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CHAPTER 1: INTRODUCTION

SECTION 1: INTRODUCTION TO THE PROJECT SERVICING HANDBOOK

1.1 ABOUT THIS HANDBOOK

This handbook provides Loan Servicers with guidance about the Agency's procedures for servicing actions involving borrowers receiving loans or grants for Multi-Family Housing projects. Its goal is to help MFH Servicing officials perform consistent, effective servicing of projects financed by the Agency to ensure that they are operated in accordance with applicable regulatory and administrative requirements.

This handbook presents the Agency's project servicing 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 third in a series of three handbooks that describe the requirements and procedures for the Agency's 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.
- **HB-2-3560: Asset Management.** This handbook covers the requirements and procedures regarding the ongoing management of Multi-Family Housing projects and the Agency's oversight of borrower performance.

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 Agency 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 3**.

- **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 administration of the Multi-Family Housing programs.

- **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 is used to refer to the leadership in a Regional Office or the Agency staff person to whom the leadership has 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 RHS MULTI-FAMILY HOUSING PROGRAMS

The purpose of the Agency's 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 seeks to enhance its ability to serve eligible households 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.

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 & 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. All other labor housing borrowers who are providing shelter in support of farming operations in the community at large are expected to operate the program in accordance with Agency regulations governing the approval of charges for rent, utilities, or rent and utilities subject to Agency approval.

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 their key aspects.

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.

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, 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 also is prohibited. These same requirements also apply to program participants. Agency oversight of borrower compliance with civil rights laws is covered in Chapter 4 of HB-2-3560. Complaints filed by tenants will be handled by the Agency in accordance with RD Instruction 2000-GGG and **Attachment 1-A**.

Effective management and consistent procedures are good business practices that help ensure that all applicants are treated fairly. Poor program implementation, whether discrimination is intended, has possible civil rights consequences.

Key Civil Rights Issues for Project Servicing

- Access
- Consistency and fairness of treatment
- Disparate impacts - intended or unintended
- Record keeping

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, and Title VI regulations against national origin discrimination. 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.

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 timeframes specified in statutes or regulations or within a reasonable time if no deadline is specified. **Appendix 2** of this handbook 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. **Attachment 1-C** is used for this purpose.

Letters notifying participants of adverse decisions must contain the required information regarding an informal meeting, mediation or ADR, rights to NAD, and civil rights. **Attachment 1-A** 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 NAD. 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 a form, handbook letter, or other document already includes the appropriate participant rights.

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, rights to an NAD appeal 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);

- An official's refusal to request an administrative waiver under the provisions of Paragraph 1.12 of this handbook, or a waiver authorized by any applicable regulation;

- 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 or ADR, or an NAD appeal. In doing so, participants automatically waive their rights to an informal review.

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 Attachments 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-sponsored 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-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 and 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 timeframe and all parties agree to a specific timeframe. A mediator or ADR provider will generally

conduct a teleconference between the parties prior to accepting a case to determine if the 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 by the Leadership Designee 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.

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. Borrower Disclosure

Borrowers must disclose any known relationship or association with Agency employees.

B. Agency Employee Disclosure

Agency employees must disclose any known relationship or association with a borrower, regardless of whether the relationship is known to others.

C. Disposition of Real Estate Owned Properties

Agency employees and members of their families are precluded from purchasing real estate owned (REO) property, assumptions from Agency borrowers, or security property sold at a foreclosure sale. Closing agents and members of their families are precluded from purchasing properties in which they have been professionally involved.

1.10 OTHER FEDERAL REQUIREMENTS

A. Environmental Requirements *[7 CFR 3560.3 and 3560.4]*

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 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 7 CFR part 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. Certain state construction codes and requirements may influence RD Instructions 1924-A and 1924-C.

C. Lobby 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 of HB-2-3560.

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 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. Requests must go through the appropriate Division Director.

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 and engineering, environmental, or civil rights issues will include the review and comments of the appropriate Agency staff.

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 part 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 Alternative Dispute Resolution (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.

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,

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 (HUD). 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, 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 Alternative Dispute Resolution (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.

Rural Development Leadership Designee address:

Option 2 - Request an Appeal

You may request an appeal hearing by the National Appeals Division (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 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

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.

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.

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.

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

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.

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.

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.

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,

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); 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

CHAPTER 2: MULTI-FAMILY HOUSING PROGRAMS AND LOAN SERVICING

2.1 INTRODUCTION

This chapter introduces key aspects of the Section 515 Rural Rental 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 HB-1-3565.

This chapter also describes the key project servicing procedures that the Agency uses to administer the terms of the Agency loan or grant agreement for the program. These procedures provide MFH Servicing officials with a consistent basis for conducting servicing actions and assisting borrowers in meeting their responsibilities.

Section 1 of this chapter 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 of this chapter 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 introduces the major project servicing activities, 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; and
- Rental assistance available from the Agency.

2.3 TYPES OF PROJECTS

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

- Family projects;
- Elderly projects;

- Congregate projects; and
- Group homes.

In addition, Section 515 loans can be used to finance rural cooperative housing projects. 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 it 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 must be developed in locations that qualify as rural areas.

A. Family Projects

A family housing project is a rental property developed for occupancy by eligible very low-, low-, or moderate-income households.

B. Elderly Projects

An elderly project is a rental property that is developed for occupancy solely by eligible elderly households that include a tenant or cotenant that is disabled or age 62 years or older.

C. Congregate Projects

Congregate projects are rental properties developed for occupancy by eligible very low-, low-, and moderate income elderly households that need meals or other services to assist them in performing activities of daily living. 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 <u>not</u> designed to be nursing homes and, therefore, are not allowed to pay for the cost of medical- or healthcare-related services.

D. Group Homes

A group home is housing that is occupied by eligible very low-, low-, or 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.

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.

This section describes the three types of loans and how they differ. The first two types are discussed in further detail in HB-1-3560. The requirements and procedures for assumed loans and equity loans are covered in Chapter 7.

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 makes initial loans for the 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 by the Agency 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 tenants paying at least 30 percent of their income for rent. The administration of interest credit is covered in this handbook and HB-2-3560.

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 an amortization period not to exceed 50 years. Generally, initial loans are made for a term of 50 years, with the exception of properties where the expected useful life is a shorter period (e.g., manufactured housing).

[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.

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 10 of HB-1-3560. Guidance regarding the requirements and procedures for processing project transfers is covered in Chapter 7. 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. The procedures for processing transfers and assumptions are presented in Chapter 5.

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 AGENCY RENTAL ASSISTANCE

Owners of projects located in areas where prospective tenants are likely to be rent overburdened or existing tenants are already overburdened can apply for rental assistance administered by the Agency. This rental subsidy assists tenants by allowing them to pay 30 percent of adjusted income for rent, thereby reducing the financial burden on the household. The Agency pays the difference between the tenant contribution and the approved shelter costs for the unit through the rental assistance contract with the borrower.

2.6 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 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.

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SECTION 2: SECTION 514/516 PROGRAM

2.7 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 and Section 514 assistance may be used only for on-farm labor housing projects. Only 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.

2.8 LOANS AND GRANTS

The Agency offers loans and grants to finance Farm Labor Housing projects. Chapter 12 of HB-1-3560 provides more information about the origination process for these loans and grants.

A. Farm Labor Housing Loans

Section 514 loans for farm labor housing projects are very similar to Section 515 loans, but they differ in two important ways:

- These loans carry a 1 percent effective interest rate (i.e., there is no interest credit).

- 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 Notice of Funding Availability (NOFA) process, while loans for on-farm labor housing projects are still processed in the order that they are received.

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.

2.9 RENTAL ASSISTANCE

Applicants for Section 514/516 assistance for 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. On-farm labor housing projects are not eligible for this rental assistance.

2.10 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: OVERVIEW OF MULTI-FAMILY PROJECT SERVICING

2.11 KEY PROJECT SERVICING ACTIVITIES AND THIS HANDBOOK

The goal of the Agency's servicing efforts is to ensure that projects fulfill the terms of their loan or grant agreement and provide fair, consistent processing of servicing requests. Project servicing involves the following activities:

- Account servicing;
- Reviewing requested changes in the ownership entity;
- Evaluating and processing project transfer requests;
- Addressing security restructuring requests;
- Identifying and recapturing unauthorized assistance;
- Addressing borrower defaults and evaluating workout agreements;
- Processing loan restructuring requests;
- Foreclosing and liquidating projects in default;
- Managing and disposing of inventory property; and
- Evaluating and processing prepayment requests.

This handbook presents the program requirements in each of these areas and describes the Agency's procedures for fulfilling its 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 PROJECT SERVICING PROCEDURES FOR MULTI-FAMILY HOUSING PROJECTS

Chapters 3 through 13 describe the program requirements for Section 515 projects.

A. Automated Systems (Chapter 3)

This chapter describes the Agency's four primary automated information management systems—Industry Interface, the Automated Multi-Family Housing Accounting System (AMAS), the Multi-Family Integrated System (MFIS), and the

Prepayment Tracking and Concurrence (Pre-Trac)—including their purpose and capabilities, staff responsibilities, and training and certification requirements.

B. Account Servicing (Chapter 4)

This chapter covers routine transactions involving the borrower's repayment of the loan obligation, including payment processing, tracking project accounts, and final payments.

C. Ownership and Organizational Changes (Chapter 5)

Changes in the borrower entity require Agency notification and, in specific cases, Agency consent. This chapter outlines the requirements regarding borrower requests involving these changes and the procedures for addressing these changes.

D. Determination of Project Suitability (Chapter 6)

When there are loan repayment or compliance problems with a project and the Agency is considering special servicing actions, or prior to making a subsequent loan, the MFH Servicing official must determine that the property remains suitable as a program property. This chapter is designed to assist the Agency and the MFH Servicing official in particular, to make an analysis of a project's suitability and to determine that it meets the principles and objectives of the Agency.

E. Transfers of Project Ownership (Chapter 7)

When borrowers seek to transfer their projects to a new ownership entity, the transfer must be performed in a manner consistent with the program requirements to ensure that the project continues to address program objectives and the Agency's security interests are protected. This chapter explains the requirements and procedures for completing project transfers.

F. Security Restructuring Requests (Chapter 8)

As project conditions change over time, it may become necessary to request a restructuring of the security for the loan. The Agency's requirements and procedures for filing these requests are covered in this chapter.

G. Unauthorized Assistance (Chapter 9)

If borrowers or tenants receive assistance for which they are ineligible, the Agency will take steps to recapture this unauthorized assistance. This chapter discusses the Agency's requirements and procedures for identifying and collecting unauthorized assistance.

H. Compliance Violations, Defaults, and Workout Agreements (Chapter 10)

The Agency will monitor borrower performance using the procedures presented in Chapter 9 of HB-2-3560. Borrowers who fail to comply with program requirements will be notified of compliance violations and the need to correct the deficiencies. This chapter describes the servicing actions in response to compliance violations and the additional servicing actions taken by the Agency in the event violations go uncorrected and the borrower falls into default.

I. Loan Restructuring (Chapter 11)

When borrowers encounter changes or difficulties beyond their control that affect the financial viability of the project, they may ask for the Agency to approve restructuring of its financing as one course of financial relief for the project. Also, borrowers with more than one Agency loan may be able to request restructuring changes that simplify administration of the loans. This chapter presents the requirements and procedures for Agency review and approval of these requests.

J. Account Foreclosure and Liquidation (Chapter 12)

When borrowers go into default under the terms of their loan agreement, the Agency will review the case and determine whether to accelerate the loan and initiate foreclosure proceedings. The procedures for making this determination are covered in this chapter.

K. Other Special Cases (Chapter 13)

There are a number of special circumstances that borrowers may face during the life of a loan that require special servicing actions by the Agency. The special cases covered in this chapter include bankruptcy, death of a borrower, abandonment, and valueless liens.

L. Management and Disposal of Real Estate Owned Property (Chapter 14)

Real estate owned (REO) property consists of projects where the Agency has assumed ownership as a result of foreclosure. This chapter presents Agency procedures for managing and disposing of these projects in a manner that is in the best interest of the government and of any tenants of the projects.

M. Project Preservation (Chapter 15)

Borrowers receiving loans prior to December 15, 1989 may prepay their loan obligations under the terms of their loan agreements. In an effort to preserve such units as affordable housing, the statute for the program directs the Agency to make reasonable efforts to extend the low-income use of the project. This chapter presents the requirements and procedures for borrower requests and Agency evaluation of such requests.

CHAPTER 3: AUTOMATED SYSTEMS

3.1 INTRODUCTION

Many of the Agency's account servicing activities are dependent on data submitted to the Agency by tenants and borrowers. These data are tracked by the Agency using automated systems. This section describes the Agency's four primary automated information management systems—the Management Agent Interactive Network Connection (MINC), the Automated Multi-Family Housing Accounting System (AMAS), the Multi-Family Information System (MFIS), and the Prepayment Tracking and Concurrence (Pre-Trac)—including their purpose and capabilities, staff responsibilities, and training and certification requirements.

It is important to understand that while this section identifies the specific activities that may be accomplished using the various automated systems, many of the activities listed for a particular system cannot be accomplished without inputs from one or more of the others. For instance, monthly loan payment amounts are tracked using AMAS, but those amounts cannot be determined without inputs from MFIS. Similarly, while MFIS is used to identify and track the status of borrower noncompliance, the standards by which compliance is measured come from AMAS.

Every MFH Servicing official is required to be familiar with each of the Agency's automated systems. This includes gaining familiarity with not only the basic information in this chapter, but the more detailed user manuals for each system and periodic training offered to staff.

3.2 MANAGEMENT INTERACTIVE NETWORK CONNECTION

MINC is a database used by the Agency to reduce the cost of compliance and increase the effectiveness of supervisory actions in the Multi-Family Housing program.

A. Background

Before a borrower can submit a payment to the Agency for review and processing, the Agency needs to determine and inform the borrower of the correct payment amount. Before the payment amount can be determined, the borrower needs to collect and submit to the Agency the tenant data that is used in the calculation of rental assistance, interest credit, and ultimately, the "net" payment amount that must be submitted by the borrower. To make the required calculations, tenant data are entered into MFIS, and the outputs from MFIS are ultimately entered into AMAS for tracking. It is crucial that tenant data be correct, because over $1 billion in tenant subsidy is awarded annually based on each tenant's status.

Previously borrowers have submitted tenant data to the Agency by mailing paper copies to the Servicing Office each month to reflect current occupancy status. Borrowers now must submit data through an automated interface with the Agency – MINC.

B. Purpose and Capabilities

MINC enables management agents to transmit tenant data electronically, via the Internet. In addition to tenant data, management agents can transmit *Form RD 3560-7, Multiple Family Housing Project Budget/Utility Allowance*, and *Form RD 3560-10, Borrower Balance Sheet*. Data that are transmitted correctly, and contain changes that are within the allowable parameters, are automatically uploaded into MFIS. Data that are transmitted incorrectly, or that does not comply with Agency regulations, are "rejected" by MINC. Questionable data transactions, containing changes requiring review by the Agency, are held in a "pending" status in the MFIS electronic transmission web page. A message is sent to the management agent, detailing the result of each transaction transmitted such as accepted, rejected, pending, etc. The Agency reviews transmitted transactions, through the use of a "Daily Report," to determine if there is any action necessary on the Agency's part. MINC provides the capability of Borrowers to view, approve and submit their *Form RD 3560-29* to the Agency. If the borrower discovers any discrepancies in the report, a correcting transaction is transmitted or the Servicing Office is contacted for guidance. Once the report is determined to be correct, the borrower approves and submits the payment.

C. Staff Responsibilities

In accordance with 7 CFR Part 3560, all borrowers are required to electronically transmit their tenant and financial data and process their payments, for projects with eight units or more. Agency Staff should contact all borrowers/management agents, and provide them with instructions for accessing and using MINC. The steps involved in this process are as follows:

- Contact the borrower/management agent, and verify that the taxpayer identification number on file with the Agency is correct for the management agent;

- Validate that all projects for said management agent are associated to the taxpayer identification number;

- Inform the borrower/management agent to access the MINC Web site at https://usdaminc.sc.egov.usda.gov, and print a copy of the training handbook; and

- Instruct the borrower/management agent to follow the step-by-step instructions contained in the training handbook to obtain a MINC access code and password. The help manual should be consulted for any problems they encounter while completing this process. In the event that questions still exist after having consulted the help manual, the borrower/management agent should then contact the Servicing Office for assistance.

The borrower/management agent will be required to electronically accept an automated version of the Trading Partner Agreement (TPA) while obtaining their MINC access code and password. The date of acceptance is stored within the system should this information be needed at a later date.

The Servicing Office goals are to:

- Maintain project information on MFIS, completing primary processing of submissions of changes to tenant data between the first and tenth days of each month;

- Provide MFIS reports in a timely manner, or as requested by the borrower/management agent; and

- Confirm the receipt of data transmission when asked.

The Servicing Office should refer borrowers/management agents to vendors to troubleshoot software as needed. Some borrowers/management agents with small projects do not use vendor software; instead, they transmit through MINC using the "Fill-a-Form" option and may need more assistance from the Servicing Office. Any automation or program-related issues that are discovered by the Servicing Office should be reported to the Leadership Designee.

D. Benefits of MINC

MINC benefits all parties involved. Electronic submission of data saves borrowers the burden and cost of generating and mailing paper documentation to the Agency. The Agency saves the burden and cost of handling mail, sorting and copying paper documentation, and reentering tenant data by hand. Freeing staff from clerical tasks allows them to focus on analytical responsibilities, such as reviewing occupancy patterns to uncover civil rights violations, tenant fraud, unacceptable management practices, and warning signs of occupancy problems.

In addition, MINC allows borrowers more time to meet deadlines. Changes submitted through MINC are required to be filed by the tenth of the month, an extension of 10 days. For borrowers, this provides more time to ensure that their information is assembled properly, and is complete and accurate. More accurate information results in fewer mistakes to correct with the borrower. Even if there are mistakes, MINC allows for next-day response by the Agency. As a result, corrections can be made while the borrower's memory is still fresh.

MINC also reduces the chance that borrowers will be charged overage for late certifications, which can result in a substantial penalty for borrowers, management agents, and site managers. Extended submission deadlines and faster turnaround on submission reviews reduce the possibility of overage being charged for late data.

