowance changes are as follows:

Unit Size	Present Utility Allowance	Proposed Utility Allowance	Amount Changed
Efficiency			
1-Bedroom			
2-Bedroom			
3-Bedroom			
4-Bedroom			
5-Bedroom			

(Use where applicable such as when only basic or note rate rents and/or utility allowances are changing and the tenant is receiving rental assistance) Since you receive subsidy, your contribution for rent (occupancy charge) and utilities will not be changed so long as your income and household composition remain unchanged.

All materials justifying the proposed changes have been reviewed by Rural Development and will be made available to you and other tenants (members) to inspect and copy at (insert location):

_____
during the hours of (insert date(s) and time(s)): _____.

You may submit comments or objections in writing to the Rural Development Servicing Official during the 20-day period immediately following the posting of this notice. Comments or objections should include reasons or information you feel should be considered by the Rural Development Servicing Official. Your comments or objections must be filed with the Rural Development Servicing Official, at:
Preference is by email to the applicable regional servicing team:_____

(Borrower/Management must insert **one of the following**:
MFHFODNortheast@usda.gov; or
MFHFODMidwest@usda.gov; or
MFHFODSouth@usda.gov; or
MFHFODWest@usda.gov)

Or by mail to the applicable regional servicing team.

USDA Rural Development
Attn:
_____ Regional Servicing Team
PO Box 771340
St. Louis, MO 63177

These comments will be reviewed by the Rural Development Servicing Official who will decide if the change(s) should be approved.

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Each tenant (member) will be notified in writing of the Rural Development decision to approve or deny the change. The approved rents and utility allowances will then be effective upon the effective date given above. If the approved change cannot be made
effective by such date, an additional notice will be posted and the tenants (members) will be notified in writing that new rents (occupancy charges) and utility allowances will be effective at the next rent (occupancy charge) due date following the additional notice and the Rural Development approval.

By _____
Borrower/Borrower's Representative

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Handbook Letter 204 (3560)

REFERENCE: HB-2-3560 Chapter 4 and 7

PURPOSE: Notice to Tenants of Rent Change

NOTICE OF APPROVED RENT (OCCUPANCY CHARGE) AND UTILITY ALLOWANCE CHANGE

Dear:

You are hereby notified that Rural Development has reviewed the request for a change in shelter costs for the _____ project(s), and considered all justifications provided by project management [and comments provided by tenants]. The Rural Development has approved the following rent (occupancy charge) and/or utility allowance rates listed below. The changes for all units will become effective on _____, 20__ or later effective date in accordance with state or local laws. The change is needed for the following reasons:

(Insert Reasons for Approval)

The approved changes are as follows:

Unit Size	Present Rent (Occupancy Charge)		Approved Rent (Occupancy Charge)	
	Basic	Note Rate	Basic	Note Rate
Efficiency				
1-Bedroom				
2-Bedroom				
3-Bedroom				
4-Bedroom				
5-Bedroom				

The approved utility allowance changes are as follows:

Unit Size	Present Utility Allowance	Approved Utility Allowance
Efficiency		
1-Bedroom		
2-Bedroom		
3-Bedroom		
4-Bedroom		
5-Bedroom		

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Should you have any questions or concerns, you may contact Rural Development. The Rural Development Servicing Office address is:
(Use the following required and/or optional paragraphs where applicable).

*You must notify the tenants (members) of Rural Development's approval of the rent (occupancy charge) and utility allowance changes by posting this letter in the same manner as the "NOTICE TO TENANTS (MEMBERS) OR PROPOSED RENT (OCCUPANCY CHARGE) AND UTILITY ALLOWANCE CHANGE." This notification must be posted in a conspicuous place and cannot be substituted for the usual written notice to each individual tenant (member).

*This approval does not authorize you to violate the terms of any lease (occupancy agreement) you currently have with your tenants (members).
**For those tenants (members) receiving rental assistance (RA), their costs for rent (occupancy charge) and utilities will continue to be based on the higher of 30 percent of their adjusted monthly income or 10 percent of gross monthly income or if the household is receiving payments for public assistance from a public agency, the portion of such payments which is specifically designated by that agency to meet the household's shelter cost. If tenants are receiving Housing and Urban Development (HUD) Section 8 subsidy assistance, their costs for rent and utilities will be determined by the current HUD formula.

*You may file an appeal regarding the rate and utility allowance change as approved. An appeal must be received in the Regional Office no later than 30 calendar days after receipt of the adverse decision. The appeal should state what agency decision is being appealed and should include, if possible, a copy of the adverse decision and a brief statement of why the decision is wrong. A copy of the appeal request should be sent to the agency.

*You must inform the tenants (members) of their right to request an explanation of the rate and utility allowance change approval decision within 45 days of the date of this notice by writing to (insert the name and address of next higher Rural Development approval official). All tenants (members) are required to pay the changed amount of rent (occupancy charge) as indicated in the notice of approval.

*Any tenant who does not wish to pay the Rural Development approved rent changes may give the owner a 30-day notice that they will vacate. The tenant will suffer no penalty as a result of this decision to vacate, and will not be required to pay the changed rent. However, if the tenant later decides to remain in the unit, the tenant will be required to pay the changed rent from the effective date of the changed rent.

Sincerely,

_____
Rural Development Approving Official

*Required
**Optional, as applicable

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Handbook Letter 205 (3560)

REFERENCE: HB-2-3560 Chapter 9

PURPOSE: Letter to Borrowers or Management Agents

RURAL DEVELOPMENT
[*LOCATION*]

Date: [*insert today's date*]

[*Name of borrower*]

[*Address of borrower*]

Dear[*Insert Borrower/Management Agent Name*]
[*Insert Address*]

Dear [*Insert Name*]:

Rural Development is implementing a wage and benefit matching system. The goal of the system is to find or prevent fraud, waste, and abuse of Federal benefits. We hope to achieve this goal through early detection of inaccurate information supplied on Tenant Certification Forms.

Rural Development is proud of its multi-family housing programs. Properties financed are generally well maintained and managed. Unfortunately, there are those who attempt to "beat the system" by providing inaccurate information to qualify for program benefits.

Beginning on [*Insert appropriate date*], Rural Development will have the capability to review wage and benefit information from the State Department of Labor (SDOL) for comparison with information provided on the most current Tenant Certification (Form RD 3560-8) to identify apparent inaccuracies. The Agency will be using this information to resolve discrepancies.

