United States Department of Agriculture

Rural Development

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TO: State Directors
Rural Development

FROM: Joel C. Baxley /s/ ***Joel C. Baxley***
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SUBJECT: Protective Advance – Recoverable Cost Procedures for Multi-Family Housing Loans

The purpose of this Unnumbered Letter (UL) is to address how to request Protective Advances for Multi-Family Housing (MFH) loans and when to implement Protective Advances.

Protective Advances are provided by the Agency when the borrower fails to meet their responsibilities to provide decent, safe, and sanitary housing, including payment of operating expenses. In some instances, a protective advance is absolutely imperative if the property's situation threatens the health and safety of the residents. Care must be taken to ensure that funds are used appropriately.

A protective advance is **not** a source of funds for rehabilitation, general repair or routine operational expenses of MFH properties.

A written request for a protective advance for MFH properties should be submitted from the State Office to the MFH Portfolio Management Division, "Attention: Ancil Green" or e-mail ancil.green@wdc.usda.gov. The request should include but not be limited to:

a) an executed copy of RD Form 2024-30, "*Non-Contractual Program Loan Cost Expense (PLCE) Certification*";
b) a summary of events leading up to the causation for the request;
c) current physical condition of the property;
d) current financial status of the property, in particular status of the Operation & Maintenance, and reserve accounts;
e) actions taken with the borrower to address the extant of issues;
f) recommendation why obtaining a protective advance is in the best interest of the Agency and how it will cure the immediate needs of the property.

EXPIRATION DATE:
June 30, 2019

FILING INSTRUCTIONS:
Housing Programs

The request should also include the obligation date of the oldest outstanding loan on the property, as this will determine which type of program authority loan funds to be utilized (i.e. MFH loans made prior to fiscal year (FY) 1992 require "L" funds and MFH loans made after FY 1992 require "R" funds). Prior to submitting a request for a protective advance, check to verify all Multi-Family Information System (MFIS) data is current and accurate. MFH personnel will review the request to ensure the advances are reasonable and appropriate.

When requesting a protective advance that requires multiple and/or re-occurring advances, such as monthly utility expenses, please indicate the projected number of subsequent advances that will be needed, along with an estimated dollar amount for each additional advance. Your subsequent request(s) need only be followed-up with an e-mail to ancil.green@wdc.usda.gov**,** identifying the request and the exact dollar amount needed.

Protective Advances should not be requested for property insurance. MFH will utilize forced placed insurance under a contract administered by the Customer Servicing Center (CSC). For additional information on forced placed insurance, State Officials should contact the Escrow and Front-End Management Branch at CSC, at (314) 457-5890, or via e-mail to jason.esparza@stl.usda.gov.

Protective Advances are a recoverable expense when they are utilized to protect the security interest of the Government, and can be authorized for: (1) payment of real estate taxes and/or assessments, (2) essential maintenance and repairs needed to immediately remedy and/or prevent further damage, deterioration and devaluation of secured property, when the borrower possesses the title and is not adequately maintaining the property; or when the borrower has abandoned the property, (3) payment of utility bills in order to maintain/restore essential services such as heat, electricity, garbage, water, etc., and (4) eliminate health/safety violations, drugs and criminal activity which puts the Agency's financial security at risk.

It should be further noted that a protective advance should **only** be considered after (1) the servicing office has demanded that the borrower cure the aforementioned deficiencies within the established timeframe, (2) tax bills are vouchered prior to the tax office executing steps to take possession of the property, and (3) when immediate repairs are needed to address imminent structural or health and safety concerns.

Recoverable Cost in this context is defined as a cost charged to a borrower's account or incurred prior to the Government's acquisition/possession of title to the property. When Federal funds are extended to borrowers such as through a recoverable cost protective advance, Restrictive-Use Provisions are required to be put in place under the law. For restrictive-use purposes, such funds are treated in the same manner as subsequent loan funds.

Amortized Recoverable Costs recoverable cost items may be amortized up to 5 years. This function will allow the servicing official to voucher recoverable cost items such as real estate taxes. For example, when a default or deficiency is identified and noted, it is the Servicing Office responsibility to inform the borrower of the finding(s) and demand that the borrower immediately cure any property default or deficiencies. If the cure does not occur within the timeframe established by the Servicing Office, the borrower may be informed of the Agency's authority to implement a protective advance in order to cure the default or deficiencies, and charge the expense as a recoverable cost against the borrower's account, and amortize the account for a period of up to 5 years, with the interest rate based on the current rate.

(1) Payment of real estate taxes. When a borrower's taxes are paid by voucher, the amortization period of the tax advance will be the number of months for which the taxes are being vouchered with a maximum of up to 5 years.

(2) Costs other than real estate taxes will be amortized for 12 months or less, based on the borrower's repayment ability. An amortized period of more than 12 months may be used only when the cost is of a non-recurring type.

Servicing Offices should remember that it is the borrower's responsibility to (1) make loan payments as agreed, (2) pay real estate taxes and/or assessments when due, (3) pay utility bills such as heat, electricity, garbage, and other essential services, (4) keep adequate property insurance(s) in force, or make scheduled escrow installments for taxes and insurance when required, and (5) prevent deterioration of secured property by immediately addressing and eliminating health and safety violations, drug and criminal activity issues, and deferred maintenance.

RD Instruction 2024-A. Exhibit D and the Program Authority Code:
Servicing Officials should reference RD Instruction 2024-A, Exhibit D, Table D-6, "Program Authority to Request Contract Services and Make Non-Contractual Payments - Recoverability of Program Loan Cost Expenses - Multi-Family Housing Programs." As a reminder, request for items such as recording and filing fees or related services need not be submitted to the National Office for approval. The Administrator may make written restrictions or revocations of any of the program authorities listed in Exhibit D at any time. An electronic copy of RD Instruction 2024-A, can be accessed and downloaded from the Rural Development website.

If you have any questions, please contact Ancil Green, Loan Analyst, MFH Portfolio Management Division, at (202) 690-0760.