MINC reduces the chance that borrowers will be charged a late fee due to the receipt of their mortgage payment being delayed by delivery issues such as mail routing errors and incorrect postage. Borrowers have the ability to review the accuracy of their *Form RD 3560-29* online, making any corrections and approving it for processing. Borrowers who are required to submit a payment with their *Form RD 3560-29* can sign up for Pre-Authorized Debit (PAD), which electronically transfers the funds owed from the borrower's bank account to Rural Development. Borrowers who receive an RA check

must be signed up for Electronic Funds Transfer (EFT), whereby the RA due to the borrower is transferred from the Agency to the project's operating account.

E. Staff Training and Certification Requirements

Beyond gaining familiarity with the functions of the system, there are few formal training or certification requirements for MFH Servicing officials using MINC.

3.3 AUTOMATED MULTI-FAMILY HOUSING ACCOUNTING SYSTEM

A. Purpose and Capabilities

AMAS maintains loan account information, tracks loan status, and disburses project subsidy. AMAS has been operational since 1985 and is located on the U.S. Department of Agriculture (USDA) Kansas City mainframe. The Systems Development Division in St. Louis administers AMAS.

AMAS is the Agency's primary financial accounting system. Any data relating to a borrower's account (e.g., payment amount, payment due date, account status) are tracked using AMAS. In addition, payment entry, verification, and reconciliation are accomplished using AMAS.

B. Staff Responsibilities

Agency staff using AMAS are responsible for the following activities:

- Closing loans, including reamortized loans;
- Disbursing loan funds;
- Determining note, rental assistance, and interest credit payment amounts;
- Determining payment due dates;
- Verify loan payment processing;
- Converting accounts from Daily Interest Accrual System (DIAS) to Predetermined Amortization Schedule System (PASS);
- Determining current loan balances for transfer;
- Obligating loan funds;
- Adjusting accounts in response to unauthorized assistance;
- Processing recaptured unauthorized assistance;
- Adjusting accounts for interest rate changes;

- Tracking rental assistance;
- Tracking inventory property status and acquisitions;
- Tracking Servicing Office and overall Agency loan and subsidy totals;
- Tracking and correcting account discrepancies; and
- Tracking account payment history.

C. Staff Training and Certification Requirements

MFH Servicing officials must be certified by the Leadership Designee to process payments in AMAS. The AMAS Coordinator is responsible for the payment processing certification process and will make recommendations to the Leadership Designee, based on certification examination. Uncertified staff may access the view-only screens within the system, but cannot alter any of the data.

1. Basic Skills Required

The basic areas a Loan Servicer must master to receive certification include the following:

- The employee must successfully review and process payments for three call dates;
- The employee must understand the process for verifying that payment processed in MFIS is updated correctly in AMAS; and
- For offices on the wholesale lockbox system, the employee must properly prepare the Field Office Remittance Reconciliation Report and all related forms for submission to the wholesale lockbox.

2. Procedures for Certification Training

The procedures for certification training are as follows:

- The employee will be trained by the AMAS Coordinator, or by a qualified Agency employee. The training must cover the following areas:
  - ◊ Release *Form RD 3560-29* for borrower's review;
  - ◊ Reviewing and processing the borrower's payment transmittal;
  - ◊ Establish and maintain PAD accounts;
  - ◊ Understanding the payment logic;
  - ◊ Signing onto the AMAS Cash System (AMAS-CSH);

◊ Inputting regular payments and special collections into MFIS;

◊ Handle any pending transactions in AMAS; and

◊ Submitting checks, cash, and accounting data to the Finance Office.

- The trainee will make copies of all the records related to preparing the test collections and will include them in an envelope as if they were being mailed to the Finance Office. The envelope will be marked "Payment Certification for (trainee name)" and submitted to the AMAS Coordinator.

3. Recommendation of Certification

The AMAS Coordinator will review the balanced blocks and the accounting data envelope prepared for the examination. When the employee has demonstrated an understanding of the payment process and proficiency in all steps listed above, the AMAS Coordinator will recommend certification to the Leadership Designee. The Leadership Designee will:

- Instruct the IRM to notify the Security Officer in the Finance Office to add AMAS payment process to the employee's user identification number; and

- Notify the Loan Servicer and employee, by letter, of the employee's certification to process payments. The letter must list the possible reasons for withdrawal of certification.

4. Monitoring Payment Processing

After certification, the AMAS Coordinator will periodically monitor Field Office payment processing activities to ensure that payments are being input properly and verified. For newly certified employees, monitoring should be daily for a 30-day period. For experienced employees, monitoring should be no less than monthly, provided monitoring reports do not indicate any of the problems that could lead to withdrawal of certification.

A log of each monitoring activity should be kept by the AMAS Coordinator for documentation using *Form RD 3560-64, Online Payment Certification Monitoring Log*.

5. Withdrawal of Certification and Recertification

Certification may be withdrawn from an employee if the effective date of the payment and the call date differ by more than 3 days and there is not sufficient justification (e.g., office was closed on the regularly scheduled work day that the payment was received; weekend and holidays caused a 3-day delay before the payment could be processed).

After the third occurrence of any of the above errors in a 12-month period, the Leadership Designee will notify the Loan Servicer and employee in writing that

certification may be withdrawn. The notice will include plans and requirements for remedial training.

The Leadership Designee will withdraw certification after the fourth occurrence in a 12-month period of any of the above errors. The Leadership Designee will notify the Loan Servicer and employee in writing, with a copy to the IRM for the State. The IRM will notify the Security Office in the Finance Office to remove online payment authority from the employee's identification number.

6. Retraining

An employee should be retrained immediately when a payment processing problem occurs as a result of an employee error. This training should cover the areas causing problems and should prevent recurrence of the error. After certification has been withdrawn, the Leadership Designee must determine whether it is desirable for the employee to process payments. If so, the retraining should be performed immediately. The employee may be recertified if retraining has been completed, the employee demonstrates the necessary skills to process payments, the AMAS Coordinator recommends recertification, and the Leadership Designee concurs.

3.4 MULTI-FAMILY INFORMATION SYSTEM

A. Purpose and Capabilities

MFIS assists MFH Servicing officials in monitoring the Multi-Family Housing program, maintains data on clients, and provides comprehensive and flexible reporting. MFIS was designed to improve management and supervision routines of MFH Servicing officials. It is the monitoring and scheduling system used by the Agency and provides the analytical tools to review budgets and financial information. MFIS has a classification system that uses information entered during normal supervisory activities to identify projects needing additional servicing attention.

MFIS is used by the Agency to track tenant data, and it is employed mainly to ensure that each tenant receives the correct amount of subsidy. MFIS uses the tenant data to calculate tenant rents and rental assistance, which drive many subsequent account servicing activities. MFIS is also the source for occupancy statistics used to describe Multi-Family Housing program beneficiaries.

MFIS is the primary tool used by the Agency to track the status of borrowers' compliance with loan agreements and all other program requirements. Account status data from AMAS are transferred to MFIS, where MFH Servicing officials use them to monitor the status of borrower compliance. For instance, the system holds data on project classification based on compliance status (i.e., Classification codes A, B, C, or D). In addition, the system tracks the status of project budgets (i.e., when they are due, when they are received, and when they are approved).

The goal of using MFIS for tracking is to identify borrower compliance violations, as well as to track the status of servicing letters, workout agreements, and other Agency

servicing actions. For instance, MFIS tracks the 15-day period for responses to servicing letters or monitoring letters and alerts staff to the need for follow-up when that period has expired.

MFIS also is used to track each team's performance in meeting Agency goals, and evaluates those teams that may need additional assistance in determining solutions to problem accounts and the effectiveness of actions previously taken. The Agency uses the information from MFIS in monthly staff meetings and to provide information to borrowers. MFIS allows for timely assembly of this information with minimal effort from the MFH Servicing official.

All regular borrower payments are processed through MFIS. MFIS maintains a collection history for each borrower.

B. Major Components of MFIS

The MFIS home page displays icons that each represents a Web page of their own that link to each other and are capable of interacting by accessing the data contained therein. The five main icons a MFH Servicing official should be concerned with are Projects, Project Payments, Customers, Reports, Electronic Transmissions, and Message Board. Each web page contains links for data input and analysis of important multi-family housing portfolio issues such as borrower compliance with their loan agreement/resolution, management efficiency, financial stability, occupancy trends, rent structures, and identities-of-interest, as well as program strengths and deficiencies. Moreover, MFIS archives a history of the multi-family housing portfolio nationwide, providing information necessary for determining the need for program changes and/or enhancements as well as funding needs.

- **Projects.** This page is used when working on information specific to a single project. It contains the data on the borrower, management agent, project tenants, type of project, and the like. Basically it contains all information that was formerly contained on the Management Card System for each project. Any incorrect information on this page could lead to improper calculations on *Form RD 3560-29, Notice of Payment Due Report*, that the borrower uses to make their monthly/annual installment from, thus causing unnecessary delinquencies.

  The Projects page is also where the Agency maintains information concerning borrower/management agent compliance with Agency regulations. One link on this page is Supervisory Activities. Supervisory Activities, when properly populated, can serve as an excellent tickler system to let the MFH Servicing official know when action is needed on their part. The same is true for the link Servicing Efforts, Findings, Financial Instruments, and Rents. When all components are analyzed, a clear and concise picture of the needs of the project can easily be determined.

- **Project Payments.** This page is used to perform activities related to payment processing. These functions include scheduling the release of Form Rd 3560-29 to borrowers, processing payments, and review payments. In addition, users can view

and make adjustments for a specific pay period, monitor uncollectible returns, review and edit RA Obligations tracking for projects receiving RA units due to an obligation or transfer of units. The Project Payments page can be a very valuable tool when evaluating the feasibility of various servicing actions, providing collection history for a specific project at any given time.

- **Customers.** This page should be used when working on information across projects or specific only to the borrower, key member, or management agent. This is the page used to enter the key members of the borrower and management agent. It also allows the user to access all of the projects managed by a particular management agent, enabling an identical change to multiple projects with ease.

- **Reports.** This page contains predesigned reports by category, such as borrower, financials, findings, management agent, project, project summary, tenant, and tracking. Under each category, several different reports that may be generated are listed. The user is allowed to complete various data fields to allow one to zero in on the particular information that is desired. *The accuracy of these reports is based on the information that has been input into the Projects and Customer Web pages.*

- **Electronic Transmissions.** This page allows the MFIS user to view the individual transactions that have been electronically transmitted by the borrower/management agent. It is an important tool in assisting the borrower/management agent in correctly transmitting the data necessary to reflect the correct tenant and/or financial data.

- **Message Board.** Below the icons for the individual Web pages is a link to the message board. Each user of MFIS is encouraged to view the message board on a regular basis. This shows information on changes that have been made to the system. Step-by-step instructions for the input of all requested and/or required data are provided in the training manuals that are accessible from the message board.

C. Staff Responsibilities

MFH Servicing officials are responsible for populating all data fields contained in the MFIS system with accurate and current information. The upgrading of the MFIS system is an ongoing process. It is extremely important that the information contained in MFIS III for each borrower/management agent/project be input and accurate.

3.5 PREPAYMENT TRACKING AND CONCURRENCE

Pre-Trac is a Web-based automated application that allows the Agency to significantly reduce the reporting burden required to process and monitor Multi-Family Housing prepayment activity. This means that the Agency enters prepayment-tracking information once for use by all administrative levels. The Agency uses Pre-Trac to process all prepayment requests to meet the Agency's requirements. Pre-Trac is designed to lead the user through the statutorily prescribed prepayment process.

The Portfolio Management Branch uses Pre-Trac to issue all concurrence and authorizations of incentives to avert prepayment, and equity loans and prepayments. The MFH Servicing official can view prepayment status and will complete the final prepayment servicing steps using PreTrac. See Chapter 15 for more detailed information on using Pre-Trac.

3.6 FURTHER INFORMATION

Because there is a detailed users' manual for each of the Agency's automated systems, the discussion provided here is intended to be more of a basic introduction to the systems and their uses and requirements than an exhaustive step-by-step tutorial. Agency staff requiring more detailed information on any of the automated systems should refer to the relevant users' manual.

CHAPTER 4: ACCOUNT SERVICING

4.1 INTRODUCTION

To ensure that program objectives are met and that borrowers do not default on their loans, the Agency has specific procedures for servicing borrower accounts. These procedures are designed to ensure that loan payments are received on time and in the proper amounts; payments are properly applied to the appropriate account; past due accounts are serviced correctly; late fees are assessed for late payments; and procedures for final loan payments are followed. Diligent management of the account servicing process through promptly and accurately recording payments and tracking late payments is an effective method to reduce unnecessary delinquencies.

This chapter presents the Agency's procedures for servicing borrower accounts. It describes the procedures that all MFH Servicing officials must follow when servicing accounts to protect the Government's interest in the loan and the property.

4.2 OVERVIEW

Agency regulations in 7 CFR 3560.401 through 7 CFR 3560.403 establish borrowers' responsibilities and the actions the Agency may take to collect timely loan payments from borrowers, protect its interests and the security of its loan, and assist borrowers in meeting the objectives and requirements of the loan. These regulations require that borrowers repay their loans to the Agency according to the specific provisions of their debt instruments and operate their facilities in accordance with requirements of the rule and other applicable Federal, State, and Local laws. The Agency may reject any servicing request by a borrower if it is not in the best interest of the Government or tenants.

Most servicing requirements and procedures are the same for Daily Interest Accrual System (DIAS) accounts and Predetermined Amortization Schedule System (PASS) accounts, with the exception of the assessment of late fees, which only applies to PASS accounts. Payments under DIAS are not assessed late fees because additional interest is charged automatically, based on the number of days the past due balance is outstanding.

SECTION 1: ACCOUNT SERVICING REQUIREMENTS
[7 CFR 3560.403 AND 7 CFR 3560.404]

The Agency's regular account servicing requirements cover the following major topic areas: loan payments, late fees, waivers, servicing past due accounts, conversion of accounts from DIAS to PASS, and final loan payments. This section describes the regulatory requirements for each area.

4.3 LOAN PAYMENTS

Borrower loan payments are due on the first day of each month unless otherwise established in the debt instrument executed with the Agency. A borrower is in default of loan

agreements when the Agency has not received the full payment by the first day of the month. The Agency is under no obligation to offer borrowers loan servicing other than actions consistent with debt instruments and other agreements. However, the Agency does not pursue legal action to cure the default until a borrower is 60 days delinquent. If a borrower with a PASS account has not paid the full amount by the tenth day of the month, a late fee may be incurred.

4.4 LATE FEES (PASS ACCOUNTS ONLY)

The Agency will charge a fee for late payments under PASS accounts, equal to 6 percent of the note installment. Late fees are charged if any portion of a note payment exceeding $15 is late (i.e., outstanding after the tenth day of the month). The Agency may charge late fees only once for each regular installment or portion thereof.

Late fees are an owner expense and, as such, may not be charged to the project. The amount of the late fees is not appealable. The Finance Office notifies all late borrowers with PASS accounts of late fees and the payment due, not including overage and rental assistance calculations. The MFH Servicing official should follow up with the borrower on this notification in an effort to collect the amount due before an account becomes 30 days past due.

4.5 LATE FEE WAIVERS

The Leadership Designee 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 Agency is under no obligation to grant waivers.

4.6 PAST DUE ACCOUNTS

A. Past Due Payments

The Agency considers a borrower to be delinquent if any past due amount remains after the payment due date. If a delinquency exists, the Agency immediately contacts the borrower and attempts to collect the amount due.

B. Interest on Past Due Payments (PASS Accounts Only)

When a regular payment continues to be past due on the first day of the month following the payment due date, the Agency charges interest at the note rate on the unpaid delinquent principal amount. Interest is charged from the date the principal was due until all applicable payments are current in accordance with the number of full installments required by the *Form RD 3560-52, Promissory Note*, and is in addition to the scheduled interest of the regular payment. The interest on delinquent principal, the unpaid delinquent principal, any applicable late fees, and recoverable cost charges are added to the regular payment amount due for the next month to determine the total amount due as of the first of the month following the delinquency.

Example – Determining Days for Past Due Accounts

If a borrower fails to make a scheduled payment in full due on June 1, the following example demonstrates how the Agency calculates past due charges:

June 1 – Payment due date.

June 2 – Payment is 1 day past due. No Agency action taken.

June 11 – Payment is 11 days past due. Late charge applied on overdue payments.

June 30 – Borrower is delinquent and 30 days past due. Agency begins special servicing actions in accordance with Chapters 10 and 12.

C. Special Servicing Action

Borrowers with accounts 30 days past due may be subject to the special servicing provisions outlined in Chapters 10 and 12 of this handbook.

4.7 CONVERSION FROM DIAS TO PASS

To facilitate and standardize its servicing efforts, the Agency requires that all new loans be closed and serviced using PASS. The only exceptions are off-farm and on-farm labor housing loans, which may be closed on either DIAS or PASS. Farm labor loans may be closed on DIAS if the farm operation is such that the annual payment corresponds to the timing of usual farm income.

Borrowers with DIAS accounts, except for farm labor housing loans, must convert to PASS if they request servicing actions that involve a change in the terms of their loan (e.g., credit sales, reamortizations, equity incentive loans, loan consolidations, and project transfers) or if they request subsequent loans.

4.8 FINAL LOAN PAYMENTS

Before the MFH Servicing official begins the final loan payment process, they must determine if the final loan payment is a prepayment, as covered in Chapter 15.

A borrower's final loan payment must include repayment of all outstanding obligations to the Agency. The Agency will apply any remaining supervised funds to the borrower's account or return such funds to the borrower following acceptance of final payment. At the borrower's request, the Agency will provide a written statement indicating the amount necessary to pay the account in full.

Suitable forms of payment include cashier's check, money order, or bank draft. If a borrower uses forms of payment that require special handling, the borrower is responsible for the cost of such handling. When payment is provided in a form that is not the equivalent of cash, the Agency will consider a payment to be received at the time the funds have been successfully transferred to the Agency. This can now be accomplished electronically through Pre-Authorized Debit (PAD).

The Agency will release security instruments when full payment of all outstanding obligations to the Agency have been received and accepted. If the Agency and the borrower agree to settle the account for less than the full amount owed, the Agency may release security instruments when the borrower has paid all agreed-upon obligations in full. Recording costs for the release of the security instruments will be the responsibility of the borrower, except where State law requires the mortgagee to record or file the satisfaction.

If the entire principal of the loan is refunded after the loan is closed, the borrower must pay interest from the date of the note to the date of receipt of the refund.

The Agency may collect any account balance that results from an error by the Agency in handling final payments.