Should a review of SDOL data reveal a substantial discrepancy, you will have to contact the tenant household to solicit added information to explain any discrepancies, abuses, or to correct any errors. The goal is not to harass tenants but merely to resolve misunderstandings and errors as early as possible. The Agency's program will not usually look at past tenant certifications or recover any improper subsidy which may have been delivered in years past unless there is evidence of substantial abuse and the amount of the past unauthorized assistance exceeds $1,000.

Upon receipt of this notice, you should take steps to inform tenants of the wage and benefit matching initiative. You may use Handbook Letter 206 (3560) in Appendix 4 of HB-2-3560 as a guide in preparing your own tenant notification. This tenant notification

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must be sent within 30 days from the date of this letter and a copy of this notice forwarded to this office.

Any tenants that are contacted regarding discrepancies with SDOL data should be advised of their right to file a grievance under 7 CFR 3560.160 if the matter is not satisfactorily resolved. No corrective action will be initiated unless the tenant concurs with it in writing, or the timeframe for filing a grievance has passed, or the information presented in the grievance has been considered and acted upon.

The borrower or management agent will not be held responsible for repaying subsidies improperly received solely as a result of inaccurate information supplied by tenants. The borrower or management agent is expected to take corrective measures when inaccurate information is detected. The corrective measures should include prompt correction of inaccurate tenant certification forms, along with plans for tenant reimbursement for improperly delivered subsidy.

The reimbursement may be collected by lump sum or in a monthly amount added to the tenant's rent to recoup the improper subsidy.

If corrective measures cannot be achieved, tenant eviction proceedings should be promptly initiated. Tenants who falsify information and do not agree to corrective measures, or fail to uphold their subsidy repayment agreements, should be referred to the Agency along with supporting material.

In summary, the Agency's wage and benefit matching program will assist in detecting inaccuracies and dishonest actions. At the same time, the program should ensure that borrowers and management agents suffer no penalties as a result of a dishonest action on the part of others.

Sincerely,

[*Insert Name*]
[*Insert Title of Signature Official*]

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Handbook Letter 206 (3560)

REFERENCE: HB-2-3560 Chapter 9

PURPOSE: Letter to Tenants

RURAL DEVELOPMENT
[*LOCATION*]

Date: [*insert today's date*]

[*Name of borrower*]

[*Address of borrower*]

Dear [Insert Tenant Name]
[*Insert Address*]

Dear [*Insert Tenant Name*]:

Rural Development is implementing a wage and benefit matching system. The goal of this system is to reduce fraud, waste, and abuse in Federal programs. This notice is to inform you about the program and how it may affect you.

Beginning on [*Insert appropriate date*], Rural Development will start receiving wage and benefit information from the State Department of Labor (SDOL). This information will be shared with the owners and management agents servicing your housing development. This information may then be compared against information provided on your Tenant Certification (Form RD 3560-8). Whenever differences are revealed, or result in the government providing unauthorized assistance in the form of rental subsidy, you may expect to be contacted for an explanation.

Rural Development assumes Tenant Certifications are completed as accurately as possible. However, misunderstandings and honest errors do occur. Unfortunately, there are also those who will report wrong information in order to qualify for Federal benefits. The objective of the record's check is to make sure that those needing assistance can receive assistance, while those who do not can be stopped and made to repay improperly received benefits.

Rural Development will implement a wage and benefit matching system fairly. Therefore, whenever a new or renewed Tenant Certification is completed, it will be subject to verification by the Agency and the owner or management agent servicing your housing development. If a problem is suspected, you will be contacted and asked to provide an explanation. If disagreements arise, you will be informed of your right to file a grievance under 7 CFR 3560.160. A copy of the grievance procedure is available from the owner or management agent servicing your housing development.

(08-31-26) PN 661
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You can update or correct your existing Tenant Certification now until [*Insert date 45 days from the date the notice was received by the borrower/management agent*]. Of course, the updated and corrected Tenant Certification may result in changes to the Federal housing benefits your household is entitled to receive. However, initial changes that result in improper subsidies received by you would not be retroactive and subject to recapture if you disclose them during this grace period. Any discrepancies that result in receipt of improper assistance after this grace period ends will be subject to recapture.

If you have any further questions, please contact [*Insert contact information*].

Sincerely,

[*Insert Name*]
[*Insert Title of Signature Official*]

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Handbook Letter 207 (3560)

REFERENCE: HB-2-3560 Chapter 9

PURPOSE: Letter to Notify Borrower or Management Agent of a Potential Wage or Benefit Discrepancy Which Requires Review

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RURAL DEVELOPMENT
[*LOCATION*]

Date: [*insert today's date*]

[*Name of borrower*]

[*Address of borrower*]

Dear [*Insert Borrower/Management Name*]
[*Insert Address*]

Dear [*Insert Borrower/Management Name*]:

Upon review of the attached information, we conclude that there is a discrepancy between the wages or benefits reported on Form RD 3560-8, "Tenant Certification," and those reported to [*Insert the appropriate state agency name*].

Please review this information with the tenants and provide a written explanation as to your findings and what, if any, corrective arrangements (e.g., recovery of improper benefit agreements, evictions, legal proceedings, etc.) you are making. Please provide the explanation within 30 days of the date of this letter.

Should recovery of improper payments be required, Agency regulations require collections be made by lump sum cash payment, or payment over a reasonable period of time (usually not to exceed 90 days). Whenever concerns cannot be mutually resolved, the tenants must be advised of the right to file a grievance under the provisions of 7 CFR 3560.160.

If your explanation is not satisfactory to us, we will contact you to resolve the matter. The Agency will seek a mutually satisfactory resolution. Should this not be possible, you will be formally advised of our concerns and advised of any applicable appeal rights.

(08-31-26) PN 661

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[*Insert Name*]
[*Insert Title of Signature Official*]

If you have any questions concerning the subject matter, please contact the Servicing Office staff at [*Insert Office Telephone Number*].

Sincerely,

Attachments [*Attachments may include appropriate information summarizing results from the State wage information collection agency and Agency records*]

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• APPENDIX 5

• Civil Rights Laws' Accessibility Requirements That Apply to the • Multi-Family Housing (MFH) Program

The Civil Rights laws covering accessibility have different implementation responsibilities but all provide for the protection and nondiscrimination of individuals with disabilities. Borrowers who fail to meet these requirements will make themselves vulnerable to damages and can be required to retrofit their facilities at their expense.

