

RD AN No. 4793 (1924-A)
September 10, 2015

TO: Rural Development State Directors

ATTN: Deputy Administrator of SFH Programs
Area Directors
SFH Loan Specialists
Housing Program Directors

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

SUBJECT: Response to SFH 504 findings from the 2015 MCR

PURPOSE AND INTENDED OUTCOME

This Administrative Notice (AN) provides guidance on Agency compliance with construction and development requirements as established in RD Instruction 1924-A, that are critical to the success of Single Family Housing (SFH), 504 Direct Loan and Grant program. Results from the 2015 Management Control Review for the Single Family Housing 504 Program revealed several areas of concern regarding design and construction process and required documentation for projects funded in the 504 Program. This AN shall serve as clarification to the guidance and direction provided in RD Instruction 1924-A and 1940-G, related to construction documentation and the construction process including the need and requirements for a Final Inspection Report (1924-12) and builder's warranty records.

COMPARISON WITH PREVIOUS AN

There is no previous Administrative Notice on this subject.

EXPIRATION DATE:
September 30, 2016

FILING INSTRUCTIONS:
Preceding RD Instruction 1924-A

IMPLEMENTATION RESPONSIBILITIES

Field staff involved in the 504 Program Direct Loan and Grant process should review the construction requirements established in RD Instruction 1924-A and this AN in order to implement the proper procedures and requirements.

Final Inspections and inspection reports:

The true value of the Final Inspection report is documentation and record of the written determination and concurrence that the project was completed adequately and in compliance of the approved contract. This report is a record of RD observations and confirmations that “we got what we paid for”. The confirmation can be achieved by obtaining certificates of completion/occupancy, (county code compliance offices, contractor certifications) third party reports and certifications (Home Inspectors, professional code/building inspectors, appraisers, etc) photos, video and owner acceptance. Although RD observations are generally very effective, other options are acceptable and often necessary. Alternative confirmation must be established by multiple resources for the maximum validity.

§ 1924.9 Inspection of development work.

The following policies will govern the inspection of all development work.

(a) Responsibility for inspection. The County Supervisor or the District Director, accompanied by the borrower when practicable, will make final inspection of all development work and periodic inspections as appropriate to protect the security interest of the government.

Agency inspections are not to assure the borrower that the house is built in accordance with the plans and specifications. The inspections create or imply no duty or obligation to the particular borrower. Agency inspections are for the dual purpose of determining that the Agency has adequate security for its loan and is achieving the statutory goal of providing adequate housing. The final inspection will be made at the earliest possible date after completion of the planned development. When several major items of development are involved, final inspection will be made upon completion of each item.

The final inspection will be made when all on-site and off-site development has been completed and the structure is ready for occupancy or its intended use.

For rehabilitation of existing buildings, inspections will be made in accordance with appropriate stages of construction/installation to assure that construction is being performed in a professional manner and in accordance with the approved contract documents.

Warranty: Warranties are critical to the performance of a construction contract. The terms and conditions of the Warranty provide protection to the owner from latent and unexpected failures, as well as, errors and omissions by the contractor. Either a 1-year or 10-year warranty will be issued by the builder to the borrower. If the warranty protection is for 1 year, RD Form 1924-19 will be provided. For 10-year warranties, RD Instruction 1924-A describes the availability of these plans that are offered by several entities that are able to meet a specific criteria to provide this service. Reference Exhibit L and §1924.12 of RD Instruction 1924-A.

Exhibit L - "I. Purpose: In recent years, numerous third-party home warranty plans have been developed offering new homeowners varying degrees of protection against builder default and/or major structural defects in their homes. This exhibit establishes the criteria and procedures by which a warranty plan is found acceptable for new construction of single family homes financed by Rural Development. An acceptable warranty plan will:

- A. Assure that Rural Development borrowers receive adequate warranty coverage,*
- B. In certain circumstances, eliminate the requirement for Rural Development personnel to make the first two construction inspections, and*
- C. Permit a loan up to the market value of the security (less the unpaid principal balance and past due interest of any other liens against the security), even though Rural Development personnel may not have performed periodic inspections during construction.*

§ 1924.4 (p) - Warranty. A legally enforceable assurance provided by the builder (warrantor) to the owner and the Rural Development indicating that the work done and materials supplied conform to those specified in the contract documents and applicable regulations. For the period of the warranty, the warrantor agrees to repair defective workmanship and repair or replace any defective materials at the expense of the warrantor.

§ 1924.12 (a) - Form RD 1924-19, "Builder's Warranty," or an insured 10-year home warranty as described in Exhibit L of this subpart, and normal trade warranties on items of equipment will be issued to the borrower at the completion of new building construction, dwelling rehabilitation by the contract method, all cases of newly completed and previously unoccupied dwellings or construction under conditional commitments issued to builders and sellers.

(b) If the warranty is not an insured 10-year warranty, a completed Form RD 1924-19 with warranty protection for 1 year, must be provided by the builder upon final acceptance of the work by the owner and Rural Development. If an insured 10-year warranty is provided, the requirements of Exhibit L of this subpart apply, and a copy of the warranty insurance policy or a binder must have been received by Rural Development prior to disbursement of the final payment to the builder.

(c) If, for some reason, the warranty insurance policy cannot be issued, the contractor will be required to execute Form RD 1924-19 and the case will be forwarded to the State Director for consideration of debarment under the provisions of Subpart M of Part 1940 (available in any Rural Development office). The County Supervisor will assist the borrower to the extent necessary under the provisions of the warranty and Subpart F of Part 1924 of this chapter. (Revised 4-11-89, SPECIAL PN)

(d) The County Supervisor will take the following action prior to the expiration of the first year of the warranty period:

(1) As soon as the warranty has been executed, the follow-up date for sending Form RD 1924-21, "Notice of Expiration of First Year of Warranty," which will be used for the 1 year warranty or the first year of the insured 10-year warranty, will be posted to the "Servicing and Supervision" section of the Management System card.

(2) Form RD 1924-21, is provided for use in notifying the borrower of the expiration date of the first year of the warranty. This letter will be mailed to the borrower early in the second month preceding the expiration date of the first year of the warranty period.

(3) If the County Supervisor or District Director does not hear from the borrower within 30 days, it can reasonably be assumed that no complaint exists or that any complaint has been satisfied unless information to the contrary has been received.

(4) If the borrower notifies Rural Development that any complaint has not been satisfied, an onsite inspection shall be made as early as possible, but not later than 1 month preceding the expiration date of the first year of the warranty. The results of the inspection will be recorded on Form RD 1924-12. If the borrower has complaints, the case should be handled in accordance with the provisions of Subpart F of Part 1924 of this chapter, or as otherwise provided in this subpart.”

POINT OF CONTACT

Please direct all questions pertaining to this AN to your State Architect or the National Office Program Support Staff: William Downs, Program Support Staff, at (202) 720-1499 or email: william.downs@wdc.usda.gov.