SECTION 2: PROCESSING TENANT CERTIFICATIONS

4.9 OVERVIEW

For borrowers to qualify for interest credit or rental assistance, they must demonstrate that their tenants meet the income and household size eligibility limits delineated by the Agency. This section describes the Agency's policies and procedures for processing tenant certifications, including verification that the information is true and accurate.

4.10 REQUIREMENTS OF THE RULE

For each occupied unit under lease, borrowers must have a current tenant certification or recertification on file with the Agency to be eligible for interest credit or rental assistance. The Agency may charge borrowers overage and withhold rental assistance payments for units without a valid and current tenant certification. These requirements protect the Government's interest by ensuring that only eligible units benefit from Agency subsidy payments. They also protect tenants' interest by reserving subsidy benefits for those who actually qualify for them.

4.11 GENERAL PROCEDURES

A. Timely Submission and Overage Charges for Late Submissions

Borrowers must submit tenant certifications for new tenants and required recertifications for existing tenants no later than the tenth day of the month for the certification to be effective for that month. This deadline applies regardless of whether the certifications are being submitted through electronic transmission or in hard copy. 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.

The tenth-day-of-the-month deadline applies regardless of whether the late certification in question relates to a new certification or a recertification. 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 that 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 Agency may remove a management agent if there is a pattern of failure to submit tenant certifications on time that results in excessive overage charges.

B. Waivers of Overage

The Leadership Designee 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 to be considered, the borrower must submit a written request to the MFH Servicing official justifying the reasons for the waiver. For each waiver requested, the borrower must provide a written explanation of the circumstances that caused the late submission of the tenant certification, 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.

To recommend the approval of a request for waiver of overage, the Servicing Official will attach a completed copy of *Form RD 3560-23, Multi-Family Housing Waiver of Overage*, to the borrower's request and forward to the Leadership Designee. Only the Leadership Designee has the authority to grant a waiver of overage. Once the waiver is approved, the MFH Servicing official is responsible for making the appropriate entries in AMAS and MFIS.

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.

C. Verification and Processing of Certifications

In the case of projects with eight units or more, Borrowers are required to provide the data for all tenant certification forms to the Agency through electronic transmission via MINC. Borrowers with less than eight units may submit hard copies. The MFH Servicing official processes these transmissions through the Industry Interface page of MFIS, providing assistance where needed with rejected entries. In the event of the receipt of hard copies of *Form RD 3560-8*, the MFH Servicing official will process manually the data into MFIS. MFIS calculates interest credit and rental assistance due the borrower, as well as overage due the Agency in cases of late certifications. These calculations are reflected on *Form RD 3560-29*. All subsidy payments are based on tenants' occupying the units as of the first day of the month prior to the payment due date. For example, a payment due on July 1 is based on tenants' occupying the units June 1.

The MFH Servicing official verifies the accuracy of the tenant data transmitted by the borrower through a random review of selected tenant files during the Supervisory Visit. Corrective action is initiated for any discrepancies revealed during this review.

D. Approval of Subsidy

The Agency will certify for interest credit or rental assistance only those tenants with current tenant certifications showing on MFIS when payments are being processed. MFIS retains a copy of *Form RD 3560-29*, to document the approved subsidies.

SECTION 3: LOAN PAYMENT PROCESSING

4.12 OVERVIEW

The Agency processes loan payments and subsidy requests according to the servicing and collection requirements of the individual loan. The requirements are established by the loan agreement or loan resolution, and *Form RD 3560-52*. There are a number of steps common to the processing of any loan payment, as outlined below.

4.13 NOTIFICATION TO BORROWERS OF PAYMENTS DUE

A. Factors Used to Determine Payment Amount

The amount of each borrower's monthly payment is automatically calculated by MFIS based on the tenant information received from the borrower and summarized on *Form RD 3560-29*. The Agency releases this form to MINC on or about the seventeenth day of the month, where borrowers are able to view and approve the information for processing.

B. Calculating Payment Amount

To determine the amount of the payment that is due from the borrower, MFIS sums the total of the following components:

- Audit receivables (e.g., excess rental assistance, unauthorized assistance) as determined by MFIS;
- Late fees as determined by AMAS;
- Unamortized cost items (e.g., taxes, insurance, protective advances) as determined by AMAS;
- Amortized cost item loan installments as determined by AMAS and reflected on the MFIS *Form RD 3560-29* (included in the project payment) and in the project payment amount on *Form RD 3560-29*;
- Overage; and
- Debt service (i.e., interest and principal as determined by AMAS).

Note that audit receivables and cost items may be either unamortized or amortized. If they are amortized, a borrower may have up to five years to pay under the terms of an

approved work-out agreement (see Chapter 10 for more information on workout agreements).

The Agency will count only those tenants who have current tenant certifications on MFIS for interest credit or rental assistance when processing payments. For a project receiving rental assistance, the rental assistance amount is applied as a credit to the total amount due as calculated on the project worksheet. The remaining balance is the net amount due.

Exhibit 4-1 illustrates how rental assistance and overage are calculated and the impact they have on the tenant's rent and the borrower's loan payment. If the amount of rental assistance exceeds the borrower's loan payment, the Agency will make a rental assistance payment to the borrower. In accordance with the Debt Collection Improvement Act of 1996, the Agency is required to send rental assistance checks via an electronic funds transfer to the borrower's bank account.

Exhibit 4-1

Overage and Rental Assistance

30% of Tenant Monthly Adjusted Income	Rental Assistance	Basic Rent	Note Rent	Overage	Actual Rent Paid by Tenant
$180	Not available ($0)	$200	$500	$0	Tenant pays Basic Rent, $200. Tenant is rent overburdened.
$180	$20	$200	$500	$0	Tenant pays $180.
$200	$0	$200	$500	$0	Tenant pays Basic Rent, $200.
$230	$0	$200	$500	$30	Tenant pays $230; $30 is considered overage.
$500	$0	$200	$500	$300	Tenant pays $500; $300 is considered overage.

C. Borrower Verification Of Payment Data

Form RD 3560-29 is released to MINC for verification by the borrower on or about the seventeenth day of the month. It is the borrower's responsibility to access this form and verify that the data contained therein is accurate. Should discrepancies be found, the borrower must transmit corrected data through MINC or contact the MFH Servicing official for assistance.

4.14 PAYMENT DUE DATES

The regular payment due date is established in the Agency *Form RD 3560-52* for the project and is generally the first day of each month. The first regular amortized payment after loan closing for transfers, reamortizations, voluntary conversions, credit sales, or loans closed after interim financing must be at least 1 month from closing. For example, if a loan is closed on

January 31, the first regular amortized payment will be due March 1. For multiple advance loans, the first payment must be at least 1 month after the final advance.

4.15 PROCEDURES FOR PROCESSING PAYMENTS

A. Overview

MFH Servicing officials are responsible for administering the requirements for payment processing under the guidance and supervision of the Leadership Designee. Key steps in processing regular payments and advance regular payments are listed in Exhibit 4-2.

Exhibit 4-2

Key Steps in Processing Loan Payments

- Process payments that are submitted to the Agency through MFIS.
- Review payments for accuracy, balance totals, access the accounting system, and enter appropriate amounts in the proper fields;
- When a payment is processed, the system will apply subsidy credit to the loan account before any payment or other credit is applied to the account. Subsidy credit will be applied first to accrued interest and then to principal after all interest is paid. Subsidy credit will not be applied to late fees, audit receivables, or recoverable cost charges;
- After a payment has been processed, any change in application that does not involve changes in cash may be made in the Servicing Office by properly trained and certified staff. If changes need to be made in a cash field, the AMAS Coordinator can process the charge after performing a cursory review of account information; and
- Make modifications to the payment as necessary. Some examples of situations where modifications might be made include wrong date of credit, key punch errors, incorrect recording of rental assistance, and duplicate payments (see AMAS instructions for more information).

When a borrower remits a payment, AMAS will net enough rental assistance to bring the account status current and pay any unpaid overage, late fees, or interest on delinquent principal based on the date payment is received. If the account is on or ahead of schedule when the payment is received, enough rental assistance will be netted to pay one full installment and any unpaid overage, interest, or other obligation.

B. Borrower Submission

Borrowers must prepare and submit *Form RD 3560-29* providing the following information:

- Only tenants' occupying units the first day of the month prior to the payment due date;
- Interest credit and rental assistance only for tenants with current tenant certifications;
- Overage up to the market rent that must be paid to the Agency by the borrower for tenants without current tenant certifications unless there is a formal eviction in process. In that case, the payment will be based on the expired tenant certification; and
- The borrower may subtract any rental assistance due the project (supported by current tenant certifications) from the payment due and remit a net payment. Calculations

supporting the net payment must be shown on Part I of *Form RD 3560-29*. AMAS will net enough rental assistance to bring the account status current and pay any unpaid overage, late fees, or interest on delinquent principal based on the payment receipt date.

- If the RA due the borrower exceeds the balance of scheduled loan payments, delinquent payments and other charges, no additional payment is due from the borrower and an RA check for the excess will be issued.

Examples

Example 1: Borrower Olson shows on *Form RD 3560-29* for the month of May a loan payment due to the Agency of $1,865 and RA due from the Agency of $3,600. The Finance Office sends Olson a check for $1,735.

Example 2: Borrower Johnson shows on *Form RD 3560-29* for the month of May a loan payment of $2,200 due to the Agency and RA of $1,200 due from the Agency. Johnson must attach a check made out to the Agency in the amount of $1,000.

C. Application of Payments

1. Regular Payments

The Agency has developed specific priorities for applying regular payments. Exhibit 4-3 lists these priorities in descending order.

AMAS also will apply regular payments on projects with an initial and subsequent loan according to the priorities in Exhibit 4-3. Each priority item will be paid for all project loans before moving to the next item. AMAS will apply payments for each priority item in accordance with the loan number, beginning with the initial loan and ending with the highest-numbered subsequent loan.

Exhibit 4-3

Priorities for Application of Borrower Payments to Outstanding Obligations

From highest to lowest, the priorities are:

- Amortized audit receivables;
- Unamortized audit receivables;
- All project late fees due;
- Amortized recoverable costs due;
- Unamortized recoverable costs due;
- Overage;
- All other interest due;
- Principal; and
- Any remaining regular payment, which will be applied as an advance regular payment unless specifically designated otherwise.

2. Advance Payments and Additional Principal Payments

The Agency also has established specific procedures for applying advance payments and additional principal payments. Advance regular payments are applied as such only

when the loan account is current. The payment effective date will be the due date of the next regular payment that is not fully paid. Extra payments are applied as principal to the last installment to become due under the note. Voluntary additional principal payments will only be credited to the account when all regularly scheduled payments on the account have been paid. These payments are credited to all principal, as of the payment effective date, and do not affect the payment status of the loan. Any amount paid by the borrower in excess of the amount owed will be refunded to the borrower if the excess amount is over $10.

4.16 ASSESSMENT OF LATE FEES

Payments for loans closed on PASS and DIAS are due on the first day of the month. The Agency charges late fees on PASS payments received after the tenth day of the month. The Finance Office automatically notifies each borrower of late fees for PASS payments that were outstanding as of the tenth day of the month. On or about the eleventh day of each month, *Form RD 3560-29A*, *Multiple Family Housing Statement of Payment Due*, will be mailed to each borrower who is 30 days past due and/or owes late fees, showing the current monthly payment due, unpaid late fees, and past due payments due on the first day of the following month. This payoff statement will be determined from current Finance Office records but will not reflect overage due from the borrower or rental assistance due the borrower.

Late fees collected by the Finance Office are deposited in the Rural Housing Insurance Fund (RHIF).

A. Agency Approval of Waivers Procedures for Granting Late Fee Waivers

Waivers to late fee charges may be granted only as follows:

- The Leadership Designee may grant a waiver for as many late fee charges as are justified by the facts of the case, based on a determination that the late fees would place an unfair burden on the borrower. For each waiver requested, the borrower must provide a written explanation of the circumstances that caused the late payment, proof that they were beyond the borrower's control, and a description of what actions will be taken to bring the account current. Waivers are granted on a case-by-case basis;

- There are only two circumstances under which the Agency will grant a waiver to late fees. The first is when the borrower is a board-managed nonprofit or cooperative, because they are the only entities on which the assessment of late fees would place an unfair burden. The second is where the Agency has agreed to accept deferred payments or partial payments as part of an approved workout agreement. In such cases, the Leadership Designee can grant as many waivers as are justified by the facts of the case (i.e., there is no annual limit on the number of waivers that may be granted);

- As noted above, late fees are an owner expense. As a result, they may not be charged to the project, except in the case of cooperatives, which can pay late fees from project expenses in cases where the fees are not waived;

- The Agency will not grant a waiver solely to correct a delinquency; and

- The Leadership Designee may authorize late fee waivers in cases where Agency error (e.g., an incorrect statement of the date a payment is due) leads directly to the late payment.

B. Required Submissions from Borrower to Receive a Waiver

Borrowers must submit a number of items to the Agency in order to receive a waiver. These include:

- A written explanation of the circumstances that caused the late payment;

- A description of the factors beyond the borrower's control (e.g., natural disaster); and

- A description of the actions that will be taken to bring the account current.

If the late payment is due to Agency error, the borrower need not submit the above-listed items. In such cases, providing notification to the Agency of its error will suffice, and loan services will promptly correct the error in the appropriate automated system(s).

C. Notification upon Granting A Waiver

When a waiver to late fees is granted, the Leadership Designee will notify the MFH Servicing official and the borrower on *Form RD 3560-28*, *Multi-Family Housing Exception to Late Fees*, completed according to the Forms Manual Insert (FMI), and enter the change into AMAS and MFIS.

D. Denying Waivers

When an application for a late fee waiver is denied, the Leadership Designee must give the borrower appeal rights under 7 CFR Part 11.

4.17 SPECIAL CIRCUMSTANCES

A. Reapplication of Payments

MFH Servicing officials may approve, with the authorization of the Leadership Designee, reapplication of payments between accounts when payments have been applied in error. However, no change may be made if the loan is paid in full, the canceled note or notes have been returned to the borrower, and the security instruments have been satisfied. The AMAS Coordinator will enter changes.

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B. Overpayments and Refunds

MFH Servicing officials will process overpayments and refunds to borrowers according to the procedures outlined in 7 CFR 3560.401 through 7 CFR 3560.404, Account Servicing Policies.

C. Recoverable and Nonrecoverable Cost Items

The MFH Servicing official will service recoverable and nonrecoverable cost items according to the procedures outlined in 7 CFR 3560.403 and RD Instruction 2024-A.

SECTION 4: ACCOUNT TRACKING AND SERVICING

4.18 OVERVIEW

The Agency must track borrower accounts to ensure that all payments are up-to-date and to identify any problems that could lead to delinquencies or defaults. Any transaction that affects an account must be tracked to ensure that it has been processed correctly and that it has not had a negative impact on the interests of the borrower, tenants, or the Government.

The Agency has sought to facilitate and standardize the account tracking process by requiring that all new loans, and many existing loans, be closed and serviced using PASS.

4.19 ACCOUNT TRACKING PROCEDURES

A. Conditions for Conversion from DIAS to PASS

Conversion of accounts from DIAS to PASS may be either voluntary or involuntary. An involuntary conversion may occur at the time of a servicing action such as a subsequent loan, transfer, or reamortization. In such cases, the MFH Servicing official completes *Form RD 3560-50, Conversion Agreement,* and submits it to the State AMAS Coordinator for entry into AMAS. The terms for the converted loan will be the same as for the original loan.

B. Procedures for Conversion from DIAS to PASS

The following actions must be taken to convert an account from DIAS to PASS:

- The MFH Servicing official will complete *Form RD 3560-50,* except for loans converted on *Form RD 3560-21, Assumption Agreement*, or *Form RD 3560-16, Reamortization Agreement* (which converts the account to PASS);

- When the borrower will continue to receive interest credit following conversion, the current interest credit plan type will be passed through to the PASS loan. A new *Form RD 3560-9, Interest Credit and Rental Assistance Agreement,* must be prepared

by the borrower and the MFH Servicing official to reflect the PASS payment and subsidy amount;

- The MFH Servicing official will document on the back of the original note or assumption agreement that the payment schedule was modified; and

- The MFH Servicing official will establish principal balance converted to PASS according to the FMI for *Forms RD 3560-21* or *3560-16*, and specific requirements based on whether the transaction is on the same terms or new terms.

C. Account Reviews

The foundation for proper and timely debt payment is sound budgeting and monthly review of income and expenses by the borrower and, as necessary, by MFH Servicing officials. Account maintenance must begin with initial planning and must be an integral part of ongoing analysis, planning, and follow-up management assistance.

MFH Servicing officials must review each loan account at least monthly by accessing AMAS and carefully reviewing the status screens showing account status and other relevant account information. Accounts that are 30 days past due are subject to special servicing actions, as outlined in Paragraph 4.21 and in Chapter 10 of this handbook.

4.20 SERVICING ACCOUNTS THAT ARE 30 DAYS PAST DUE

When tracking borrowers' accounts, MFH Servicing officials must identify all accounts that are 30 days past due. The MFH Servicing official will service these delinquent accounts according to the procedures in this handbook, with guidance and assistance as necessary from the Leadership Designee. If a borrower's delinquency is not corrected by the time the account is 60 days past due, the Agency initiates legal action to cure the borrower's default. In such cases, MFH Servicing officials will follow the procedures described in Chapter 10 and any additional procedures established by the Leadership Designee for the particular type of loan.

4.21 SPECIAL CIRCUMSTANCES

A. Same Terms Transfers

Same terms transfers, when the transferor has been converted to PASS, must take place in a current loan status on the date of the transfer. Borrowers must bring current any delinquent principal and interest before the conversion can occur.

B. Overpayments and Advance Regular Payments

Overpayments and advance regular payments made on PASS accounts result in the creation of a "future paid" status account under AMAS. MFH Servicing officials must reverse and apply such advance payments to the transferor's principal balance prior to determining the loan balance to be transferred. If the future payments have been made through RA, they must be refunded to the transferor and reapplied in the form of cash on the loan balance.

SECTION 5: FINAL LOAN PAYMENT *[7 CFR 3560.404]*

4.22 OVERVIEW

Because the final payment on an Agency loan signifies the end of the borrower—Agency relationship and opens a number of legal questions, it is important that the Agency has specific requirements and procedures for accepting and processing final loan payments. The Agency's procedures ensure that payments are received in the proper amount and suitable form, that security instruments are released only when all obligations are satisfied, and that special circumstances are handled appropriately.