Section 504 of the Rehabilitation Act of 1973

The Department of Agriculture (USDA) implemented section 504 of the Rehabilitation Act of 1973, on June 10, 1982, by issuing 7 CFR 15b. Section 504's purpose is to assure that no otherwise qualified person with a disability is solely by reason of his or her disability excluded from benefits, or subjected to discrimination under any federally assisted program or activity.

Compliance Standard: The Uniform Federal Accessibility Standards (UFAS). For more information see www.access-board.gov/ufas/ufas-html/ufas.htm.

Highlights of section 504 Requirements

In MFH projects ready for occupancy ***on or before June 10, 1982:***

- Borrowers are encouraged to make 5 percent of the units fully accessible. (Structural changes in existing facilities may not be needed where other methods are effective in achieving program accessibility, such as reassignment of services to accessible buildings, assignment of aides to users, and delivery of services at alternate accessible sites.
  Borrowers are to use the method that provides the most integrated setting.)
- Borrowers must conduct self-evaluations and, if needed, develop transition plans.
  (Borrowers must make these documents available to the public or Agency upon request.)
- Borrowers must make common areas accessible when financially and structurally feasible.
  (Common areas include mailboxes, office, community room, trash area, playground, and laundry facilities.)
- When a qualified individual with a disability applies for admission, borrowers must make the unit accessible and usable to the individual.

In MFH projects ready for occupancy ***after June 10, 1982****:*

- 5 percent of the units, or one unit, whichever is greater, must be fully accessible.
- The mix of accessible units is to be comparable to the variety of other project units (i.e., 1, 2, and 3 bedrooms).
- All common areas must be accessible per UFAS.
- Borrowers found in non-compliance with accessibility requirements of Civil Rights laws may be required to conduct "self-evaluations" and prepare "transition plans" or respond to other administrative and legal actions.

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- **Fair Housing Act**

The Department of Housing and Urban Development (HUD) issued 24 CFR100.205 to implement the Fair Housing Act, as amended, on January 23, 1989. The Fair Housing Act requires that buildings be constructed to be accessible to individuals with disabilities.

Compliance Standard: The Fair Housing Act/Accessibility Guidelines (FHA/AG). For more information see www.hud.gov:80/library/bookshelf09/fhefhag.cfm.

Highlights of Fair Housing Act Requirements

In MFH projects ready for occupancy ***on or before March 13, 1991:***

- FHA/AG architectural requirements do not apply, even during project rehabilitation.

In MFH projects ready for occupancy ***after March 13, 1991:***

- All first floor ground units in buildings with four or more dwelling units must be designed and constructed in a manner that is adaptable to individuals with disabilities.
- All units must be adaptable if there is an elevator.
- Covered MFH projects must have:

  1. An accessible entrance on an accessible route
  2. Accessible public and common-use areas
  3. Usable doors
  4. Accessible routes into and through the dwelling unit
  5. Accessible light switches, electrical outlets, and environmental controls
  6. Reinforced bathroom walls, and
  7. Usable kitchens and bathrooms.

Americans with Disabilities Act (ADA)

The Department of Justice (DOJ) issued regulations at 28 CFR parts 35 and 36 to implement the Americans with Disabilities Act (ADA). ADA prohibits discrimination on the basis of disability in areas of public accommodations. ADA does not apply to residential units.

Compliance Standard: Americans with Disabilities Act/Accessibility Guidelines (ADA/AG). For more information see www.access-board.gov/adaag/html/adaag.htm.

Highlights of ADA requirements

In MFH projects ready for occupancy ***on or before January 26, 1993****:*

- When public areas are altered, they must be altered to ADA/AG standards. (Public areas are those areas used by individuals other than tenants and their guests. This includes offices used to pay bills or to inquire about service or employment, public restrooms, and buildings used for voting or public meetings.)

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In MFH projects ready for occupancy ***after January 26, 1993:***

- Public areas must be designed and constructed to ADA/AG standards.

Grid to show MFH borrower architectural accessibility requirements of Civil Rights laws and how they affect eligibility for Agency loans.

	Section 504 Project ready for occupancy on or before 6-10-82	**Section 504** Project ready for occupancy after 6-10-82	**Fair Housing Act** Project ready for occupancy on or before 3-13-91	**Fair Housing Act** Project ready for occupancy after 3-13-91	**ADA** Project ready for occupancy on or before 1-26-93	**ADA** Project ready for occupancy after 1-26-93
New Construction		Must meet UFAS requirements		Must meet UFAS and FHA/AG requirements		Must meet UFAS, FHA/AG and ADA/AG requirements
Rehabilitation	1. Encouraged to meet 5% requirement 2. Must meet common area requirement, if feasible 3. Must accommodate on request 4. Must have a self-evaluation 5. If required by self-evaluation, must have a transition plan	Must meet above requirements or be addressed during rehabilitation	Not applicable	Must meet above requirements or be addressed during rehabilitation	Must meet UFAS and ADA/AG requirements or be addressed during rehabilitation (If built after 3/13/91, FHA/AG requirements apply as well)	Must meet above requirements or be addressed during rehabilitation
Equity	Prior to the receipt of equity, must meet above requirements	Must meet above requirements or be addressed prior to receipt of equity	Not applicable	Not applicable (not eligible for equity at this time)	Not applicable	Not applicable (not eligible for equity at this time)
Transfer without Rehabilitation	Prior to transfer, must meet above requirements	Must meet above requirements prior to transfer	Not applicable	Must meet above requirements prior to transfer	Not applicable	Must meet above requirements prior to transfer
Ongoing project operations – monitored by supervisory visits or compliance reviews	Must meet above requirements	Must meet above requirements and must have a self evaluation and transition plan if found in non-compliance	Not applicable	Must meet above requirements	Not applicable	Must meet above requirements

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- **Self Evaluations and Transition Plans**

On June 11, 1982, USDA issued 7 CFR 15b, which required all borrowers to conduct ***self-evaluations*** within 1 year of the USDA regulation. In the event that structural changes were necessary, recipients were required to develop ***transition plans*** that set forth the steps necessary to complete such changes.

Who must conduct self-evaluations and develop transition plans?

