

RD AN No. 4773 (2033-A)
September 2, 2014

TO: State Directors
Rural Development

FROM: Tony J. Hernandez /s/ *Tony J. Hernandez*
Administrator
Housing and Community Facilities Programs

SUBJECT: Separate Files for Prepayment Requests

PURPOSE/INTENDED OUTCOME:

RD Instruction 2033-A provides for prepayment requests and supporting documentation to be filed in "Position 3" of the loan file. This Administrative Notice (AN) is to advise you that each State should continue to create a separate "eight position" file folder for all prepayment requests. The intent of this creation is to ensure complete documentation of any events or materials associated with a request to prepay. This complete documentation will help ensure the Agency meets its regulatory obligations and will provide timely and complete information to the Office of General Counsel and the Department of Justice should litigation occur.

COMPARISON WITH PREVIOUS ADMINISTRATIVE NOTICE:

This AN replaces RD AN No. 4717 (2033-A), dated May 21, 2013, which expired May 31, 2014.

IMPLEMENTATION RESPONSIBILITIES:

Immediately upon receipt of a request to prepay, a separate prepayment file will be established for all Section 515 projects and their associated loans. There is no need to retain and preserve documents from litigation cases that have been closed. States with litigation cases filed in 2010, 2011 and 2012 remain subject to a litigation hold and while in litigation hold, files are to be retained and preserved. While there is no current requirement to retain records for properties not involved in litigation, it is in the Agency's best interest to have these records in the event a suit is filed. The guidance set forth in the Unnumbered Letter, entitled "Servicing Section 515 Loans that Received Damages under the Settlement Agreement and File Retention for Loans Subject to Future Claims", dated (to be determined), should continue to be followed.

To ensure that all records and documents for any Section 515 loans made or assumed during the period of December 21, 1979, to December 14, 1989, are adequately preserved, states must retain both the original loan files as well as the servicing files for 6 years after the loan has been satisfied. This would also include any electronic correspondence (e-mail) and data stored in MFIS. Each State should create prepayment file folders in the following manner:

EXPIRATION DATE:
August 31, 2015

FILING INSTRUCTIONS:
Preceding RD Instruction 2033-A

Label tabs as follows:		
Tab 1	Rural Development Contact Information	Name of Servicing Office with Contact Person's Name, Phone and FAX Numbers, and e-mail address.
Tab 2	Legal Documents	Promissory Note, Loan Agreement, Loan Obligation Forms, Deed of Trust, Budgets, Organizational Documents, Financing Statements, Supervised Bank Account Documents, Assumption Agreement, Reamortization Agreement, etc. (in date order starting with the latest).
Tab 3	Paid in Full Tenants and Post Prepay Tenants	List of current tenants when the project was paid in full. List of current tenants as of this date. Borrower's annual dated and signed certification.
Tab 4	Correspondence (including e-mails)	Any documents and correspondence to include the Running Record, regarding the Borrower's request(s) or other attempts to prepay, and/or intention to prepay, including but not limited to: <ol style="list-style-type: none"> (1) All written correspondence regarding any request/attempt to prepay by this Borrower (2) All records reflecting verbal communications with any Borrower regarding any request/attempt to prepay (3) All internal Agency documents regarding any request/attempt to prepay by any Borrower (4) All documents and other information found on computer systems or databases regarding each property and/or Borrower, and (5) Any other documents reflecting, relating to, or otherwise evidencing the intention, desire, or request of the Borrower to prepay.
Tab 5	Need Analysis Documentation	Any documents regarding any inquiry, analysis, or determination, by the Agency, as to the need for affordable housing in the Market Area where each property is located.
Tab 6	Minority Impact Documentation	Any documents regarding any inquiry, analysis, or determination by the Agency as to the impact that prepayment of the property loan(s) would have on minorities in the Market Area where the property is located.
Tab 7	Market Rent Analysis Documentation	Any documents from any time period subsequent to the loan closing date regarding the market rents and/or comparable rents in the Market Area where the property is located.
Tab 8	Appraisal(s) and Miscellaneous	Appraisal(s), CNA(s), etc. Copies of any other materials relevant to prepayment in the servicing file that do not fall under any of the Tabs listed above

Should you have any questions regarding the creation, retention or preservation of prepayment files, please contact Tiffany Tietz at (616) 942-4111, extension 126 or tiffany.tietz@wdc.usda.gov, of the Preservation and Direct Loan Division.