Before the MFH Servicing official begins the final loan payment process, they must determine if the final loan payment is a prepayment, as covered in Chapter 15. If the final payment is an advanced payment of the account, the borrower must complete the prepayment process as outlined in 7 CFR part 3560, subpart N, and Chapter 15 of this handbook before the Agency will process a final loan payment.

4.23 PROCESSING FINAL LOAN PAYMENTS

There are a number of steps that MFH Servicing officials must follow when accepting and processing a final loan payment.

A. Payment Amount Determined

The MFH Servicing official will obtain and provide to the borrower the amount to be collected for payment in full of all loans by accessing the relevant AMAS status inquiry screens. MFH Servicing officials will furnish requests for payoff balances on all accounts in writing. Such requests require verification of the payoff amount by two employees.

B. Funds from Supervised Bank Account

When a borrower is ready to pay a loan in full, MFH Servicing officials must withdraw any funds remaining in the supervised bank account for the initial loan and remit this amount for application to the borrower's account. *Note:* This requirement does not include the supervised bank account for reserves. Any amount remaining in the reserve account above the required level and unused is the borrower's money and may be released to the borrower following receipt of the initial payment.

C. Forms Processed

When the Agency receives final payment, the MFH Servicing official processes it in AMAS as a paid-in-full payment. The payment must be loan specific.

D. Payments Applied

MFH Servicing officials apply final payments on the next payment due date or the final due date shown on *Form RD 3560-52,* assumption agreement, or reamortization agreement, whichever is sooner.

E. Security Documents Released

1. General

When the Finance Office verifies that all amounts owed to the Government have been paid in full, or a compromise or adjusted agreement has been accepted and approved by the appropriate official, it will release security documents to the borrower, along with *Form RD 140-4, Transmittal of Documents*.

If the Agency receives final payment in cash, U.S. Treasury check, cashier's check, certified check, money order, or bank draft, MFH Servicing officials will give the security documents to the borrower at the time of final payment. If not, the Agency will release the documents after a 30-day waiting period.

2. Loans Secured by Both Real Estate and Chattels

If a loan secured by both real estate and chattels is paid in full, the chattel security instrument will be satisfied or released by the MFH Servicing official in accordance with RD Instruction 1962-A.

3. Loans Where Mortgagee Is Required to Record or File a Satisfaction

If State law requires the mortgagee to record or file a satisfaction, the Agency will do so consistent with the State supplement. The Agency will deliver the form of satisfaction to the borrower for recordation at the borrower's expense.

4. Loans to Insured Borrowers Whose Note and Security Instrument Are Held by a Lender

For an insured borrower whose note and security instrument are held by a lender, the MFH Servicing official will deliver to the borrower the note and other documents upon receipt from the lender of *Form RD 3560-52,* marked "paid in full," the original security instrument, and the instruments of satisfaction or release.

F. Release of Interest in Insurance

When the borrower's loan has been paid in full and the satisfaction or release of the mortgage has been executed, the MFH Servicing official is authorized to release the mortgagee interest in the insurance policy as provided in Chapter 3 of HB-2-3560.

G. Special Circumstances

1. Refunded Principal

If the entire principal of the loan is refunded after the loan is closed, the borrower must pay interest from the date of the note to the date of the receipt of the refund.

2. Overpayment

If the borrower's final loan payment is greater than the amount due to close the loan, the Agency will process a refund to the borrower 30 days after receipt of the final payment.

3. Agency Error in Handling Final Payments

If the Agency makes an error in handling final payments and the error results in an account balance, the MFH Servicing official may attempt to collect that amount from the borrower.

4. Note-Only Cases

When a loan is evidenced only by a note (i.e., no security instruments are evident) and the note is paid in full, the Agency will deliver the note to the borrower.

5. Other Situations

If a situation develops that is not covered by regulations, the MFH Servicing official forwards the borrower's case file to the Leadership Designee, who may offer assistance and special instructions after consultation with the Office of General Counsel (OGC).

H. State Supplements

The Leadership Designee, with the advice of OGC, will issue a State supplement and the necessary forms for releasing or satisfying real estate security instruments. Any unusual cases that are not covered by the State supplement will be handled in accordance with advice from OGC.

I. Redelegation of Authority

Leadership Designees may be authorized to redelegate to Agency Staff the authority to execute releases and satisfactions associated with final payments, provided it is determined that the individual to whom such authority is being redelegated has had sufficient training and experience to properly exercise such authority.

CHAPTER 5: OWNERSHIP AND ORGANIZATION CHANGES *[7 CFR 3560.405]*

5.1 INTRODUCTION

During the term of an Agency loan, changing circumstances may lead borrowers to seek Agency approval of a change in the structure of the ownership entity. For instance, partnerships may dissolve, or substitute individuals or entities may obtain an ownership interest in a property due to business reorganizations, retirements, or other reasons. To address these situations, the Agency has developed requirements and procedures for receiving notification of and reviewing proposed changes, as well as granting approval for such changes to ensure that the Agency's security interest is protected.

This chapter covers the Agency's requirements regarding changes in a borrower's ownership structure and Agency procedures for reviewing and accepting such changes.

5.2 OVERVIEW OF CHANGES REQUIRING PRIOR AGENCY CONSENT

The Agency imposes specific requirements on certain proposed changes in the structure of the borrower entity to ensure the adequacy of the new or substitute interests and thus protect the interests of tenants and the Government.

The Agency requires that borrowers obtain prior Agency consent to organizational changes involving the controlling interests of the borrower entity to ensure that such changes will continue to serve the needs of tenants and protect the interest of the Government. For example, if one partner in a borrower entity decides to sell their interest to a new individual from outside the existing organizational structure, the Agency needs to review that individual's prior history and qualifications to ensure that the person is eligible to participate in the program (i.e., is not under suspension, debarred, under Office of the Inspector General (OIG) review, or known to be in default on any Agency loan[s]). The purpose of this review is to evaluate that the borrower entity will continue to be eligible under program requirements and that any changes in the organizational structure do not adversely affect the Agency's security interests.

5.3 REQUIREMENTS FOR OBTAINING AGENCY CONSENT

A. Overview

Certain changes in the structure and ownership interests in the borrower entity require Agency consent before they become effective. These include:

- Any changes in the controlling interests of the borrower entity;
- Changes in the ownership interests of the borrower entity that involve the transfer of stock to any individual or organization not previously listed in the ownership documents submitted to the Agency; or

- A 100 percent change in membership interest where the tax ID remains the same and the organizational entity remains the same during any 12-month period.

Examples of such changes include changes in general partners, addition of new general partners, proprietorship as a result of death, divorce, or other applicable ownership changes.

B. Written Request

Requests for Agency consent to organizational changes must be submitted in writing, along with *Form RD 3560-1, Application for Partial Release, Subordination, or Consent,* to the MFH Servicing official. Each request must describe the proposed changes in the organizational structure of the borrower entity and provide the information shown in Exhibit 5-1 for each new or substitute ownership interest or member in the borrower entity.

The information included with the written request must demonstrate that the proposed change will not adversely affect the Agency's security interest in the property by illustrating that all key individuals would meet loan approval requirements.

Exhibit 5-1

Required Content of Requests for Agency Consent to Changes in Borrower Entity

- *Form RD 3560-1, Application for Partial Release, Subordination, or Consent;*
- The names, addresses, and taxpayer identification numbers of individuals with controlling interests in the new or substitute entity;
- Certification that the new interests and/or members are not suspended, debarred, or in default on Agency loan(s);
- The organizational role of the new interest/member or changes in roles of existing individuals;
- Résumé, including experience managing real estate, business experience, and education;
- Identity-of-interest (*Forms RD 3560-30, Certification of No Identity of Interest (IOI), and 3560-31, Identity of Interest Disclosure/Qualification Certificate*);
- Personal financial statement;
- Percentage of ownership of the new interest/members in the borrower entity;
- Proposed amendments to organizational documents;
- Previous participation certification;
- Opinion of the borrower's attorney stating that the changes are in accordance with reapproved organizational documents, are permitted by law, and comply with Agency regulations; and
- Current comprehensive credit report (7 CFR 3560.405)..

C. Assumption of All Applicable Responsibilities by New Interests

If any portion of the controlling interest in the borrower entity is transferred to an individual or organization not previously holding a controlling interest, the new individual or organization must agree to assume the responsibilities and obligations established under the terms of the *Form RD 3560-52, Promissory Note* with the Agency, the mortgage, the loan agreement/resolution, and any applicable partnership documents for the entity.

D. Assumption of Liability by Substitute General Partner

In the case of substitution of any general partner, the substitute general partner must agree to assume the responsibilities and obligations of the original general partner under the terms of the Agency *Form RD 3560-52*, mortgage, and the borrower's partnership agreement.

In consultation with the Office of General Counsel (OGC), the Leadership Designee may require the substitute partner to sign an agreement to assume all applicable responsibilities. This agreement is placed in the case file.

E. Satisfaction of Eligibility Requirements

All proposed new individuals in the ownership entity must meet applicable eligibility requirements for borrowers under 7 CFR 3560.55. For further information on eligibility requirements, see Chapter 4 of HB-1-3560.

5.4 BORROWER REQUESTS FOR CONSENT

Borrowers must submit their written requests for Agency consent to organizational changes at least 45 days prior to the desired effective date of the change. Borrower requests must contain the information listed in Exhibit 5-1.

5.5 AGENCY REVIEW OF BORROWER REQUESTS

A. Overview

To ensure that all changes to borrower entities protect the interests of tenants and the Government, the Agency has developed procedures for review and approval of proposed changes. By preventing changes that do not further program objectives, the review process ensures that program implementation is consistent with Agency mandates.

MFH Servicing officials need to take all actions necessary to determine that the changes will have no adverse impact on the loan or property. These actions will vary based on the nature of the changes to the borrower entity.

The Agency may reject such requests if the borrower fails to adequately demonstrate that the proposed change will not adversely affect the interests of the Agency or the tenants of the property.

B. MFH Servicing officials and Leadership Designee Actions

MFH Servicing officials first review borrower submissions for completeness. Next, they perform a review to determine whether the new individuals or organizations proposed meet eligibility criteria (i.e., the same criteria required to qualify for a new Agency loan as set forth in the HB-1-3560). To determine that approval of the transaction will not adversely affect the objectives of the loan or the property, the Leadership Designee must consider past performance, experience, qualifications, and abilities of any individual or organization obtaining an interest in the borrower organization. Finally, MFH Servicing officials review all documentation to determine if the substitute general partners propose to assume all liability that had been assumed by the withdrawing entity.

When the initial review has been completed, MFH Servicing officials process and submit *Form RD 3560-1* to the Leadership Designee, who either approves or rejects the proposed transfers or changes. In cases where proposed membership changes are not covered in the organizational documents or appear to be in conflict with applicable regulatory requirements, MFH Servicing officials may submit case files to OGC for review and concurrence regarding a borrower's legal sufficiency to assume the proposed role in the new organization. OGC does not override the decisions made by the Agency with regard to organizational changes.

5.6 DOCUMENTATION OF CHANGES

To ensure that there is a running history of all changes made to the organization of a borrower entity, the Agency requires that all changes be adequately documented through both written notification to borrowers and maintenance of case files. MFH Servicing officials must respond to all requests for Agency consent to changes in a formal letter, a copy of which is placed in the borrower's case file. Documentation allows the Agency to track the legality of the changes and the suitability of any new individuals or organizations added to the borrower entity over time. All changes must be entered into the MFIS so that the automated system is always up to date.

CHAPTER 6: PORTFOLIO AND PROPERTY ASSESSMENT

6.1 INTRODUCTION

This chapter is designed to assist MFH Servicing officials in assessing the Multi-Family Housing Programs' Direct Loan portfolio and to determine whether Rural Development (RD)-financed properties meet the objectives of the Agency. The goal of the assessment is to position the property for long term viability and participation in RD programs. Preservation of RD assets should be prioritized as an outcome of the property assessment, using all RD preservation and asset servicing tools at our disposal to achieve a preservation outcome.

Many of the property and marketing factors that support the Portfolio Assessment will also provide indications of whether a property should remain in the program or be removed. It is imperative to annually review the portfolio in every State to allow for the appropriate and timely application of servicing actions, which will ensure that tenants in RD-financed properties continue to be provided decent, safe and affordable housing.

6.2 KEY STEPS TO COMPLETING PORTFOLIO ASSESSMENT

The key components to a Portfolio Assessment are divided into Action Summary steps, summarized in Exhibit 6-1. MFH Servicing officials should use these steps to ensure the continued suitability of each RD-financed property.

Exhibit 6-1
Action Summary

Step	Action	Guidance
1	Determine appropriate classification of projects in the portfolio.	Correct Multi-Family Information System (MFIS) database information, if needed.
2	Complete an assessment of the portfolio.	A. Evaluation Tools and Asset Data Collection, Exhibit 6-2 B. Property and Marketing Factors C. Categorize the Properties
3	Focus on "D" properties or those properties with outstanding deficiencies such as vacancy that exceeds the recommended thresholds.	Servicing Strategies: • Send series of servicing letters • Meet with Borrower • Obtain a Workout Plan • If no action, prepare Problem Case Report • Accelerate account

Step 1: Determine appropriate classification of properties in the portfolio.

The first step in the assessment process is to ensure that the properties are properly classified in the MFIS database. Old findings long unresolved will affect today's classification and should be resolved with the Borrower. Removing out of date findings is covered in a MFIS Tip, available on-line. In addition, MFH Servicing officials should periodically review and update properties that are working toward or operating under a Workout Plan to determine if changes in the MFIS classification are appropriate. For example, a property classified as a "D" because of unresolved findings may enter into a Workout Plan to resolve the findings, thereby re-classifying the property to a "B". Having accurate baseline information is critical to conducting the portfolio evaluation.

Step 2: Complete an assessment of the portfolio to determine how to prioritize assets for servicing and preservation.

A. Evaluation Tools and Asset Data Collection

In an effort to identify the physical condition and market viability of the Section 515 portfolio, the Agency has identified three property categories:

- Category 1: Property is needed but is in a strong market, and is very expensive for Rural Development to preserve;
- Category 2: Property is needed and suitable for revitalization because it is in a good market, is well-performing or remains viable despite limited chronic vacancies;
- Category 3: Property is no longer needed in the program as determined by the local affordable housing market or is too expensive for the owner to maintain as determined by the financial condition of the property, i.e., delinquent taxes, lack of insurance or deferred maintenance.

This analysis, using the categories in Exhibit 6-2, is a starting point to identify the appropriate use of resources. The analysis should be an annual exercise to ensure that property changes are captured and considered.

Step 3: Focus on "D" properties or those properties with outstanding deficiencies such as vacancy that exceeds the recommended thresholds.

Use the Servicing Strategies from Chapter 10 of this Handbook:

- Send series of servicing letters
- Meet with Borrower
- Obtain a Workout Plan from the Borrower with actions that are appropriate and acceptable to the Agency to restore compliance and correct deficiencies.
- If no action, prepare Problem Case Report
- Accelerate account

EXHIBIT 6-2
Assessment Categories

Category 1	Category 2	Category 3
Needed, but Too Expensive To Preserve Properties that meet one of the four conditions below: a) Cost to Rural Development to revitalize (rehabilitation loan + MPR tools) exceeds 50% of estimated replacement cost; b) Preservation funding is not available; c) Property is in a strong market with market rents that are affordable to moderate-income households; or d) Rental Assistance (RA) is not needed to keep property viable.	Needed and Preserve-Able Good market, good property; modest cost to revitalize (less than 50% of replacement cost estimate) or recent rehabilitation; rents remain at or below Conventional Rents for Comparable Units (CRCU). Moderate market, only affordable housing available, property cash flows with vacancy above 15%.	Not Needed or Revitalization Is Not Financially Feasible Weak market; weak property; weak financials; rents cannot be held at CRCU; has chronic high vacancy as described below; For projects with 15 or fewer units, the historical vacancy rate is 15 percent or greater; For projects with more than 15 units, the historical vacancy rate is 10 percent or greater; Other affordable housing available to meet needs or use of Rural Development Voucher Program.
*Action: If property meets the prepayment requirements at 7 CFR 3560, subpart N and leaves the portfolio: Rural Development Vouchers can be used to protect tenants.	Action: Institute a suitable Workout Plan, or revitalize using an appropriate mix of MPR tools, or facilitate an efficient transfer. If the property is in good standing, continue with routine servicing.	Action: Use necessary servicing actions, including compromise offers, debt settlement, and foreclosure, and make vouchers available to tenants.

*The Agency does not and cannot advocate methods to move properties to prepayment. Requesting a mortgage prepayment is solely a decision of the Borrower and prepayment requests must continue to follow the process outlined in Chapter 15 of this Handbook.

Agency staff can access population shift and growth information at the following URL: https://www.policymap.com/. Other State facts to consider when evaluating properties such as income, education, employment, Federal funds, are at http://www.ers.usda.gov/topics/rural-economy-population.aspx.

B. Property and Marketing Factors

Listed below are property and market factors that, taken together, can assist the MFH Servicing official in evaluating the properties in the portfolio. There may be other factors particular to each State that should also be considered and documented using a format similar to Attachment 6-A, Property Categorization Worksheet.

Factor 1: Ownership. Consider whether ownership has been uncooperative and non-compliant with Agency requirements. Uncooperative ownership can result in deferred maintenance, low occupancy rates, high accounts payable, and financial viability problems.

Key questions to answer include:

- Is the present ownership entity still legally operational?
- Is the ownership entity cooperative? Is the ownership entity responsive to Agency requests for information and does it take action when the Agency identifies issues and deficiencies?
- Is the ownership entity financially solvent?
- Is competent management being provided?

The answer to all four questions should be yes. If not, improvements must be made for a property to be deemed suitable.

Factor 2: Management. Consider whether the property is experiencing current and/or ongoing problems with property management, either on-site or off-site. Problems may include but are not limited to:

- Responding to property compliance issues
- Aggressively marketing the property to broad income-eligible groups
- Resolving health or safety needs
- Cooperating with MFH Servicing officials' instructions
- Failing to follow-through with required actions in relation to Workout Plans, Transition Plans, and property maintenance needs

Factor 3: Health or Safety. Health or safety issues are most often identified or documented during a physical inspection or environmental assessment of the property. While a majority of violations can be fixed through maintenance, repairs, or even a rehabilitation loan to pay for rehabilitation, some violations are more difficult to resolve.