- Borrowers of projects ready for occupancy on or before June 10, 1982.
- Borrowers of projects ready for occupancy after June 10, 1982, where the borrower has been found in non-compliance with Civil Rights law (as a remedial action).
- Borrowers who have had complaints filed against them, and the Agency determines it is necessary.
- Borrowers transferring ownership.
- Borrowers of projects receiving rehabilitation or equity loans, when the Agency determines it necessary.
- All state and local government borrower entities. (DOJ issued a regulation on July 26, 1991, which requires all State and local governments to conduct self-evaluations, unless they had already done so to meet the requirements of section 504.)
- Borrowers receiving loans after January 1, 2001, if a self-evaluation has not been previously conducted within the last 3 years.

What standards do borrowers need to meet?

Regardless of when a project was ready for occupancy, all borrowers are required to have ***policies and practices*** that do not discriminate against persons with disabilities. The architectural ***accessibility standards*** borrowers must meet will depend on when the project was ready for occupancy and what modifications are planned. In addition, many State and local governments have their own accessibility standards that also must be met. **Rural Development does not have the authority to waive any of the accessibility requirements**. Waivers may only be granted by the Secretary of Agriculture. To date, no waivers have been granted.

What are the self-evaluation and transition plan requirements?

In accordance with 7 CFR 15b the following is required:

Self-Evaluation

(1) Evaluate, with the assistance of interested persons, including persons with disabilities or organizations representing disabled persons, its current policies and practices and the effects thereof;

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(2) Modify, after consultation with interested persons, including disabled persons or organizations representing disabled persons, any policies and practices that do not meet the requirements of this part;

(3) Take, after consultation with interested persons, including disabled persons or organizations representing disabled persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices; and

(4) To **maintain a record** of the self-evaluation for at least three years. The record must be made available for public inspection and be provided to the Agency upon request. The self-evaluation record must contain:

(a) a list of the interested persons consulted,
(b) a description of areas examined and any problems identified, and,
(c) a description of any modifications made and of any remedial steps taken.

Transition Plans

At a minimum, transition plans are required to:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to disabled persons;

(2) Describe in detail the methods that would be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Identify the person responsible for implementation of the plan.

When structural changes are necessary, such changes shall be made within three years and as expeditiously as possible.

Examples of policies and practices to be addressed include:

- How will applicants and tenants be made aware that the owner will provide reasonable accommodations (unless doing so would cause an undue/administrative burden)?

- How will requests for reasonable accommodations be handled and who is authorized to approve or deny any such requests?

- Does the project have a Telecommunication Device for the Deaf (TDD) or an *equally effective communication syste*m? (Note: If the complex has section 8 assistance from HUD, the complex is required to have a TDD)

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- If the project has a TDD, is the public made aware that there is a TDD? For example, is the TDD telephone number given each time the project's telephone number is given?
- If the project relies on a relay service as an *equally effective communication system* (rather than having a TDD), who is the relay service operated by? Is the relay service available 24 hours a day and without any added cost to the disabled person?

- Have procedures been established to accommodate hearing and sight impaired applicants and tenants. Examples of methods the borrower might use include readers, sign language interpreters, Braille, etc.

- Does management give priority for fully accessible units to persons who are in need of the special design features of an accessible unit? Is priority given first to those living in the complex and then to persons on the waiting list?

- Before accessible units are temporarily rented to people who do not need the special design features, have there been diligent marketing efforts to market the units as accessible units? Have those efforts been documented? Are lease clauses used? Do marketing efforts continue after renting the unit to someone who does not need the special design features?

- Is management's policy for verifying a person's disability limited to only that which is needed to establish eligibility and is verification required only after a tenant or applicant has asked that their disability be considered by management?

- Does management provide their employees with civil rights training?

- When marketing an elderly project, has there been an effort to reach all eligible people. Persons with disabilities (of any age) are every bit as eligible as persons who are 62 or older. Marketing efforts should be designed to reach both population groups.

- Does the recipient notify the public that they do not discriminate on the basis of disability? Do materials published by the borrower contain such a notice? Use of the Equal Housing Opportunity logo is one means of doing so (the logo is the house with the equal sign and the words Equal Housing Opportunity underneath the house).

- Does management have a policy that permits persons with disabilities to have service and/or companion animals?

- Does management give persons with disabilities the same choices other applicants are given? For example, both first and second floor apartments.
-

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Monitoring compliance with the Self-Evaluation and Transition Plan

The Agency monitors MFH borrower compliance with Civil Rights laws through the compliance review process. Servicing Office staff who have been trained and designated will conduct the compliance review using the general format of Form RD 400-8. To assure compliance with the self-evaluation and transition plan requirements of Civil Rights laws, during the compliance review Agency staff will:

1. Visually inspect the project to determine if there are physical barriers.

2. Review the management plan to determine project management's method of informing tenants and applicants regarding requests for reasonable accommodations.

    - Visit and interview tenants to determine if the borrower has provided information and made reasonable accommodations upon request by the tenant.

3. Visit and interview tenants in the fully accessible units to determine:

    - If the tenant has need of the accessibility features of the unit and is an eligible occupant.

    - When the tenant is an ineligible occupant of the unit, if the tenant and borrower have executed a lease attachment that requires the tenant to move if an individual needing the handicapped features applies for occupancy.

4. Review the lease agreement, application and other documentation used by the borrower to determine if policies and procedures represent barriers to occupancy.

5. Review the self-evaluation plan and transition plan and compare the physical inspection to determine if there are barriers present that were not addressed or scheduled to be removed.

6. Where transition plans are scheduled to remove barriers over more than a one-year period, review the transition plan and the most recently approved budget to assure that borrower budgeting and the projects financial condition is supportive of the transition plan as written. Transition plans should include the potential cost of removing identified barriers.

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The Agency's response to findings of non-compliance

When the compliance review determines the following:

- The borrower has not completed a self-evaluation when required.
- The borrower's self-evaluation does not adequately address required components.
- The borrower has not completed a transition plan when required by the self-evaluation.
- The borrower's transition plan does not adequately address required components.
- The borrower has failed to comply with their transition plan.
- The borrower is in-noncompliance with other Civil Rights law requirements.

