

May 9 2008

TO: State Directors
Rural Development

ATTN: Multi-Family Housing Program Directors

FROM: Russell T. Davis (*Signed by Russell T. Davis*)
Administrator
Housing and Community Facilities Programs

SUBJECT: Policy Guidance for Waiving Late Fees or Overage

The purpose of this memorandum is to provide guidance on waiving late fees and overage in Multi-Family Housing (MFH) Section 515 and 514 properties. We have identified that a large number of management agents are requesting the waiver of late fees as well as overage waivers. Both of these waivers should be extremely rare.

Waiver of Late Fees (HB-3-3560, Chapter 4, sections 4.4 & 4.5)

The State Office may waive late fees only for circumstances beyond a borrower's control or when granting the waiver is in the best interest of the Government. Waivers are issued at the Agency's discretion and the Field Office Staff are under no obligation to grant waivers.

These charges may be waived only if one of the following situations occur:

1. Rural Development made an error in installment date or payment amount.
2. Borrower is under an approved workout plan.

If the late fee waiver request is denied, the borrower may appeal the decision in accordance with RD Instruction 1900-B, "Adverse Decisions and Administrative Appeals." This letter should be sent certified mail. The amount of the late fee may not be appealed.

Waiving a late fee is considered forgiveness of debt and therefore an Internal Revenue Service (IRS) Form 1099-C, "Cancellation of Debt," will be issued to the borrower. Rural Development can indicate on the transaction whether the waiver should be reported to the IRS. Rural Development should only indicate not to report when the waiver is due to negligence on the part of the Agency.

EXPIRATION DATE:
May 31, 2009

FILING INSTRUCTIONS:
Housing Programs

Waiver of Overage (HB-3-3560, Chapter 4, section 4.11)

Borrowers must submit tenant certifications for new tenants and recertifications for existing tenants no later than the tenth day of the month for the certification to be effective for that month. Tenant certifications received after the tenth day of the month will be considered late. Borrowers are not eligible for interest credit or rental assistance for units with late certifications, and the Agency will charge the appropriate amount of overage until valid certifications are received in a timely manner for all units.

Any changes to tenant certifications that are effective as of the first day of the month must be submitted to the Agency by the tenth day of the month for the affected units to qualify for interest credit or rental assistance. If the changes are submitted after the tenth day of the month, the Agency will charge overage and the changes will be effective the first day of the following month.

The State Director may grant a waiver of overage charges resulting only from the late submission of tenant certifications in the following instances:

- Circumstances existed that were beyond the borrower's control (e.g. natural disaster or undetected transmission failures due to network interruption);
- It would place an unfair burden on the borrower;
- It is in the best financial interest of the Government to grant the waiver; or
- The charges were a result of an Agency error.

In order for a waiver of overage charge request to be considered, the borrower/management agent must submit a written request to the Centralized Service Center (CSC) justifying the reasons for the waiver. For each waiver requested, the borrower must provide information regarding the unit number, amount of overage charged, Rental Assistance withheld, and details of the circumstances that occurred to cause the late submission, proof that these circumstances were beyond the borrower's control and a description of the actions taken to prevent the situation from occurring in the future. Proof should include a copy of the file transfer confirmation page that says the file was successfully transmitted, and an email with the status of the transfer (pending, accepted, rejected) and a breakdown of the actions that were included in the file transfer. The borrower should receive this email after sending in a file of tenant certifications that were created by a vendor application or transmitting through the Management Interactive Network Connection (MINC) system. The borrower can also go into MINC and use the "Review Transactions" function to view the status of any transmission.

CSC will forward the borrower's request and any additional details that CSC is aware of to the State Office. The State Office will review all the facts submitted. If a file transfer confirmation page is submitted and the information is not on the Multi-Family Information Systems (MFIS) system, further investigation should be pursued, including calling the Centralized Help Desk, if necessary. Only the State Director has the authority to grant a waiver of overage. Once the waiver is approved, the State Office will send a letter to the borrower and notify CSC of the approval of the waiver. CSC is responsible for making the appropriate entries in AMAS and MFIS. Approval of the waiver will waive the overage and reinstate any rental assistance due.

If a request for waiver of overage is denied, the charge must be paid as a borrower expense. With prior Agency approval, nonprofit borrowers and cooperatives may treat the charge as a project expense. If a request for an overage waiver is denied, the borrower will be given appeal rights. CSC will also need to be notified of the denial.

The request for waiving overage or late fees should be very rare and will only be approved if the circumstances listed above exist. MINC allows the borrowers to view their project worksheet prior to being released for payment approval. When system problems arise, borrowers should exhaust all available avenues to try to get the data to transmit, including contacting the Centralized Help Desk for assistance. If the error cannot be resolved in time to meet the transmission deadline, the CSC should be contacted for instructions as to how to proceed.

If you have any questions regarding this memorandum, please contact Diane Larson of the Multi-Family Housing Portfolio Management Division at 712-243-2915.