A compliance violation that is identified on the Physical Inspection Report may be considered a health or safety issue. However, most of these violations will never lead to a concern of suitability. For example, broken windows, a leaking roof, or exposed wiring are all easily corrected if funds are available. Health or safety issues that do affect suitability will likely pertain to the entire property and either cannot be repaired, or repair is too costly. For example, a property with a damaged and unstable foundation may not be repairable or repaired at an expense beyond that which is fiscally responsible.

Consider whether the property is experiencing problems that are of a health or safety nature that the owner/management has been unsuccessful in resolving. This may involve a recurring condition and/or a situation that the owner/management has failed to adequately address. Some health or safety issues such as structural problems and extensive mold may be so pervasive that there is no financially-feasible remediation, at which point the account may need to be accelerated.

Factor 4: Physical Standards/Obsolesce. Determine whether there is evidence of physical deterioration and extensive deferred maintenance. Signs of physical stress are unresolved physical condition problems identified during annual inspections or supervisory visits (also known as "open physical findings"), media reports of the property's poor conditions, and tenant complaints.

The MFH Servicing official must also determine whether the problem can be solved through special servicing, workout agreement, or revitalization funding or that solving the problem is not in the Agency's best financial interest.

If the issues from any of these property and marketing factors are not addressed in a timely manner, the property may be considered obsolete as compared to similar properties in the market area. The MFH Servicing official must also consider the issue of need when determining if a property is obsolete. The outcome of the need determination does not affect the result of the obsolescence determination, but it may influence how the Agency implements the result. Exhibit 6-3 lists helpful questions to use in making this determination.

There are three reasons that a property may be considered obsolete:

- The property poses a health or safety risk to the tenants;
- The building has structural or design characteristics that make the property economically infeasible; or
- The site is no longer economically viable because of local economic conditions (such as the transportation infrastructure).

The MFH Servicing official should go through the following process to determine if the property (i.e., the site and the building) poses a health or safety threat, has physical characteristics that cannot be addressed economically, or faces adverse local economic conditions.

Physical characteristics that make the property obsolete or economically infeasible are usually documented either through a physical inspection or with a market study.

Factor 5: Transition Events. Identify whether the property is eligible to prepay the mortgage; is reaching the expiration of tax credit eligibility; or is coming up on the natural maturity of the mortgage.

Factor 6: Revitalization Cost vs. New Construction/Replacement Cost. Consider the cost to rehabilitate the property compared to building a new, comparable property. The Agency's share of rehabilitation costs, including a rehabilitation loan and the cost of revitalization loan tools if available, should not exceed 50 percent of the cost of new construction. The property may still be needed in the market, but it is too expensive for Rural Development to fund.

Conversely, preservation funding may not be available even for a property for which the Agency's portion of the cost is less than 50 percent.

An alternative to consider is subordinating the Agency's position to enable the Borrower to obtain rehabilitation financing from a third-party. Low-Income Housing Tax Credits (LIHTC) are one form of financing. Subordinations can only occur if the requirements of 7 CFR §3560.409 are met.

Exhibit 6-3
Factors Influencing Obsolescence

Site

- Has economic obsolescence adversely affected the community?
- Does the community have adequate medical, transportation, and school systems?
- Is the site itself located in a solid residential neighborhood that is a viable part of the community?
- Does the topography of the site lend itself to optimal accessibility?
- Does the site have environmental hazards or commercial influences that adversely affect it?

Building

- Is the building structurally sound?
- Are there obsolescence factors that are economically unfeasible to correct such as the building design, poor quality of construction, environmental hazards, or structural deterioration?
- Does a unit-by-unit inspection with cost estimate for rehabilitation, deferred maintenance, and wheelchair accessibility demonstrate that the costs of this work are not feasible in the property budget?
- Can the property be rehabilitated to bring it into compliance with applicable building codes or must an exception to code requirements be obtained from local authorities?
- What is the estimated economic useful life of the property after rehabilitation?

Exhibit 6-4 provides the type of information the Agency needs to determine if a property is obsolete. In most cases, the MFH Servicing official may need one or more of the following:

Exhibit 6-4
Information Needed to Determine Obsolescence

Type of Information		Guidance
1.	Data on environmental conditions.	• The need for an environmental review, assessment, or due diligence is based on the condition of the property and must be conducted in accordance with RD Instruction 1970 Part. • Due diligence is to be accomplished prior to appraisal to assure that any adverse conditions are considered in valuation. • In cases when contamination is found, the State Environmental Coordinator should be consulted on further actions.
2.	A Physical Inspection.	The MFH Servicing official and Program Support Staff (PSS) Architect, if appropriate, may conduct a unit-by-unit physical inspection of the property with a cost estimate to fully understand the problem, and to determine whether repairs or rehabilitation may resolve the problem.
3.	Market Study.	A market study is most appropriate when the problems are related to external factors.
4.	Cost Estimate.	A professional may be needed to determine the feasibility of repairs, and to obtain a cost estimate. The PSS Architect should be consulted for review of estimates.
5.	Cost estimates for new construction in the property's area.	New construction cost estimates are critical to determine the Agency's financial interest.
6.	Borrower's Intentions.	The Agency may ask the Borrower to prepare documentation stating the Borrower's intentions for the property.

Example

For a property that may need on-site laundry facilities to improve the property's marketability, the Borrower may be able to receive a rehabilitation loan to resolve the problem; therefore, the property is not obsolete. However, if a factory is built near the property, even if there are no negative health or safety factors, the quality of life may suffer due to an increase in noise, odor, or other factors. Such developments may make it difficult to market the property and cause it to become obsolete in the local market.

Factor 7: Market Demand/Vacancy Rates. Consider whether the market demand for the property has decreased significantly creating a high vacancy rate, i.e. a rate in excess of 15 percent over the last two years. The high vacancy rate may have resulted in a lack of adequate cash flow, and drained the property of financial resources. Determine whether there are other RD-financed properties within the market area (e.g., the county) or within a reasonable distance from the property, and whether those properties are also experiencing high vacancy rates.

If other RD-financed properties are experiencing high vacancies, the MFH Servicing official should consider which of the properties in that market area should be considered for Category 3. Evaluate the status of waiting lists, unit turnover frequency, and downtime so that the remaining portfolio will have sufficient demand.

The MFH Servicing official should have the following information to determine need:

1) The Agency should obtain a market study. If the Agency has a market study covering the property area that is less than 12 months old, the MFH Servicing official may use this market study and update any information as necessary.
2) If not included in the market study, the MFH Servicing official may need to obtain local economic indicators, such as local employment and economic trends to judge the short- and long-term prospects for change.
3) The MFH Servicing official should have the property's updated budget, including a record of accounts receivable and accounts payable.
4) The MFH Servicing official should also seek community input to get information on the community's interest in retaining the property and the community perception of the need for the property.

There are two components to the needs analysis: impact and economic viability. The MFH Servicing official must consider both components to determine if there is a need for a property.

The Agency must determine if removing the property from the portfolio would have a negative impact on tenants. This analysis is the same impact analysis as conducted in response to a prepayment request. See Chapter 15 of this Handbook for a detailed discussion on determining impact. The objective of this analysis is to determine if tenants will lose their units, suffer from rent overburden, or be unable to find comparable housing in the community if the designation is changed.

Also consider whether the property is located in close proximity to other subsidized, affordable housing units (Tax Credit, Section 538 Guaranteed Rural Rental Housing, Section 8, or even market-rate properties) that, in effect, reduce the demand for RD-financed property units, i.e., the need for the property is no longer there. This condition may be ongoing, or the property may be just beginning to experience vacancies as a result of new development within the immediate vicinity.

Consider, for this specific property, what is the true market area: i.e., where would existing tenants go for new housing? Include consideration of the Rural Development Voucher Program, the United States Department of Housing and Urban Development's (HUD) Section 8, tax credit, etc., which is available to low-income tenants of Section 515 properties that prepay or are foreclosed by the Agency.

Consider whether the property was located in an eligible rural area when constructed but, due to population growth, is now located in an ineligible area.

Determine whether there is still a market need for this property, now likely to be in a high rent area. If the property has a vacancy problem, it may be an indication of a lack of market need for the property, or it could indicate a management problem.

If subsidy is no longer needed for the benefit of tenants the Agency may, upon written notice, suspend, modify or terminate the Interest Credit Agreement for the property, using form RD-3560-9 "*Multiple Family Housing Interest Credit Agreement*".

Consider whether the property is located in an area that is in the process of or has experienced a significant population change that has a negative effect on its continued successful operation.

Examples include:

1) the population in the area has declined, which likely will reduce the demand for housing;
2) the population will decline in the future, likely reducing housing demand in the coming years; and
3) a local factor that will reduce population or housing demand such as a plant closing that causes families to move out of the area, the effects of a natural disaster, and/or an economic crisis impacting the area.

Population change could also be an increase. To the extent that this information is available, consider the population age groups that have increased or decreased as this may affect the market for the property. In some areas, the overall population is stable but the portion of the population that is most likely to use RD-financed properties is declining, and this will negatively affect housing demand.

The MFH Servicing official should use the market study to consider the following:

- The tenant's ability to stay in the property. This analysis depends on the proposed use of the property after leaving the program and CRCU;
- The availability of alternative housing if the proposed use of the property or increase in rents will cause rent overburden. The alternative housing must be comparable in size, amenities, and rent to keep property tenants in the local community; and
- If the property has RA, the MFH Servicing official must identify comparable units with RA or other rental subsidies, such as HUD Section 8.

Factor 8: Economic Viability. Consider whether the property is economically viable. Does it have a difficult time generating sufficient income to pay essential expenses, fund the reserve account, and make loan payments? Evaluate financial stresses on the property and their cause, and consider whether they can be resolved.

The MFH Servicing official must determine if the property is economically viable. If the property cannot generate sufficient income to pay essential expenses, fund accounts, and make loan payments - despite appropriate loan servicing actions, budgeting, and marketing - the property may no longer be economically viable. Economic viability problems are usually associated with a change in local economic conditions and the inability of the property to maintain a sufficient occupancy rate even with aggressive marketing.

For example, if a 20-unit property has a 50 percent vacancy rate and has been steadily losing tenants as the area's population declines due to the closing of a factory, the property may not be economically viable. It may not be in the Agency's interest to spend limited resources on a property that cannot meet the financial requirements of the program. Physical characteristics of a property that impact on viability are considered under obsolescence, but utilize the same basic analysis.

Types of questions to consider regarding economic viability include:

- Has the market changed due to changing demographics or local economic conditions such that there is no longer demand for the units?
- Is there a need for a different bedroom mix than the property has to offer?
- In the case of Section 514 on-farm Farm Labor Housing, is the operator still farming?
- Have there been significant vacancies that cannot be reduced with aggressive marketing?

To make the determination of economic viability, the MFH Servicing official should:

- Determine whether the Borrower's budget, rents and marketing plans are appropriate in accordance with Chapters 4 and 7 of HB-2-3560.
- Determine that special servicing efforts, including utilizing all appropriate workout tools in accordance with Chapter 10, and increased RA, if available, will be sufficient for the property to be viable. Any increase in RA must be reasonable and approved in accordance with Chapter 8 of HB-2-3560. If the cost to the Agency of special servicing exceeds replacement costs, the special servicing action is not in the Agency's best interest.
- Determine whether, based upon the market study, local economic conditions will significantly improve in the next one to two years. The market study should identify any known changes in the local economy to assist the MFH Servicing official in understanding the short- and medium-term impacts. For example, if a new factory or large business is relocating to the local area, or has announced plans to close, these plans will affect the local economy.
- Determine whether the Borrower, given occupancy levels and any servicing actions, can pay essential expenses, adequately fund accounts, and pay the Borrower's monthly loan payment in full.

Local economic conditions that can affect a property's viability are addressed in the market study and generally cannot be fixed through any changes to or investments in the property. For example, if a community lacks sufficient transportation, medical, and school systems or if the local neighborhood has changed in character so that it is no longer a desirable residential site, the property may be rendered obsolete.

Factor 9: Environmental Influences. Consider whether there are businesses or facilities located nearby that would be undesirable as neighbors, and may affect marketability of the property to prospective tenants. Are any such plants, facilities, or industrial parks planned that may negatively impact the property? Are there sufficient and adequate services located nearby? Are there stable, growing or declining employment opportunities? Is there a social deterioration in the neighborhood and/or an increase in crime?

C. Categorize the Properties

Using the three broad categories in Exhibit 6-2 and the assessment measures in Exhibit 6-4 to identify the appropriate category for each property. Attachment 6-A, Property Categorization Worksheet is an acceptable format for documenting the property assessment.

Proactively service the properties that are viable and needed in the program. For the properties with monetary and nonmonetary compliance problems, initiate the series of servicing letters as outlined in Chapter 10 of this Handbook. Varying factors may affect the category of the State's properties over time. It will be necessary to determine an appropriate schedule to re-assess the portfolio.

D. Servicing Strategies

The Portfolio Assessment should have provided a good base for identifying property problems. The evaluation should be considered in conjunction with Chapter 10 of this Handbook, which provides guidance to ascertain the source of the property problem, and whether the problem can be resolved to the satisfaction of all. If it cannot be resolved, the MFH Servicing official must determine the appropriate next step. While the Agency would prefer to recover all of its funds, the two primary concerns are:

a) Protection of the tenants from irresponsible owners or managers, from harmful living conditions, from the loss of affordable housing; and
b) Ensuring that Government funds in the form of financing and subsidy are used effectively and efficiently.

1. Send series of servicing letters in strict accordance with handbook requirements

MFH Servicing officials must adhere to the servicing letter timeframes and process discussed in Chapter 10 of this Handbook.

2. Meet with Borrower

It is important to maintain clear communication with the Borrower throughout this process to ensure that they meet their responsibility to address property problems. Meet with the Borrower and work with them to develop a Workout Plan to resolve all open issues. If an acceptable Workout Plan is developed, be sure to update MFIS to reflect the current status.

3. Obtain an acceptable, comprehensive Workout Plan within 60 days of having met with the Borrower

Development of a Workout Plan is the Borrower's responsibility; the Agency does not develop or recommend a plan. The Agency has several options to offer a Borrower in developing resolutions to property problems. Refer to Chapter 10 of this Handbook for servicing measures. The MPR program is available for qualified properties. A Borrower's failure to utilize the assistance offered by the Agency should not result in a property remaining indefinitely in the "D" classification. Prompt action is necessary to enforce compliance.

4. If no action, prepare Problem Case Report in accordance with handbook requirements.

The MFH Servicing official must use Form RD 3560-56 and follow the procedures set forth at Chapter 10, paragraph 10.14 of this Handbook. If the Borrower cannot present an acceptable, comprehensive Workout Plan in 60 days, immediately begin preparation of the Problem Case Report.

5. Accelerate account

In conjunction with the Regional Office of General Counsel, issue the acceleration letter. Follow the guidance in Chapter 12 of this Handbook on Account Liquidation. As a note, compromise offers should only be offered after acceleration of the account.

Tenants in properties subject to foreclosure by the Agency are eligible to receive an offer of a Rural Development Voucher. An area market rent study (AMRS) should be ordered to determine the amount of any voucher that will be provided. Guidance for the Rural Development Voucher Program is provided at the Rural Development Voucher SharePoint site. If accepting a deed-in-lieu or payoff of accelerated account, order AMRS immediately. Otherwise, follow foreclosure guidance.

6. Different course of action when assessing the property

The Agency may determine it is in our best interest to take a different course of action, rather than removing the property from the program. The Agency may:

- Continue with special servicing actions in accordance with Chapter 10 of this Handbook, including developing a workout agreement;
- Request the Borrower to transfer the property in accordance with Chapter 7 of this Handbook;
- Consider changing the use of the property. A change from elderly housing to family, a change to congregate or cooperative housing, for example, may provide a positive opportunity for salvaging a property and serving the community; or
- Request the Borrower to change the management agent in accordance with Chapter 3 of HB-2-3560.

6.3 IMPLEMENTATION PLAN TO REMOVE PROPERTY FROM PROGRAM

In making a determination of the most appropriate means to remove a property from the program, the Agency must balance the following interests:

- Act to protect the interest of the tenants by ensuring they have decent, safe, and affordable housing;
- Act in the financial interest of the Agency by obtaining the greatest net recovery;
- Act to protect the integrity of the program by ensuring that removal from the program does not provide undue rewards to the Borrower.
- Based on these interests, the Agency must choose the most appropriate option to remove the property from the program:

    - Allow the Borrower to prepay the loan in accordance with Chapter 15 of this Handbook. The National Office must approve all prepayment agreements; or

    - Proceed with liquidation as detailed in Chapter 12 of this Handbook.

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Attachment 6-A

Property Categorization Worksheet

(Use additional sheets as needed)

Property Name: _____
Address: _____
_____

Borrower Case No.: _____
Appropriate Classification _____ Date of classification _____

Factors and influences to consider when evaluating a property. Use the sections below to comment on each factor or influence.

1. Ownership:
2. Management:
3. Health or Safety:
4. Physical Standards/Obsolesce:
5: Transition Events:

6. Revitalization Cost vs. New Construction/Replacement Cost:
7. Market Demand/ Vacancy / Need:
8. Economic Viability:
9. Environmental Influences :
10. Other (describe unique factors/influences affecting the property):

Conclusion:

The property is categorized as:

_____ Category 1 – needed, but too expensive to preserve.

_____ Category 2 – needed and preserve-able.

_____ Category 3 – not need or revitalization is not financially feasible.

By: _____ Date: _____
(MFH Servicing official or Leadership designee)

Servicing Strategy (describe servicing strategy):

This assessment should be reviewed periodically as market, ownership and property conditions change frequently.

Reviewed _____ (date & initial) Changes noted: _____

Reviewed _____ (date & initial) Changes noted: _____

Reviewed _____ (date & initial) Changes noted: _____

CHAPTER 7: TRANSFER OF OWNERSHIP
7 CFR 3560.406

7.1 INTRODUCTION

This chapter applies to ownership transfers or sales *[7 CFR 3560.406]* of all or a controlling interest in the project ownership.

During the term of a Rural Development (RD) loan, borrowers may determine that it is in their best interest to transfer a project to another owner. Transfer of any RD project requires RD's prior approval. RD may approve a project transfer [7 CFR 3560.406 (b)] if that project continues to further the objectives of the program, if the transaction is in the best interest of Government and the tenants, and if RD's security is protected.

The Agency's Transfer Application Process (TAP) strives to balance the needs of RD and its customers. This chapter elaborates on Agency policies and defines thresholds to accomplish this goal. The Agency review process relies on accurate information being timely provided from all parties. This chapter outlines the requirements for project transfers and RD's procedures for reviewing and approving those transfers.