The Servicing Office takes the following actions:

- Enter the appropriate finding under the Supervisory Activity, "Compliance Review" and provide descriptive comments on MFIS.
- Notify the borrower in writing and provide 30 days to come into compliance. The following language should be contained in your letter to the borrower regarding their con-compliance:

  > "Recent Agency monitoring of the subject project indicates that you are not currently meeting your responsibilities under applicable Civil Rights laws. Since project operating or reserve account funds may be required to address this situation, we request that you advise the Agency of how you intend to comply with the law. In addition to any penalties, liabilities, or loss of tax credits that may result from legal action brought against you by third parties, continued non-compliance may result in your ineligibility to receive further loan funds from the Agency. You failed to meet the following MFH physical standard(s) OR you are in non-compliance with the following: (Specify)"

If a borrower fails to either bring themselves into compliance within 30 days or submit an acceptable transition plan to bring themselves into compliance, the Servicing Office will notify the State Civil Rights Coordinator/Manager (SCRC/M). The Leadership Designee will forward the issue of non-compliance to the National Office Civil Rights Staff.

The National Office Civil Rights Staff will notify the Leadership Designee if further review and processing of the finding will either resolve the finding or require that it be forwarded to the USDA Civil Rights Staff or the Justice Department to resolve the non-compliance issue.

The SCRC/M will notify the State Office MFH Program Director and the Servicing Office of the disposition of the finding of non-compliance.

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FREQUENTLY ASKED QUESTIONS (FAQ)
CIVIL RIGHTS-RELATED COMPLIANCE ISSUES

1. Is the International Symbol of Accessibility (ISA) required to be on a MFH project sign?

No. However, borrowers are encouraged to include the ISA on the project sign if:

- There are no physical barriers for someone wishing to inquire or apply for a service or benefit, and
- The project has an accessible route to fully accessible units.

2. Is the Telecommunication Device for the Deaf (TDD) number required to be on the project sign?

When project management communicates with hearing impaired applicants or tenants, they must use either a TTD or an "equally effective communication system." If a borrower uses a TTD number, the TTD number must be on the project sign. If a borrower uses an equally effective communication system, the borrower must document the process in their self-evaluation and let the public know how this is to be accomplished. However, the borrower is not required to post the relay service phone number on the project sign. Borrowers with Section 8/515 projects are required by HUD to use a TTD.

3. Are assistance animals that assist the disabled subject to MFH project "Pet" rules?

No. They are permitted occupancy under the Fair Housing Act and are defined as follows:

- Assistance animals are not pets. These are animals that work, provide assistance, or perform tasks for the benefit of a person with a disability, or animals that provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals – often referred to as "service animals," "support animals," "therapy animals" or "companion animals" perform many disability-related functions including but not limited to (1) guiding individuals who are blind or have low vision, (2) alerting individuals who are deaf or hard of hearing to sounds, (3) providing minimal protection or rescue assistance, (4) pulling a wheelchair, (5) fetching items, (6) alerting persons to impending seizures, or (7) providing emotional support to persons with disabilities who have a disability-related need for such support.

- A borrower may not refuse to allow a person with a disability to have an assistance animal merely because the animal does not have formal training. Some, but not all, animals that assist persons with disabilities are professionally trained. The owners themselves train other assistance animals and, in some cases, no special training is required. The question is whether or not the animal performs the disability-related assistance or provides the disability-related benefit needed by the person with the disability.

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- A borrower's refusal to modify or provide an exception to a "no pets" rule or policy to permit a person with a disability to use and live with an assistance animal would violate Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act unless:

  1. The animal poses a direct threat to the health or safety of others that cannot be reduced or eliminated by a reasonable accommodation,

  2. The animal would cause substantial physical damage to the property of others,

  3. The presence of the assistance animal would pose an undue financial and administrative burden to the provider, or

  4. The presence of the assistance animal would fundamentally alter the nature of the provider's services.

- The fact that a person has a disability does not automatically entitle him or her to an assistance animal. There must be a relationship between the person's disability and his or her need for the animal.

- A borrower may not require an applicant or tenant to pay a fee or a security deposit as a condition of allowing the applicant or tenant to keep the assistance animal. However, if the individual's assistance animal causes damage to the applicant's unit or the common areas of the dwelling, at that time, the borrower may charge the individual for the cost of repairing the damage if the provider regularly charges tenants for any damage they cause to the premises.

4. Does an applicant needing special design features have priority for occupancy over a current tenant without a need for the special design features of a fully accessible unit?

Yes. While tenants without a need for the special design features may occupy a fully accessible unit, prior to occupancy the tenant must agree to move to another unit in the project if a qualified individual needing the special design features applies for occupancy of the fully accessible unit. Borrowers are required to enter into a lease agreement with the tenant without a need for the special design features to assure that a legal right exists to require the tenant to move to another available unit in the project, when necessary.

5. What are a few suggestions to improve marketing of fully accessible units?

Before fully accessible units are rented to persons not in need of the special design features, borrowers must conduct a diligent and documented marketing effort to ensure that those in need of the special design features know about the availability for the units. Such contacts may Include, Area Commission on Aging, Physical Rehabilitation Centers, Hospitals and Disabled Veterans Organizations. Borrowers are encouraged to use the handicap accessibility logo as a marketing tool on the project sign, in advertising, and on contact letters, leaflets and brochures.

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When a tenant not needing the design features occupies a fully accessible unit, borrowers are to continue their marketing efforts until a tenant needing the design features is found.

6. How do borrowers meet 7 CFR 15b numerical requirements for fully accessible units?

In MFH projects ready for occupancy after June 10, 1982, 7 CFR 15b standards require:

- At least 5 percent or one unit, whichever is greater, must be fully accessible. To meet the 5 percent minimum, borrowers must round up to the next whole unit. For example, a 24-unit MFH project must have at least two fully accessible units (8.3 percent) rather than one (4.2 percent).

- Fully accessible units must be comparable in variety to other project units. For example, in a 24-unit project with 12 one-bedroom units and 12 two-bedroom units, one of the fully accessible units should be a one-bedroom unit and the other should be a two-bedroom unit.

- Rents for fully accessible units must be comparable to other same sized project units.

- If a project has more than one site, fully accessible units may not be clustered at one site, unless only one fully accessible unit is required.

- When a project has a wide variety of units (one, two, three or four bedrooms), borrowers are not required to exceed the 5 percent requirement simply to have a fully accessible unit of each type.

7. On-farm Farm Labor Housing is normally a single-family house. Is this housing subject to the 5 percent fully accessible requirement?