The programs covered by this Chapter and authorized by Title V of the Housing Act of 1949 are as follows:

1. Section 515 Rural Rental Housing (RRH) that includes congregate housing, group homes, and Rural Cooperative Housing as defined in §3560.11; and

2. Section 514 Farm Labor Housing (FLH) loans and Section 516 FLH grants for farm-worker housing.

A transferee must meet the eligibility requirements found in HB-1-3560 for the respective loan program type (RRH or FLH) as defined in 7 CFR§3560.55 and §3560.555, including possessing the financial capacity and management experience to successfully own and manage the project. After a transfer is authorized, the property should be financially and operationally sustainable for the remaining term of the RD funding. The property should provide adequate, affordable, decent, safe, and sanitary rental units for very low-, low-, and moderate-income households in rural areas.

To protect RD's security interests in a transfer, the RD underwriter must perform the evaluations outlined in this chapter, taking into account the requirements in Chapters 4 and 5 of HB-1-3560 and considering the impact of the transaction on the tenants. While transfers offer an opportunity to improve the quality of housing through improved maintenance, rehabilitation, and/or better management, if not properly scrutinized, a transfer may increase the risk of loan default or poorer housing conditions.

For purposes of this chapter, the term applicant, transferee, or purchaser is used to refer to the entity that wishes to acquire the property, and borrower, transferor, or seller refers to the current borrower, or the entity transferring the property.

For additional guidance on loan restructuring, see Chapter 11 of this Handbook. For a list of documents to be submitted when requesting RD approval of a transfer, see Attachment 7-B-1, Transfer Application Documents.

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SECTION 1: OVERVIEW

7.2 RD OBJECTIVES AND GUIDING PRINCIPLES

A. Objectives

The key objective of this chapter is to ensure RD Multi-Family Housing (MFH) projects continue to meet long-term program goals stated below by maintaining the affordability of needed rental housing in rural areas. This chapter guides the Loan Servicer/underwriter and the applicant in evaluating transfer requests to ensure the transaction meets the best interests of the Government and the tenants by:

1. Improving and maintaining the long-term physical and financial viability of the property;

2. Improving or maintaining the affordability of the property for RD-eligible tenants and applicants;

3. Completing the transaction in a timely and efficient manner; and

4. Providing a framework for the timely and consistent review of the applicant's submission subject to the applicable program and statutory requirements.

B. Responsibilities

RD relies on the ability of underwriter and loan originator (hereinafter used interchangeably and in those cases they may be designated as a MFH specialist and may further serve as the loan servicer) to complete the basic eligibility determinations concerning both the applicant/borrower and the project to ensure the transaction complies with the respective MFH program authorities described in current RD Handbooks, Code of Federal Regulations (CFR), and statutory authorities. It is RD's responsibility to fully evaluate the proposal and determine when the transaction meets applicable Agency administrative and program requirements. In those cases where the RD underwriter and RD loan servicer are two different individuals, they will jointly be involved in processing the loan transfer and share accountability for successfully completing the transfer by fulfilling the actions described in this Chapter. All transfers and Multi-Family Housing Preservation and Revitalization (MPR) Transactions must be in the best interests of the Government and tenants. These transactions must demonstrate the extended viability/sustainability of the project, the likelihood of full repayment under the terms being offered, and the probability of providing and maintaining quality affordable housing over the long-term.

The Applicant is responsible for providing complete, timely and accurate information and documentation throughout the transfer process to comply with all of the applicable program policies, procedures, and regulations. The Loan Servicer is typically the initial point of contract when a borrower decides to transfer their property and will determine if the transfer meets these objectives subject to the applicable program and statutory requirements. If a transfer does not meet each of these objectives, the Loan Servicer should work with the purchaser and the seller in an effort to resolve issues of concern within the respective program limitations. If the applicant contacts the RD underwriter who is not also the designated loan servicer, the underwriter will inform the servicer and initiate the cooperative effort necessary to comply

with the process described in this Chapter. It is not RD's role to assume any responsibility for the individual business decisions of the borrower or applicant in ultimately determining the course of action they propose. RD does not negotiate the terms of the transaction that are between the buyer and seller.

C. Guiding Principles

Agency underwriters will use the currently available underwriting analysis and guides available at the RD intranet (SharePoint) https://mfhdemoteam.sc.egov.usda.gov/ProgTracking/ default.aspx to document their MFH transfer and MPR decisions. Applicants and borrowers may access these forms through the appropriate RD public websites (http://www.rd.usda.gov/programs-services/multi-family-housing-direct-loans or http://www.rd.usda.gov/programs-services/housing-preservation-revitalization-demonstration-loans-grants).

The key parties to the transfer include the Seller, the Purchaser, the Agency (on behalf of the tenants and as mortgagor), and any third-party funders (other lenders, tax credit agencies, syndicators/investors, etc.). The different parties may have competing or conflicting requirements, needs, and/or objectives and goals that must be recognized and addressed early in the transfer process. RD is not responsible for reconciling conflicts between buyers, seller or any other interested third parties. RD may, within its policy constraints and to protect the interest of the Government and the tenants, offer alternatives for conflict resolution.

An initial or preliminary conceptual meeting with the RD loan servicer, Seller, and Purchaser should be arranged as early in the process as possible to evaluate the potential suitability of the proposed transfer and formulate a mutually acceptable schedule for RD's internal program analysis. This meeting can also identify potential problems or issues early in the process that will need to be addressed before completing the transfer application.

When initiating the conceptual discussion, RD should recommend to applicants the use of RD's optional Preliminary Assessment Tool (PAT) or a suitable preliminary assessment tool alternative offered by other parties, as a starting point to explore the feasibility of the transaction. Using the PAT encourages all interested parties to contact the RD servicing office as early as possible to discuss program requirements and conditions. The PAT contains general instructions, basic underwriting thresholds and pertinent tips for RD customers and staff to assist in preparing and evaluating proposals. The tool incorporates the detailed instructions found in the applicable RD Handbooks, CFR, and other applicable Agency and Departmental regulations. Additional instructions and suggestions are available internally for Agency underwriters through the Agency SharePoint by drilling down to their specific needs.

The RD website (http://www.rd.usda.gov/programs-services/multi-family-housing-direct-loans) includes the PAT along with many of the other tools and additional program information.

Using the information provided by the applicant, Loan Servicers should assess whether the transfer request is consistent with the following guiding principles:

1. There is a continuing need for the property in the community. This should be considered in lieu of prepayment of any existing RD direct loan MFH properties.
2. When the transaction is complete, the property will be in the hands of eligible owners.

3. The transaction will address the immediate and long-term physical needs, including accessibility issues identified in a Transition Plan as well as any other fair housing requirements, and other needs of the property.

4. Any increased post-transaction rents will not displace existing tenants otherwise meeting the RD eligibility requirements for continued occupancy.

5. Post-transaction basic rents will not exceed the lesser of conventional rents for comparable units (CRCU), or the restricted rents as defined below in Paragraph D 1, unless an exception is allowed by the Agency. Low Income Housing Tax Credits (LIHTC) rents are differentiated from CRCU and other restricted rents that may be imposed by the applicant's participation in other funding sources such as HOME or individual State Housing Assistance programs. See Paragraph 7.7 B.

6. Any equity amount recognized by RD will be supported by a market value appraisal meeting RD appraisal acceptability and underwriting requirements.

7. The RD-recognized Seller's Equity will consider the Market Value reflected in the RD-approved appraisal (See Paragraph 7.7 B) less the unpaid balance of the outstanding RD Loans on the Property and any other amortizing debt or other real estate secured liens outstanding at the time of transfer as determined appropriate by the Agency. If any new loans will be placed on the property at the time of transfer that will cause the total real estate debt to exceed the RD security value, an exception may be made for payment of a Seller's Equity on a case-by-case basis with RD Headquarters (HQ) Multi-Family Housing Preservation and Direct Loan Division (PDLD) approval.

8. An Exit Incentive (EI) can be paid to the Seller if the following tests are met:

   a. The present RD-accepted market value appraisal does not indicate any equity exists in the property as is;

   b. All threshold items in Paragraph 7.2 C of this handbook are met;

   c. The total amount paid as EI is available from tax credits or other soft dollars (*RD funds will not be used to fund EI*);

   d. All New Loans are used for eligible RD MFH program purposes; and

   e. All RD Direct Loans together with any RD authorized senior or superior debt, such as may be incurred when the RD direct loans have been subordinated or were previously issued in a junior lien position, post transfer will be less than the Security Value determined by RD.

9. The Seller's Equity and any EI may not both be paid on the same transfer. When an EI is proposed, the RD HQ must review the PAT before RD issues a letter of support for the buyer to obtain tax credits. RD must also review the settlement statement pre- and post-closing to verify the amounts that may ultimately be released at closing, and confirm no more than the amount authorized has been allowed.

10. The PDLD concurs with the equity loan amounts and the new Return-To-Owner (RTO) being authorized when it exceeds the seller's originally authorized return, and coordinates the approval of all waivers for unique and non-recurring circumstances that fall outside of the normal transaction principles, RD HQ approvals, or revitalization-related policy issues.

11. RD encourages the use of third-party resources to secure adequate funding to successfully complete transfers and associated revitalization efforts. Such resources include Low Income Housing Tax Credits (LIHTC), grants, and participating lenders adhering to established RD MFH policies and programs, including Section 538, Guaranteed Rural Rental Housing (GRRH) loans. Lenders include Federally-regulated and insured institutions; State-regulated, chartered, and insured institutions; and other national, state, regional, or local governmental agencies specifically authorized to make loans and/or grants for multi-family housing purposes authorized under the authorities accorded to USDA.

12. Post-transaction basic rents will not exceed the lesser of Conventional Rents for Conventional Units (CRCU) or the restricted rents as defined below in Paragraph C 1, unless an exception is allowable or the rents are 100 percent Project-Based Section 8 with evidence from HUD that the current rents will be carried forward to the new borrower without anticipating any reduction for the remaining term of the Housing Assistance Payments Contract (HAP) contract. See Paragraph 7.7 B.

13. Each transfer will result in computation of a new Return-to-Owner (RTO) for the new owner. Currently the RD RRH program allows the project owner to potentially earn its maximum return based on original loan terms and/or prior modification authorized by the Agency. A new RTO will replace the previous owner's return amount in underwriting and future operating budgets for the longest remaining term of any RD direct MFH loan on the property assumed, incurred or modified as part of the transfer transaction.

    For transfers, the following conditions are considered in determining when any tax-credit equity, projected-deferred developer fees, or other program adjustments will be used to establish the maximum total RTO the new owner may be allowed:

    a. Rehabilitation costs eligible for the RD Section 515 Program purposes less all outstanding and new RD direct loans, together with any RD authorized senior or superior debt such as may be incurred when the RD direct loans have been subordinated or were previously issued in a junior lien position must not exceed the RD-determined Security Value;

    b. The new maximum projected RTO at the time of transfer approval based on the Agency underwriting analysis of Net Operating Income (NOI) less debt service for all loans (without agency debt deferral);

    c. NOI for payment of RTO should provide for the Debt Service Coverage Ratio (DSCR) of 1.15 (when RD-recognized new equity has been provided), and will be based upon the projected post-rehabilitation operating budget with rents not exceeding the lesser of CRCU or, if applicable, the LIHTC rents required by the tax credit application process or any other restricted rents as approved during RD underwriting;

d. The budget must reflect the lesser of the Agency's 5 percent of O&M and historical vacancy plus 2 percent (not to exceed maximum of 10 percent for 16 or more units, or 15 percent for fewer than 16 units), or the industry standard of 5 percent vacancy;

e. There must be a demonstrated ability to repay any deferred developer's fee from the NOI proposed by the applicant at the time of RD underwriting approval for the remaining term of the RD loan using the rents approved for the transaction (See Paragraph 7.2 B); and

f. Each transfer request received by RD will be tracked by Agency underwriters and loan servicers throughout the transfer process in the electronic monitoring and tracking system prescribed by RD HQ.

D. Preliminary Transfer Thresholds

RD adopted the following thresholds and policies for evaluating MFH transfer feasibility to promote consistency in RD underwriting for MFH transfer transactions; and balance the needs of the Agency, customers, and the project to maintain affordability for eligible tenants under the RD programs. The transferee should complete a preliminary assessment using these standards early in the transfer process and discuss it with the RD office responsible for servicing the account. Careful analysis by all parties involved can identify the general issues that will need to be resolved as the transfer application is completed and submitted for formal review. Acceptance of the preliminary analysis by RD does not constitute final approval of any transfer proposal by RD or any other third-party funder. Thresholds RD considers include:

1. Post-Transfer Rents. Post-transfer rents should not exceed the restricted rents of the LIHTC, HOME Program (if applicable), or CRCU (as defined in existing RD regulations), whichever is less. The term Restricted Rents for the purpose of this review will be the rent restrictions of LIHTC, HOME, or other Rent Restricting Program(s) that will be placed on the property upon completion of the transfer. Post-transfer rents on properties with 100 percent Project-Based Section 8 will not exceed the maximum rents authorized under the HAP contract. No rent increase beyond the current basic rents is authorized prior to completion of the planned rehabilitation.

2. Rents Cash Flow in Proposed Operations. Proposed rents must be sufficient to meet all projected expenses including a reasonable allowance for operations and incidentals, and are typically included in the estimated individual operating expense line items. The allowance may be expressed as a percentage of total operating expenses and the resulting planned amount is reflected in the amount shown as net cash on the RD operating budget, Form RD 3560-7, Part I, Line 30. The **minimum** combined allowance for operating expenses and vacancy/bad debt loss must not fall below the equivalent industry standard of 5 percent vacancy loss or the applicable amount specified in #3 below. Net operating income (NOI) must also be sufficient to meet the general industry minimum standard of 1.15 Debt Service Coverage Ratio (DSCR) for all amortizing debt being placed on the property in the initial underwriting review and authorization determination based on the first year of typical operations (rents, O&M, etc.). If third-party lenders

specifically require DSCR in excess of the minimum, such rate should be used for RD underwriting analysis during the initial three operating years. See also # 9 below.

3. Vacancy/Bad Debt Loss. The maximum allowance for vacancy and bad debt is 10 percent (for 16 or more units) and 15 percent (for fewer than 16 units) unless otherwise specified by terms of any supplemental Notice of Solicitation of Applications (NOSA) for which the transaction has been submitted. The minimum allowance is the lesser of the historical average of collected rents for the most recent three years plus 2 percent for bad debt, or the Restricted Rent Program/Lender requirement when specified. If the budgeted allowance is less than historical average plus 2 percent, it will be considered a failure to meet the required threshold unless extenuating circumstances can be supported and documented to RD's satisfaction.

4. Operating Expenses. The minimum amount of operating expenses required per unit is the greater of any specified by the Restricted Rent Program (LIHTC, HOME, etc.) or the third-party lender (if applicable). Generally, project maintenance costs are reduced as a result of the proposed rehab and generate a net reduction. However, any reduction must be reasonable. No more than a 10 percent change or variance in total project post-transfer closing operating expenses based on historical actual averages will be accepted for underwriting without an adequate justification acceptable to RD.

5. General Operating Account Minimum Requirement. The project's General Operating Account (GOA) must be equal to 20 percent total operating expense as underwritten at the time of transfer (excluding the required prorated tax and insurance escrow), and there must not be any outstanding accounts payable exceeding 30 days. If this requirement cannot be achieved through normal project operations as reflected in the underwritten typical year budget, the transfer development budget must include an additional cash deposit to the GOA from non-debt, LIHTC or the applicant's non-project resources. Any additional required deposit (not from normal operations) made by the applicant must be documented to the Agency at the time of transfer. The applicant may recoup the additional required cash deposit to the GOA between the second and seventh year of operation in accordance with HB-2-3560 Chapter 4, Section 1, 4.3.

6. Tenant Protection. RD does not permit the intentional displacement of any existing RD-eligible tenant because of the planned transfer, as long as the tenant remains eligible under RD regulations and the terms of the RD-approved lease. For projects not having full Rental Assistance (RA) and for all non-RA assisted revenue units where the transfer results in a rent increase, the applicant must agree to protect currently eligible tenants affected by the rent increase as long as the tenant resides in the project. All tenant protection costs must be included in the Sources and Uses analysis used in RD underwriting for the full amount needed to fund the initial two-year minimum period following the transfer closing for transfer underwriting purposes. NOTE: This does not limit the total cost of tenant protections the transferee may ultimately be responsible for and is solely to aid in completing the initial transfer underwriting analysis using the PAT. The applicant will establish a specific cash escrow set-aside for this purpose at the time of closing, and is responsible for providing, from non-project resources, any future

tenant subsidy or protections necessary to maintain cash flows if the project does not have or fails to secure 100 percent RA, or other tenant subsidy necessary to meet LIHTC or other third-party tenant rent restrictions.

7. Capital Needs Assessment (CNA) Funding & Reserve Deposit. The minimum requirement per unit is the greater of any Restricted Rent Program (LIHTC, HOME, etc.) requirement, or third-party lender (if applicable) requirement that will be placed on the property upon completion of the transfer. The Reserve Account ending balance forecast must be positive for all 20 years of CNA.

8. New Loans for RD Section 515 Eligible Purposes. Any new loans placed on the property must be for Section 515 RRH-eligible loan purposes only, as defined in 7 CFR 3560.53. The Agency will analyze Federal Government and other assistance provided to any MFH project to establish the maximum loan amount and to assure that the assistance is not more than the minimum necessary to make the housing affordable, decent, safe, and sanitary to potential tenants [7 CFR 3560.63(d)]. Any prohibited uses of loan funds as defined in 7 CFR 3560.54 must be paid from non-debt sources. However, projects using a RD Section 538 Guaranteed Rural Rental Housing (GRRH) loan may be allowed additional debt for purposes eligible under the GRRH regulations.

9. Debt Service Coverage Ratio (DSCR). RD underwriting will include annual trending increases of revenue at 2 percent and expenses at 3 percent (including reserve) for each of the first 15 years. For transfer underwriting and analysis, the project at a minimum must meet an initial DSCR of 1.15 through year 3, and may project subsequent DSCRs of 1.1 in years 4 and 5, and 1.0 for the remaining years solely for the purposes of the RD initial transfer analysis. Third-party lenders may require higher DSCR for their individual underwriting approval requirements. If so, the DSCR required by the third-party lenders should be used in the RD underwriting analysis during the initial 3 operating years.