No. The 5 percent requirement appears in 7 CFR 15b.41. This section of the regulation only applies to multi-family rental housing. The Office of the General Counsel (OGC) provided an opinion on its application to a single unit Farm Labor Housing because 7 CFR 15b does not define "multi-family." OGC advised us that we may use the definition in Uniform Federal Accessibility Standards (UFAS), which defines multi-family housing as any "building containing more than two dwelling units." (For more information on UFAS, refer to www.access-board.gov/ufas/ufas-html/ufas.htm). Therefore, "on-farm" labor housing that consists of buildings with less than three units, is not required to meet the requirement that 5 percent of the units be constructed as fully accessible units. However, borrowers should be mindful that if a request is made for a "reasonable accommodation", that they must address accessibility at that time.

8. Who pays for reasonable accommodations?

If an eligible applicant or tenant makes a request for a reasonable accommodation, borrowers are to use project resources to complete and pay for the accommodation. A borrower may request a

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waiver from the Secretary of Agriculture if they can show that the modifications or other special accommodations needed by the person with a disability would cause an undue financial/administrative burden or fundamental change in operations. The borrower must prove such a burden exists in order to receive a waiver from the Secretary.

9. What type of reasonable accommodation is made?

If an eligible applicant or tenant makes a request for a reasonable accommodation, the change to be made should be based on the tenant's assessment of their needs, even when the accommodation may vary from commonly accepted accessibility standards. All improvements should be done in a professional manner and meet local building code requirements.

10. When is it appropriate to make inquiries about a person's disability?

An appropriate question for all applicants to an elderly MFH project is:

- "If you are less than 62 years old, are you eligible for occupancy based on your status as an individual with handicaps or disabilities?

Regarding the issue of adjustments to income or priority for a unit with special design features, the application form should give the opportunity to make a request for the added benefit. For example, it would be appropriate to ask all applicants and tenants:

- "Do you wish to have priority for an apartment with special design features for persons with disabilities?"

- "Do you wish to claim a $400 deduction from your income based on a disabling condition?"

By phrasing questions in this manner, applicants are advised of the benefit and allowed to decide for themselves if they wish to disclose a disabling condition. Once an applicant requests that their disability status be considered, inquires can be made, but only to the extent necessary to verify eligibility. Project management should not attempt to make any determination concerning an applicant's disabling condition.

11. May a guardian sign a rental agreement on behalf of a qualified person with a disability?

While there is no Federal law preventing a guardian from signing a rental agreement on behalf of a qualified person with disabilities, state law may vary. Each borrower should check with their legal counsel. To the extent individual state laws permit a guardian to sign a rental agreement, guardian signatures are to be accepted.

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12. What are the requirements for van accessible parking?

The requirements vary based on when a project became ready for occupancy. . The parking lot of all projects with public areas such as an on-site office, ready for occupancy after January 26, 1993, must be properly striped for van accessible parking and access aisles. All projects with public areas ready for occupancy before January 26, 1993, must be striped for van accessible parking and access aisles whenever the parking lot is re-striped.

13. If accessible parking is located across the drive from the building it serves, must a crosswalk be painted on the drive?

No, it's not required. However, having a crosswalk is a good idea since it would indicate a crossing exists, and hopefully would signal a driver to slow down. There is no requirement for a painted crosswalk in the accessibility standards. Further, there is no requirement for the color of paint to be used. White is most commonly used, and sometimes blue or yellow. Curb ramps from the drive to the site are required.

14. May a borrower allow a resident assistant to occupy a unit overnight to assist a tenant with a disability?

Yes. When a tenant with a disability provides a physician's statement requiring resident assistant care in excess of the established time periods for visitors, it would be a reasonable accommodation to the rules and policies to allow the resident assistant to reside in the unit in excess of established visitor's time. Further, if the need is for the resident assistant to live in the unit, it is a reasonable accommodation to rent a two-bedroom unit to a tenant at their request. The income of a resident assistant is not included in tenant household income.

15. Is the "interested person(s)" who assists or is consulted during the borrower's preparation of their self-evaluation required to visit the project site?

No. While interested persons, including disabled persons or organizations representing disabled persons must be consulted they are not required to conduct a site visit.

16. Is the self-evaluation required to be maintained at the project site?

Yes, if the project has an office. If there is no office, the borrower is still obligated to make the self-evaluation available to the public upon request. The public includes any applicant, tenant and the Agency. It is not reasonable for the borrower to expect the public to drive to a location other than the project to view the self-evaluation.

17. What can be done with projects ready for occupancy after June 10, 1982 that were not built in accordance with UFAS standards, where it is either structurally impractical or financially infeasible to make the required changes?

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Typically, the borrower should seek guidance from their project architect before making this determination. The Agency will need documentation that it is structurally impractical from a knowledgeable source. For example, in a project built using a split foyer design, it may be structurally impractical to make changes. The borrower might try to establish a referral agreement with another project in the local market area with a fully accessible unit. If no referral agreement is possible to make the program accessible, the Agency may administratively recognize that the borrower is unable to address their outstanding non-compliance issues. In this case, all avenues have been explored, and the Servicing Office will document the case file to fully explain the situation and the borrower's attempts to resolve the problem, remove the finding(s) from Multi-Family Housing Information System (MFIS) and discontinue reporting the situation through the post supervisory visit and compliance review reporting process. In some instances, a borrower may claim that a project is not able to meet UFAS standards because the project's financial condition is such that the change would create an undue financial burden. For example, the project is located in a poor rental market and rents are insufficient to address capital needs. While the Agency has no mechanism for waiving the requirements of UFAS standards for financial reasons, the borrower may request a waiver from the Secretary of Agriculture. For such a waiver, the borrower must document the financial condition of the project as well as attempts to seek local, state, private and Federal funding for grants or loans to correct the condition.

18. Attachment C states that regardless of when a project was ready for occupancy, all borrowers are required to have "policies and practices" that do not discriminate against persons with disabilities which are provided on Attachment C-1. Where do the borrowers document these "policies and practices"?

Borrowers document these "policies and practices" in the management plan.

19. If these policies and practices are not presently covered in the management plan should we ask everybody to provide written documentation of the "policies" now or, do we wait until the management plan is renewed, or the next supervisory visit/compliance review (whichever comes first)?

We recommend that you be sure borrowers understand that these issues should be addressed in their management plans and that you will review these items in your supervisory visits, compliance reviews and management plan approvals. However, the Agency is not required to conduct a full review of all existing management plans at this time.