10. Loan-to-Value. Upon completion of all planned rehabilitation/repairs and approved development, all Debts must be secured within the Prospective As-Improved Security Value as defined by RD in 7 CFR 3560, §3560.63. RD determines Security Value and includes the intangible benefits afforded by the interest credit subsidy of the RD loans, and the benefits of other favorable financing resulting from other Federal, state or local government instrumentality direct or authorized intermediary lending programs such as HOME, Preservation Revolving Loan Fund (PRLF), and Section 538 GRRH loans being made at below-market rates and terms, as permitted by RD regulations. Security Value does not include any non-amortizing or deferred loans or grants regardless of the source; or any federal, state or local LHITC and Historic tax credits or the investment value thereof.

11. Loan Terms of Third-Party Debt. No balloon payment from any third-party debt is allowed prior to the expiration of the minimum RD Loan Term (30 years for RRH transfers and 33 years for FLH transfers), unless the Lender provides a written agreement, acceptable to the Agency, to extend the scheduled maturity on terms that do not require rents above comparable rents for comparable units (CRCU) through the term of the RD loan.

12. Sources and Uses Must Balance. Sufficient funds must be available for all proposed rehabilitation, acquisition costs, and uses to meet the terms of the proposed transaction. Funds must be adequate to address repairs needed immediately, including all health and safety, fair housing and accessibility issues.

13. These may be included as part of the up-front rehabilitation that is being paid by third-party funds. Applicants must be able to fund any projected shortfalls from resources other than the project or project income.

7.3 KEY ANALYTICAL CONCEPTS

In evaluating all the components of a transfer request, the Loan Servicer and the Applicant need to determine if the transfer meets RD's objectives by collecting the information necessary to form the analytical foundation for Agency processing and authorization of the proposal.

Using a preliminary analytical process and the processes provided in this Handbook, the Loan Servicer and underwriter should be able to answer, and document the proposed terms and conditions that will ultimately serve as part of the basis for approving the transfer request. Formal final approval will only be granted upon submission and acceptance of all required documentation in its totality, and the Agency's completion of the internal analytical analysis tools as prescribed. RD underwriting considers the applicant's capacity to pay the loan, provide sufficient capital to meet the transfer requirements, demonstrate the character necessary to meet operational ownership and management requirements, provide and maintain the project collateral, and meet the anticipated conditions necessary to close the transaction and complete any required construction needs.

Applicants must have both sufficient experience and the financial capacity for the development and ownership of the proposed property transfer. Applicants are required to submit appropriate documentation to assist RD underwriters and approval officials evaluate and establish reasonable expectations to assure the terms and conditions of the respective assistance can be followed and carried in meeting the purposes intended. Applicants, including any affiliated entities sharing an identity of interest with the applicant (i.e., management, contractors, etc.), must be in compliance on all or any other Agency-financed projects that they may own or provide decision-making and operational authority over. Any noncompliance issues must have been cured or be in compliance with a workout agreement approved by the RD for at least 6 consecutive months as of the date that the initial application is due unless an exception is authorized by HQ.

Newly formed applicant entities, may not have the ability to demonstrate creditworthiness and financial capacity to meet basic program eligibility determinations. RD underwriters and approval officials may then look at the individual key principals the applicant identifies with the organization, decision making and operational authority controlling the applicant organization or entity as necessary.

All Principals will be identified and analyzed with respect to their capacity of credit, experience and financial histories. Regulatory standards established in the Code of Federal Regulations (24 C.F.R.) Part 200 Subpart H Participation and Compliance requirements determine the appropriate review of previous participation in multifamily insured programs based upon their past performance as well as other aspects of their records. 42 U.S. Code § 1441

These considerations are generally categorized in each of the following areas:

A. Eligibility

The Loan Servicer must establish applicant eligibility in the same manner as during the loan origination process, including an in depth evaluation of the applicant and the individual principals of the applicant entity and any sub-entity. These requirements set the basic standards for all borrowers including:

1. Analysis of financial capacity (such as balance sheets for all principals, including the individual key principals involved in the organization, decision-making and operational authority that may control the applicant and any sub-applicant entities involved);

2. Credit worthiness of all principals (such as credit reports, contingent obligations, payment history, etc.);

3. Experience (such as previous participation certificates, CAIVRs, SAMs, etc.);

4. Incidence of ongoing or chronic adverse actions in other projects or business transactions;

5. Satisfactory explanation of all insufficient, incomplete, or negative factors identified in the eligibility review; and,

6. Simultaneously, completion of the planned transfer must sufficiently determine a continued need for affordable housing with adequate demand for continued use of the project by tenants meeting the RD eligibility requirements. When necessary to establish the continued need for a property, the loan underwriter may require additional documentation acceptable to RD that there is an actual need for the project considering any other existing or planned affordable housing in the market area.

Note: RD needs and LIHTC needs may not always serve the same market, and may have different demands and concerns as affordable housing. Reviewers must ensure that RD funds will be used in accordance with the program's statutory requirements. The project's eligibility as documented during the loan transfer process requires the loan servicer to confirm that the project will remain eligible after the transfer.

B. Feasibility

The Loan Servicer must determine if the proposed transfer is feasible. This feasibility determination requires an in-depth financial analysis of project operations, sources and uses of funds, and potential for future success. See Paragraph 7.23.

C. Improve or Maintain Risk Levels

The Loan Servicer must consider any financial and operational risk factors in the transfer that conflict with the respective MFH loan program origination and servicing principles.

7.4 DEFINITIONS

As used in this chapter, the following definitions apply to ownership transfers or sales of all or a controlling interest in the project ownership as addressed in 7 CFR 3560.406.

A. Transfer

A transfer occurs whenever there is a change in a project's ownership that:

1. Places title to the property in the hands of a new owner;

2. A new owner assumes all liability for the debt; or

3. There is a change in the legal entity owning the project, such that the transferee is commonly considered a distinct and separate legal entity from the original borrower (including, without limitation, a change resulting in a new Internal Revenue Service Tax ID number), or 100 percent of a borrower entity's ownership interests will be transferred within a 12-month period (7 CFR 3560.405 (a)).

Changes in membership within the ownership entity such as the admission of non-controlling members do not constitute a transfer, but do require RD involvement as discussed in Chapter 5 of this Handbook. A change in ownership due to the death or involuntary incapacitation of a joint owner, beneficiary of a trust owner, or in membership within the ownership entity such as a general partner interest being sold or bequeathed may not constitute a transfer as long as the incoming member meets RD eligibility requirements, and the State Director requests authorization on a case-by-case basis from RD HQ. The change must be appropriately documented without any change in the currently authorized RTO for the project; additional debt, liability, or encumbrance of the RD loan security; or change of project type or purpose. RD HQ will review the status of the project's current physical and operational condition and may waive any other provision of this chapter for these cases only when the RD approval official determines that such ownership change is in the best interests of the government and the tenants. Borrowers may request to transfer their project to another entity in which the members are involved in both the transferring and the assuming entities, provided the new entity be legally organized, discloses all Identity-of-Interest situations, and meets applicable RD eligibility requirements. (See also Paragraphs 7.5 and 7.16 E.)

A proposed transfer to an IRS-approved intermediary for purposes of a Section 1031 exchange is a transfer for purposes of this chapter.

If the transfer being proposed is part of an Agency incentive offer as described in Chapter 15 of this Handbook as part of a prepayment incentive offer, a complete transfer application package must be submitted as described herein unless all of the following conditions are being met:

1. No additional sources of funding are being brought into the transaction and the new owner does not request any RTO consideration other than those approved as part of the Agency incentive offer;

2. There are also no existing physical, operational or financial needs, or deficiencies that must be addressed to ensure the continued success of the project in meeting the MFH program mission; and

3. The State Office has consulted with PDLD and determines an exception to this Chapter is in the best interests of the government and the tenants.

B. Non-Program Transfers [7 CFR 3560.406 (l)]

This chapter does not apply to non-program transfers, as discussed in Chapter 5 of this Handbook. However, such a transfer or sale will only be considered when it is determined by RD to be in the best interest of the Federal Government and the objectives of the original loan can no longer be met.

C. Underwriting

Underwriting as used in this Chapter refers to the process of determining the financial and operational feasibility of the project, applicant eligibility, environmental compliance, and fair housing compliance of a proposed transaction based on the specific requirements specified in this Chapter, Agency Handbooks and guidance, and/or applicable Notice of Funding Availability (NOFA), and/or Notice of Solicitation of Applications (NOSA). The specific aspects of the transaction process such as determining applicant eligibility, assessing environmental compliance, or evaluating fair housing compliance are more fully addressed in the current RD Handbooks and Regulations, and supplemented from time to time with other published guidance available on the RD website.

D. Related Definitions

The following are definitions for certain related terms used in this Chapter.

- Acceptable Appraisal. The Agency will use appraisals to determine whether the security offered by an applicant or borrower is adequate to secure a loan, or determine appropriate servicing or preservation decisions. Appraisals used for Agency decision-making must be current unless the Agency and the applicant or borrower mutually agree to the use of an appraisal that is not current. A current appraisal is an appraisal with an effective date that is not more than one year old per §3560.752. All MFH appraisals that were not written by an Agency appraiser will be reviewed by an Agency appraiser who will write and file a technical review report that complies with the Uniform Standards of Professional Appraisal Practice (USPAP) Standard 3, and Agency requirements as prescribed in Handbook 1, 3560.

- Corporation. A corporation is any entity that has filed Articles of Incorporation in one of the 50 States, the District of Columbia, or the various territories of the United States including American Samoa, Federated States of Micronesia, Guam, Midway Islands, Northern Mariana Islands, Puerto Rico, Republic of Palau, Republic of the Marshall Islands, or the U.S. Virgin Islands. Corporations include for both profit and non-profit entities.

- Debt Deferral. A deferral of an existing RD debt. Agency debt deferral is subject to appropriations and may be offered to a transfer applicant selected for participation under the terms of an outstanding MPR Program NOSA. This deferral includes the deferment of the monthly principal and interest payments with a balloon payment at the end of the deferral period. A debt deferral agreement will be required for the debts assumed eligible for deferral at the time of closing.

- Equity. Equity is the amount of the RD-accepted market value that exceeds the total of all currently outstanding RD direct loans and any other parity, or senior debts approved by RD, or to which RD has an outstanding subordination.

- Exit Incentive. An Exit Incentive is an amount of incentive compensation determined by RD that may be paid to the selling borrower to facilitate transferring the property to an eligible buyer when there is no equity as determined by the RD-accepted market value used in the underwriting analysis. See also 7.2 C 8 for mandatory applicable Guiding Principles.

- Identity-of-Interest. A relationship between applicants, borrowers, grantees, management agents, or suppliers of materials or services described under, but not limited to, any of the following conditions (7CFR 3560.102 (g)):
  1. There is a financial interest between the applicant, borrower, grantee and a management agent or the supplying entity;
  2. One or more of the officers, directors, stockholders, or partners of the applicant, borrower, or management agent is also an officer, director, stockholder, or partner of the supplying entity;
  3. An officer, director, stockholder, or partner of the applicant, borrower, or management agent has a 10 percent or more financial interest in the supplying entity;
  4. The supplying entity has or will advance funds to an applicant, borrower, or management agent;
  5. The supplying entity provides or pays on behalf of the applicant, borrower, or management agent the cost of any materials or services in connection with obligations under the management plan or management agreement;
  6. The supplying entity takes stock or a financial interest in the applicant, borrower, or management agent as part of the consideration to be paid them; or
  7. There exists or come into being any side deals, agreements, contracts or understandings entered into thereby altering, amending, or canceling any of the management plan, management agreement documents, organization documents, or other legal documents pertaining to the property by the Agency. See 7 CFR 3560.11.

- Key Principle. A key principle is the party or parties involved in the organization, decision-making and operational authority that may control the applicant and any sub-applicant entities involved and includes the actual individual(s) of any sub-entity (i.e., other organizations, partnerships, etc.) which cannot demonstrate financial ability, creditworthiness or experience in the name of the transferee or identified sub-entity, to mitigate any creditworthiness, financial capacity and/or experience in the transferee's own right or may not have equal strength with respect to all of the eligibility criteria.

- Non-Equity Compensation. Non-equity compensation is a payment to the Seller, from the buyer when no equity exists in the property. This payment should come from non-loan funds and must not affect project rents at any time during the term of the RD direct loan or any modification thereof. See Paragraph 7.8 D.

- Portfolio Transaction. A portfolio transfer transaction is a transaction involving multiple projects within one State being acquired by a single purchaser.

- RD Funds. RD funds include, for example, a subsequent Section 515 loan or a Section 538 loan.

- Security Value. The security value is the property value established by RD which is the lesser of the total development cost [exclusive of any developer's fee as provided by §3560.63 (d)(2)]or the housing project's security value as determined by an appraisal conducted in accordance with Subpart P of this part, minus any prior or parity liens on the housing project.

- Third-Party Funding. Third-party funding involves sources of funds other than RD funds and the purchaser's personal funds. The third-party funding is provided by other recognized third-party funding sources as described in 7 CFR 3565.102. Tax credit equity, HOME funds, and Community Development Block Grant (CDBG) funds are a few examples of third-party funding.

- Transferee. The transferee is the person or entity acquiring the RD-financed property. In this Chapter, the term is used interchangeably with the terms purchaser or buyer.

- Transferor. The transferor is the person or entity selling the RD-financed property. In this chapter, the term is used interchangeably with the terms borrower or seller.

7.5 CONDITIONS FOR TRANSFERS

A. Conditions When a Transfer May Occur

Transfer applications, documenting in writing one of more of the following conditions, will generally be considered for further processing:

- The transfer facilitates the physical and financial revitalization of the property;

- The transfer is needed to remove a hardship to the current borrower that was caused by circumstances beyond the borrower's control (circumstances constituting 'hardship' are discussed below);

- The transfer is a result of a court order requiring the division of security property;

- The transfer is being requested as an alternative to prepayment;

- The transfer will do no harm to RD or the current and future eligible tenants; or

- Other circumstances exist which make the transfer in the best interest of the Government.

Typically, RD will not consider a transfer if the borrower has owned the property for fewer than five years. However, if the State Director determines that a hardship is present, the transfer may occur without prejudice to the borrower.

Examples of hardship include, but are not limited to:

- Serious Illness or death of the borrower;

- Serious financial difficulties beyond a borrower's control that cause the borrower to shut down the business operation; or

- Inability of the borrower to obtain necessary credit on terms that would facilitate refinancing the debt and allow for operation of the project at affordable rents, if the outstanding loans are eligible for prepayment.

NOTE: RD will pursue appropriate administrative and/or civil remedies with respect to transfers that occur without prior RD approval. RD considers these transfers to be unauthorized sales. An unauthorized sale also constitutes a default on the RD loan [7 CFR 3560, subpart J].

B. Types of Transfers

There are many different characteristics and circumstances that may be present in a transfer. All transfer applications, unless otherwise specifically exempted in RD Regulations, will comply with the eligibility requirements based on the type of project and the nature of the transferee for the respective RD MFH program. These requirements are more fully described in the applicable sections of HB 1-3560.

If any project being transferred is currently subject to an RD-approved Workout Plan and an Identity-of-Interest as defined by RD regulations, the transferee must be in compliance with the workout plan in place and on schedule. In addition, the purchaser (transferee) must be in compliance with RD regulations or have a RD-approved workout plan in place and on schedule with respect to any other RD properties owned.

For a list of documents to be submitted when requesting RD approval of a transfer, see Attachment 7-B-1, Transfer Application Documents.

C. Coordination between RD Headquarters and State Offices

Some transfers raise complex issues and require close coordination between the borrower, the purchaser, and the Agency. However, simple transfers can be quickly and easily addressed between the borrower, purchaser, and the Agency. For example, a simple transfer of title to a purchaser with proven capacity, or transfer of a project without regulatory compliance issues that does not require a rent increase or new funding from RD, would proceed rapidly from application to approval to closing under the authority of the Loan Servicer, with a final approval from the State Director as permitted by this Chapter up to the amounts specified in RD Instruction 1901-A. Compliance issues could include issues with the physical or financial condition of the property, poor management, or noncompliance with civil rights and accessibility laws.

In transfers where the State Director's approval limit is exceeded or requires additional concurrence (e.g. where a rent increase or a policy waiver is necessary) and authorization by RD HQ, the State Director will submit the request together with their recommendation, appropriate documentation and sufficient underwriting documentation as specified by Agency policy and procedures to MPDL prior to approval. Upon completion of the HQ review, the State Director will be provided with the appropriate concurrence and guidance memorandum authorizing the terms/conditions for the continued final processing, formal approval or denial of the transaction at the State Director level.

MFH Transfer and MPR underwriting is used to authorize the transaction and approve the terms leading to approval. Often underwriting transactions becomes intertwined among the aspects and requirements crossing multiple interdisciplinary divisions within the Rural Housing Service (RHS). To minimize potential confusion for borrowers and applicants, and to ensure consistent application of pertinent RHS requirements, underwriters must coordinate loan making (direct and guaranteed when applicable) and servicing expectations when evaluating the proposed MFH transaction. Responsibility for successfully completing any MFH underwriting requires ongoing coordination of Preservation and Direct Loan Division (PDLD) loan making; Guaranteed Loan Division (GLD) guaranteed loan participation, and Portfolio Management Division (PMD) loan servicing efforts.

7.6 PROCESSING A TRANSFER REQUEST

The Loan Servicer will coordinate the review process to meet the processing guidelines by completing all of the steps below to move through the process of receiving a transfer application, evaluating the transaction, and closing the transfer. These steps are listed in Exhibit 7-1, Key Steps to Conduct a Transfer, and may be used to as a preliminary checklist for discussion with the applicant.

Exhibit 7-1
Key Steps to Conduct a Transfer

Step	Action
1	Applicant completes Preliminary Analysis and schedules Initial Consultation with designated RD Loan Servicer
2	Initial Consultation with Applicant, Seller, and other key participants having significant roles in the transaction such as other lenders, grantors, etc.
3	Application Provided by Applicant preliminary review starts; RD completeness review of application completed within 14 business days. Incomplete applications will be returned to applicant and processing does not begin until the complete application is received.
4	Request Underwriter Review - Detailed review by Underwriter commences and processing starts. Status updates provided to applicant within every 30 business days the application is in process at RD. If additional clarification or other materials are needed, the application will be considered incomplete and it well be returned to the applicant for resolution. Unsatisfactory submissions will be returned as incomplete or rejected.
5	Submit application to RD HQ for Authorization. Upon completion of the Underwriter's detailed review, the application will be submitted to HQ. Within 10 business days, HQ determines if the transfer may be authorized. If the transfer requires additional information from the applicant, the application is returned to the state office for continued processing.
6	Agency Decision - Communicate to Applicant within 45 business days (single property) / 75 days (multiple properties) - Processing for approval is limited to the periods shown and does not include delays beyond the underwriter's immediate control.
7	Prepare Approval Conditions for Signature of Applicant - Within 15 business days of Agency Decision written approval conditions sent to applicant for acceptance
8	Coordinate Closing Instructions and OGC Loan Document Approval.
9	Schedule and Close Transfer.
10	Complete post-closing review and verification that approval and closing conditions have been met.