20. Attachment C also states that borrowers are supposed to maintain a record of the self-evaluation for at least three years. How are we going to document if they have one, if the three-year period is past?

Part V of *Form RD 400-8, Compliance Review,* should contain a record of self-evaluation status based on Agency review. While the borrower is responsible to retain records for their own protection, we can retain any self-evaluation shared with us by the borrower in our files.

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21. Attachment C states that when structural changes are necessary, such changes shall be made within 3 years and as expeditiously as possible. What if major structural changes are needed and they can't be accomplished within a 3-year period?
Realistically, all structural changes should be accomplished within a three-year time frame unless funding is an issue. When changes are not made within the time frame of the transition plan, the borrower should prepare a new or revised 3-year transition plan that documents what has been done, what will be completed, and time frames for completion. Before we accept a plan, we need to be sure that the borrower is sincerely attempting to comply with the accessibility requirements. We also need to assure that rents and reserve account (RA) withdrawals are approved when necessary to make the changes.

22. Should transition plans exceed 3 years? We have seen some that just say "when funds are available." These plans are typically in projects where there is very little or no RA and rents must be kept low to keep tenants. In these cases, there may never be funds available.

Transition plans may not exceed a 3-year period and "when funds are available" is never a good time-frame. "Upon rehabilitation" is better language to use. If a poor rental market is the real issue, the transition plan should be clear that the market is the reason the borrower can not make needed improvements. If there is some way of addressing the cash flow problem (i.e., transfer RA, seek state or local grants, etc.), then the Agency should be ready to help the borrower move in that direction. This means that if a rent increase is needed, either to fund the improvement or build up the RA, the transition plan should document the amount that is needed and the Agency should be willing to approve higher rents. Also, the borrower should document their efforts to check for funding elsewhere. Some state and local governments have grant or loan funds that can be used for providing accessibility. Borrowers should be encouraged to seek out such funds if available. Once the 3-year period is completed, if corrections have not been completed, a new or revised transition plan would be required listing those incomplete items, with a proposed timeframe.

23. There are six additional items we are to review during the compliance review. Where are these items to be documented?

You will notice that some of the answers are addressed by questions already on the physical inspection form or the compliance review. While, the Civil Rights Staff has not established a separate document for the purpose of documenting this review, your assessment of the borrowers response to the six items should be documented in part V or VI of *Form RD 400-8*.

24. If we should find a borrower out of compliance with accessibility requirements and the borrower comes back with a transition plan that says they will make accommodations as needed, will the Agency be able to accept that and say that the borrower is now in compliance for tracking purposes?

Yes, however the borrower is technically out of compliance until the problem is corrected. However, if the borrower has a self-evaluation and a transition plan that describes how that particular finding will be resolved, we have established that the borrower is taking the

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appropriate steps to resolve their problem by establishing a timetable for corrective action in the transition plan. A good analogy is how we use our workout plan. If a workout plan is in place and being followed, the Agency can recognize that the default finding is being resolved. Therefore, we treat the project differently in our classification system.

25. Could you give us an example where time frames for compliance will be provided in Agency notices and will vary according to the nature of the non-compliance issue.

For example, according to Civil Rights Staff policy, findings on the compliance review should be corrected in 30 days. This timeframe may be expanded if conditions warrant. According to MFH program direction, supervisory visit findings can be resolved using different timeframes, generally varying from 30 to 90 days. The Servicing Office has some flexibility in providing corrective deadlines for findings found on the supervisory visit. Usually, these deadlines are established in relationship to the seriousness of the finding. Additionally, the letter to the borrower requesting corrective actions can combine findings and corrective time frames from both the compliance review and the supervisory visit.

26. Do you see any problem with the Agency keeping a copy of the self-evaluation and transition plan in the borrower's file? We initially told our field staff not to keep a copy because we didn't want the borrower to construe that as Agency approval of the documents; however, some of our field employees have asked for copies and are keeping them in the file.

It is a good idea to keep the self-evaluations and transition plans in the file because you should be reviewing them with each management plan and budget approval. Routine budget approvals should now include reviewing the transition plan to make sure that identified capital improvements are in the budget.

27. Are Agency field staff required to become “accessibility” police?

It is important to understand that since June 10, 1982, 7 CFR 15b requires the Agency to conduct compliance reviews regarding accessibility requirements. The bottom line is that the borrower is the party responsible for project compliance with accessibility laws. The Agency’s role is to assure that the program, in general, is administered in accordance with accessibility laws. We identify non-compliance during limited reviews, make project resources available to help solve problems, report problems through an internal reporting process, and respond to continued serious instances of non-compliance using established MFH program servicing tools.

28. UFAS requires that wall cabinets in accessible units be mounted at 48" above the floor. In rehabs, that has required relocating them. One owner requested mounting a separate shelf 48" above the floor, between the base and wall cabinets. Is this OK?

The Access Board has indicated that a shelf between base cabinets provides “equivalent” accessibility when it is not possible to lower wall cabinets. The shelf should not become the standard solution, but can be considered on a case-by-case basis. For example, if funds for

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rehabilitation are limited, the shelf may be a less expensive solution to removing and relocating wall cabinets. If funds are available, the wall cabinets should be relocated. Although deemed "equivalent," the shelf does not have doors to cover the storage space and should not be used if relocating wall cabinets is possible.

29. Is a 30" x 34" high workspace required in an accessible dwelling unit kitchen? While UFAS 4.34.6.4 requires this, it is not included in the list in Attachment B or added to the MFH Physical Inspection Form.

Yes, it's required. The list in Attachment B was not intended to be all inclusive of UFAS standards, but to hit the big issues.

30. UFAS 4.13.9 calls for lever handles on entrance doors to accessible units. An item on the MFH Physical Inspection form asks if lever handles were provided. Does this apply to all apartment doors?

UFAS requires lever handles on apartment unit entry doors only. The question on the MFH Physical Inspection form refers to apartment unit entry doors only. If a tenant needs lever handles throughout a unit, they may be requested as a "reasonable accommodation."

31. Where are grab bars required?

Grab bars are required in the 5 percent of units that are "fully accessible." UFAS 4.34.5 uses the language "If provided, grab bars will …." Our Agency has taken the position that grab bars will be installed in order to make the "fully accessible" unit ready for a person with disabilities. Grab bars are also provided in those units in which a tenant has requested them as a "reasonable accommodation." In those ground floor units constructed since 1991, FHA/AG required blocking for "adaptability." In those units, grab bars may be installed later as a form of "reasonable accommodation" when requested.

32. How do people writing Transition Plans know to require grab bars?

Since writers of Transition Plans base them on UFAS, the proposed plan may call for installing the blocking only, and not installing the grab bars. In requiring a Self Evaluation and possibly a Transition Plan from a borrower, field staff should make them aware that the Agency has taken the position that grab bars are required in 5 percent of the units that are "fully accessible."

33. An item on the MFH Physical Inspection form refers to a "functional emergency call system." Are emergency call systems required in all fully accessible units?

If the fully accessible unit presently has an emergency call system, it must be functional. If no emergency call system is in place, the borrower does not have to provide one at this time. It may be necessary to add one as a "reasonable accommodation" per tenant request. There has been

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considerable confusion on this issue, and we realize that this may be a different answer than you have received in the past.

34. Is additional maneuvering room in the bathroom required?

Some Transition Plans are indicating a need to enlarge the bathroom in an accessible unit to provide a 5' turning circle, which UFAS requires in a common use bathroom. Writers of Transition Plans are incorrectly applying this requirement to a dwelling unit. Agency staff should understand that an accessible dwelling unit bathroom must have clear floor space at the tub/shower and commode, but a 5' turning circle is not required within a dwelling unit bath. Also, UFAS provides an exception in 4.22.3 for public toilets with only one lavatory and commode. In those common use toilets, a 5' turning circle is not required.

35. In addition to the requirement that 5 percent of a project's units must be fully accessible for persons with mobility impairments, is it true that MFH projects must also meet a requirement that an additional 2 percent of the units (over and above the 5 percent) must be made fully accessible by individuals with hearing or visual impairments?

To implement Section 504, both HUD and USDA individually published regulations to apply to their respective programs. While HUD's regulation does require that 2 percent of the units (over and above the 5 percent that are made fully accessible for persons with mobility impairments) be made accessible for individuals with hearing or visual impairments, USDA's regulation does not. Consequently, MFH projects with project-based HUD Section 8 that were built on or after July 11, 1988, must meet this requirement, but MFH projects without project based HUD Section 8 do not. However, even when not required, borrowers are encouraged to make an additional 2 percent of the units accessible for persons with hearing or visual impairments.

36. We have an existing MFH property with multiple laundry rooms. Must each laundry room be made accessible?

Not necessarily.

- For a property constructed for first occupancy after March 13, 1991, and subject to the Fair Housing Amendments Act design requirements, laundries for the covered units must be on an accessible route, and the space must be accessible. This would apply to all ground floor laundries (or all laundries in a building with an elevator).

- In addition, for properties constructed, or with substantial alterations, after June 10, 1982, UFAS also applies. UFAS 4.1.3(3) states "Common Areas: At least one of each type of common area and amenity in each project shall be accessible and shall be located on an accessible route to any accessible dwelling unit." This sets a minimum of one accessible laundry. If accessible units are located near one another, the nearest laundry must be made accessible. If accessible units are located on opposite ends of the property, it may be necessary to make more than one laundry

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room accessible, depending on location and site topography. In such a situation, the nearest laundry room to each accessible unit must be made accessible.

- Regardless of when a property was constructed, it is the policy of RHS that, to the extent possible, barriers to common use areas that prevent any mobility impaired person from having full access will be removed. This does not, however, require borrowers to exceed the above standards unless it is necessary to do so in response to a request for a reasonable accommodation from a person with disabilities.

In addition, UFAS 4.34.7.2 states that washing machines and clothes dryers in common use laundry rooms shall be front loading." RHS has taken the position that this requirement is met if at least one washer and one dryer is front loading in every laundry room that is required to be accessible by UFAS. This position is taken, in part, in recognition that there may be some increase in cost to provide front loading washers and dryers.

37. If structural accessibility requirements of the Fair Housing Act were not met due to negligence of the borrower or their architect during construction, what can be done to get them corrected?

In cases where fault is established, it is a proper servicing action to seek corrections by borrowers at their own expense. To accomplish these corrections, some borrowers may in turn seek to enforce contractual agreements with project architects.

38. What are the requirements for accessibility for a community room kitchen / kitchenette?

In many situations, the requirements for an accessible dwelling unit kitchen have been applied to a common use kitchen or kitchenette. The Fair Housing Act Accessibility Guidelines and UFAS have similar requirements.

- The community room must be accessible, including an accessible route, accessible doors, switches and outlets at proper height, etc.

- The kitchen area must have an accessible sink per UFAS 4.24. This includes a mounting height no higher than 34" (or adjustable to 34"), knee clearance underneath, clear floor space at the sink, insulated piping, and an accessible faucet.

- UFAS 4.25 and 4.1.2(11) further requires that a portion of the storage provided (shelves, drawers, and cabinets) have clear floor space and be within the reach range. This requirement is normally met with standard kitchen base cabinets.

- The kitchen must have a 60" turning circle or "T" turn around for maneuverability. Space in the community room or a hallway immediately outside the kitchen may be used to meet this requirement.

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- There is no requirement in a common use kitchen for an accessible work surface, range or cooktop with accessible controls, self-cleaning wall oven, or an accessible refrigerator (side by side or with 50% of freezer space within reach ranges). These requirements appear in UFAS 4.34, and only apply to an accessible dwelling unit.

These requirements for a common use kitchen or kitchenette are minimums. Provision of additional accessibility in a common use kitchen or kitchenette is encouraged, but not required.

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39. Can the street be utilized as part of the accessible route to an amenity? Can the disabled travel behind parked vehicles or with the traffic in the travel lane?

The accessible route may include travel behind a parked vehicle only if it is an accessible parking space. Crossing a traffic lane between curb cuts is acceptable. A striped crosswalk is not required. Otherwise, the street or traffic lane may not be part of the accessible route for an individual using a wheelchair.

If the site amenity is located at a considerable distance from the accessible unit and its accessible parking space or if site terrain is such that an accessible route along sidewalks is not possible, a vehicle can be used. This requires an accessible parking space at the site amenity, with an accessible route from that parking space to the site amenity. In this situation, the disabled individual must travel from their unit to their accessible parking space, transfer to their vehicle, drive to the site amenity, transfer back to their wheelchair, and then go to the site amenity. As you can see, this is not a convenient solution, and should be used only on existing properties in cases where no other solution is possible.

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