A. Key Steps to Process a Transfer

1. Applicant completes Preliminary Analysis and schedules Initial Consultation with designated RD Loan Servicer.

   The applicant will complete the preliminary feasibility analysis and submit it to the Loan servicer or other designated State Office reviewer for the Agency's consideration within five business days of its receipt. If this preliminary

feasibility analysis has used the RD Preliminary Assessment Tool (PAT) and the analysis appears to meet Agency thresholds or provides sufficient explanation to indicate preliminary feasibility, an initial consultation will be scheduled with the applicant, seller, and other participants as appropriate.

2. Initial Consultation with Applicant and Interested Parties.

The initial consultation will establish a common understanding of the transfer process, timelines, terms, limitations, responsibilities, and conditions all parties will be required to agree to that will affect the transfer being proposed. In addition to the specific transfer requirements contained in the respective MFH program authorities, additional discussion will further clarify the minimum acceptable requirements for each of the following topics. Items to be discussed include:

a. Identification of the transfer applicant and its principal entities or individuals

- Type of entity must be legally recognized and authorized to conduct business operations for the proposed transaction under applicable state governing laws, rules, regulations, licensing, etc.;
- List of all individual sponsors, registered agents, key principals, controlling members, and any board members and officers based on the type of entity; and
- Identification of the applicant's principal ownership interests and all Identity-of-Interests among participants including buyer, seller, contractor, management, lender, etc.

b. Eligibility requirements (7CFR 3560.55), including

- Creditworthiness of the sponsors, the borrower entity if formed, and its principals should be verified with an appropriate current comprehensive commercial credit report,
- Applicant's experience record must be documented for the principals, controlling members, officers, etc.
- Project limitations and restrictions to include discussion of any outstanding or potential use restrictions that currently exist or will be imposed based on the terms, financing, or other participants in the proposed transaction; this includes existing LIHTC and any other restrictions outstanding on the property.
- Financing plans, participants, roles, amounts, terms, and conditions necessary to secure funding will be discussed.
- See HB1-3560, Chapters 2 and 4 for additional specific program eligibility requirements.

c. Site control

- Applicant must have enforceable site control throughout the transfer process. Adequately describe real estate and any other personal property, chattels, equipment, movable property and business property that is not real property, money or investments belonging to the project being

acquired in compliance with state laws and practices. Applicant should consult with his or her own appropriate legal counsel as necessary to ensure adequacy and proper enforceability of the purchase agreement.

- Price and terms must be clearly defined
- See also Handbook 1-3560, Chapter 7 for additional eligibility requirements.

d. Appraisal requirements

- Only appraisals acceptable to RD will be used for transfer underwriting. Third-party appraisals may not be sufficient for RD use unless they comply with Agency requirements in form, timeliness, and sufficiency. See HB1-3560, Chapter 7.
- Applicants should discuss RD appraisal requirements including the statement of work prior to engaging an appraiser.
- Appraisals prepared for any other participants or lenders may not satisfy RD Statement of Work requirements, and may require the applicant to incur additional appraisal costs.

e. Capital Needs Assessment requirements

- RD requires a current CNA meeting Agency requirement for all transfers.
- CNA guidelines are available on the RD public website at: http://www.rd.usda.gov/programs-services/multi-family-housing-direct-loans

f. Scope of Work

- All planned repairs, replacements, and other development must comply with RD requirements as required in RD Instruction 1924-A, regardless of funding source.
- To coordinate construction and satisfy transfer requirements, applicants, their contractors, and any technical staff should discuss the details of the Scope of Work being planned to ensure the requirements of each participating funder is addressed.

g. Applicant's Feasibility Analysis

- Verify that all parties to the transaction have been identified, and that lines of communication can be extended to ensure that full disclosure of the planned transaction will be forthcoming.
- Remind the applicant that it is his or her responsibility to provide adequate and accurate information in a timely manner to move forward with the transfer request.
- Be available to discuss deficiencies in the application, and demonstrate a willingness to consider appropriate compromise with the participants and lenders when evaluating the best interests of the Government and the tenants.

- Remember a transfer request is a business and financial decision being made by the buyer and seller to request RD permission to effect the transfer under the rules, regulations, and policies that have been prescribed.

h. Provide a general Letter of Support based upon agreements being proposed.

- The applicant's delivery of a completed self-analysis of their transfer proposal using the PAT, does not guarantee final approval of the transfer request.
- However, this analysis should present a reasonable approximation that a final transfer application adhering to the fundamental assumptions that have been presented would, upon the completion of the full transfer process, likely lead to an RD transfer authorization subject to the regulations then in effect.

3. Application Provided by Applicant.

The Loan Servicer will record all transfer applications into the MFH Transfer Tracking System in SharePoint at: https://mfh.usda.net/Admin/Lists/Transfer%20Tracking/AllItems.aspx and annotate Multi-family Information System (MFIS) with an appropriate servicing action as designated by RD HQ upon receipt from the applicant. The Servicing Office receiving the application will establish a transferee account in MFH records based on the information provided by entering the M1AA, M5A and M5B into AMAS to establish the transferee.

All transfer applications received will be reviewed within 14 business days of receipt for completeness, and provide appropriate notification to applicant. Applicants established in the tracking and servicing monitoring system will also be updated to include appropriate comments and follow up actions so long as the transfer application remains active. If the application is incomplete, it will immediately be returned to applicant. However, minor errors or administrative omissions should not prevent determination of application's eligibility or feasibility.

Internal Agency reviews will commence upon determining the application is sufficiently complete to begin processing the PAT. To ensure that the processing guideline goals can be met, the Loan Servicer will typically schedule simultaneous reviews by one or more staff members:

- The State Office review of the CNA;
- The required on-site inspection, and completion of the analytical template; and
- Coordinate all other requests for reviews.

The goal is to complete the full evaluation of the complete application(s) is:

- 45 business days if one property is involved, or
- 75 business days if two or more properties are involved.

The complete application submitted by the applicant will be evaluated based on the application materials provided by the applicant and a review of Agency records, including AMAS and MFIS information for the project being

transferred, the applicant, and the other key principals involved in the transaction. The Loan Servicer must demonstrate in the case file that the transfer application sufficiently addresses the issues of eligibility, compliance, feasibility, and risk as discussed in this chapter in each of the following broad categories.

a. Evaluate the Transferee

Transferees must meet the basic applicant eligibility for the respective loan program (RRH or FLH) currently financing the property. These requirements are presented in more detail in HB 1-3560.

- Analyze creditworthiness of the sponsors, the borrower entity if formed, and its principles.
- Analyze program organization requirements for all applicant entities' ability to meet the organizational formation and operating requirements/restrictions within the state in which the project is located, including representations regarding felony conviction and tax delinquency status for a corporation. Use Form AD-3030, for corporations to verify the corporation does not that have felony convictions within the past 24 months, or have unpaid Federal tax delinquencies.
- Require current financial statements from all entities and principals.
- Analyze the applicant's experience record and resumes from principals.
- Review *Form RD 1944-37,* Previous Participation Certification(s) for all principles.
- Order CAIVRS and SAM.
- Request initial Organizational Document review from OGC.

b. Evaluate the Property

Each property being transferred must be evaluated to determine if, upon closing the transaction, the property will continue to meet the respective loan program purposes, including:

- Evidence of continuing project need;
- Rents and occupancy; CRCU and other rent limitations;
- Property feasibility/adequacy of repair and rehabilitation, and method of construction; and,
- Reasonableness of costs for planned development.

c. Evaluate the Project

The transfer further encompasses a number of other Agency requirements and conditions that become the complete project. This includes the following items necessary to satisfy the commitments imposed by other applicable Federal laws and regulations.

- Environmental Review (typically categorical exclusion);
- Evidence of third-party funding availability, including rates and terms;
- Coordination with other third-party participants in place;
- Request of Reviews by PSS and OGC; and,
- Civil Rights Impact Analysis.

d. Compile all information necessary to complete underwriting analytical analysis using the RD PAT.

e. Notify the applicant of any deficiencies, and require corrections before considering the application to be complete for processing. Applications not corrected within 30 days will be withdrawn and returned to the applicant for resubmission when the outstanding issues are resolved.

PAT contains general instructions, basic underwriting thresholds, and pertinent tips for RD customers and staff to assist in preparing and evaluating proposals. The tool supplements the more detailed instructions found in the applicable RD Handbooks, CFR, and regulations. Additional instructions and suggestions are available internally for Agency underwriters through the Agency SharePoint.

4. Request Underwriter Review.

MFH Transfer underwriting is used to authorize the transaction and the future servicing requirements upon closing. Responsibility for successfully completing any MFH underwriting relies on the ongoing coordination of loan making and loan servicing efforts. The underwriting review relies on the expertise of the RD staff currently servicing the loan, and the invaluable input and insights each can offer on the project, the market, the borrower, and the applicant. An on-going RD team effort involving both the underwriting staff and servicing is required to deliver a project that will be sustainable for eligible tenants over the life of the RD loan.

The underwriter must have the ability to complete the basic eligibility determinations concerning both the applicant/borrower and the project to

ensure the transaction complies with the respective MFH program authorities described in current RD Handbooks, CFR, and statutory authorities.

The Underwriter will import the CNA, appraisal information, and all other third-party sources and uses into the PAT (available at the RD intranet SharePoint https://mfh.usda.net/default.aspx) to document the MFH transfer.

All transfers, including those utilizing any MPR tools, must be in the best interests of the Government and tenants. These transactions must demonstrate the extended viability and sustainability of the project, the likelihood of full repayment under the terms being offered, and the potential to succeed in providing and maintaining quality housing over the long-term. It is not the Agency's role to assume any responsibility for the individual business decisions of the borrower or applicant in ultimately determining the course of action they propose.

Each component in every transaction will be evaluated and analyzed on its individual merits. Common sense consideration of pertinent present and historical conditions, as well as recognition of justifiable future impacts, must all be used to judge the project's potential to succeed over the term of financing being proposed.

Key considerations may include questions such as:

- Is the project needed?
- Is the applicant eligible?
- Is the project eligible? Is there a present and continuing need for the project in its market area?
- Is the project economically feasible? Does the transaction cash flow use a reasonable operating budget comparable to other similar affordable properties in the market area?
- Will the project be and remain affordable upon completion of the transaction?
- Are the RD-eligible project construction and operating costs reasonable?
- Are the Agency's interests secure?
- Is the transaction in the best interests of the Government and the tenants?
- Does the proposal offer adequate property and asset management to meet RD requirements into the future based on the information presented?

The terms and conditions of the transaction presented by the applicant must reasonably address the issues that determine the potential for success. This includes substantiating any future tenant subsidies that may be necessary to ensure success of planned operations. All parties need to recognize that the transactional costs and fees proposed may adversely limit the amount of funds needed for repairs, replacements, and improvements and become detrimental to

the Agency transfer requirements and thresholds. Ultimately, any allowable costs will pass to the tenants through rent increases, but tenant subsidies such as Rental Assistance (RA) are not guaranteed beyond their current expiration. Tenants who do not receive RA will be impacted directly by any rent increase, which they may not be able to afford.

Agency underwriters must use the most current underwriting tools and guidance such as those in the PAT available at the RD intranet (SharePoint) https://mfh.usda.net/ProgTracking/default.aspx to document the MFH transfer and MPR decisions.

Applicants and borrowers may access these forms through the appropriate RD public websites (http://www.rd.usda.gov/programs-services/multi-family-housing-direct-loans or http://www.rd.usda.gov/programs-services/housing-preservation-revitalization-demonstration-loans-grants).

At this point, the Underwriter will complete the final underwriting analysis to determine full feasibility and terms for the transaction. The Underwriter will normally conclude this analysis within 45 days (for a single property) or 75 days (for multiple properties) from the date that the complete application(s) has (have) been received. The Underwriter will evaluate the application for overall compliance, risk to the Agency, and impact to the tenants.

If the terms of the transfer do not meet Agency requirements, the Underwriter will communicate to the Loan Servicer that the assumptions used in the application are not reasonable and the application will be rejected. The Loan Servicer will communicate to the applicant the Agency's decision and follow the applicable requirements of RD Instruction 2033-A for file retention.

If the terms of the transfer meet the Agency's requirements, the Underwriter will communicate to the Loan Servicer that the assumptions used in the application are reasonable and the application will proceed. The Loan Servicer will communicate to the applicant the Agency's decision to continue processing the transfer application.

The Loan Servicer will provide the applicant with a status update within 30 business days of receipt of the application.

5. Submit to RD HQ for Concurrence and Authorization for approval by the State Director.

When the underwriter has completed the underwriting analysis using the information and materials supplied by the Loan Servicer, the transfer underwriting analytical tool or PAT, and appropriate supporting information, the application will be signed by the State Director and submitted for authorization by the RD HQ Office. The submission will include the underwriter's recommended conditions and estimated closing date.

6. Agency Decision.

RD HQ will review the underwriter's package and recommendations. Upon acceptance of the information, a letter authorizing the State Director to formally approve the specific transfer pursuant to program regulations, funding, etc. will be provided to the State Director within 15 business days.

7. Prepare Approval Conditions for Signature of Applicant.

Within 15 business days of the date the authorization is signed by the RD HQ Office designate, the State Director will notify the applicant of the specific approval conditions. The Applicant will signify acceptance of approval conditions by endorsing and returning the duplicate set of the State Director's approval letter.

8. Coordinate Closing Instructions and Loan Document Approval from OGC.

The Loan Servicer will coordinate closing instructions and any necessary loan document approval with OGC and the closing agent within the closing timeframe authorized in the transfer approval letter. The Loan Servicer will also establish the new buyer's account in AMAS and MFIS within the timeframes established in the accounting system, and input necessary budgets, worksheets, etc. as required by the AMAS tips.

9. Schedule and Close Transfer.

The designated closing agent will coordinate the delivery of the RD closing documents, complete the scheduled closing as directed and deliver the necessary documentation to RD to properly evidence closing, recording, etc.

10. Complete post-closing review and verification.

The Loan Servicer will finalize the buyer's account in AMAS and MFIS to ensure the transaction complies with all of the applicable loan and operational conditions authorized for the transaction.

B. Procedure for Incomplete Transfer Requests

If at any point, the Loan Servicer determines that additional information is required from the purchaser in order to complete processing, the Loan Servicer will notify the purchaser in writing as follows:

- Explain the deficiency and describe what additional information is needed and the timeframe for submitting the additional information.
- RD’s timeframe for processing the transfer request may be extended for not more than 30 business days beginning with the date of the notice to the applicant.
- If the information is not submitted within the extension period, RD will consider the transfer request to have been withdrawn and return the application.

C. Denial of Transfer Request

The Loan Servicer may issue a denial of the transfer request at any point during the process. Appeal rights should be given for denials as submitted. Grounds for denial include, without limitation:

1. Eligibility issues as determined by the specific program regulations for RRH and LH, and this Handbook:

   - Ineligible transferee; or
   - Ineligible project.

2. Feasibility issues, such as:

   - CNA does not meet RD requirements;
   - The proposed transfer does not address the property's physical needs;
   - The appraisal submitted does not meet RD requirements;
   - The proposed transfer does not address all compliance issues;
   - Proposed Operations and Maintenance (O&M) expenses are not adequate for the project's long-term viability;
   - Proposed net operating income (NOI) is not sufficient to meet the general industry standard of 1.15 debt service coverage ratio (DSCR) through year three for all amortizing debt that is being placed on the property with the proposed transfer transaction;
   - Proposed rents exceed the lesser of CRCU or restricted rents unless an exception is allowable under the regulation; or
   - Proposed rents are not adequate to support the property's long-term viability.

3. Financial issues, such as:

   - The proposed transfer would not bring all loan accounts current;
   - The taxes and insurance account will not be adequately funded, with all outstanding bills paid; and
   - The security deposit account will not be fully funded.

4. The proposed management is not acceptable as required in 7 CFR 3560.102 and further described in RD HB 2-3560.

5. The proposed transfer will not correct all outstanding findings sufficiently to allow re-classification of the property to an acceptable level. In some cases

the agreement to transfer ownership may be considered part of an acceptable workout plan for MFIS entry together when any further servicing actions determined appropriate to meet the best interests of the government and the tenants. Some transfer requests may be unacceptable as submitted but could be acceptable with specific modifications. At any point during the process, the Loan Servicer may inform the applicant accordingly, using the procedure in paragraph 7.6 B. Incomplete transfer requests not corrected within 30 business days will be withdrawn or rejected, as appropriate.

6. Proposed sales price and/or equity payout exceeds the allowable maximum, but the transfer request would be acceptable if the sales price and/or equity payout were reduced, or the buyer demonstrates the ability to provide sufficient other resources not otherwise impacting proposed project rents, RTO or eligible cash flows, security or other RD requirements. See Section 7.4 definition for Non-Equity Compensation in this Handbook. Applications without sufficient resources to fully fund all proposed project costs, needs and uses will be rejected for lack of financial feasibility. All sources and uses must balance.

7. Proposed rents exceed the lesser of CRCU or rent restricted rents, but the transfer request would be acceptable when the applicant provides sufficient justification and RD agrees with the rents necessary to operate the property.

8. Proposed RTO exceeds the allowable maximum, but the transfer request would be acceptable when the proposed RTO is reduced.

9. The proposed management and/or management documents are not acceptable under the requirements of 7 CFR 3560.102, but the transfer request would be acceptable when acceptable management/management documents are substituted. See Paragraph 7.18 for a further explanation of what is acceptable.

10. The transfer request would be acceptable when an acceptable tenant protection plan is included. See Paragraph 7.27 for a further explanation of what is acceptable.

D. Payments Received While Transfer Pending

During the period in which a transfer is pending in the Field Office, Deputy Chief, National Financial and Accounting Operations Center (NFAOCS) will continue to apply any payments received to the transferor's account. Such payments include any down payments made in connection with the transfer for reducing the amount of the debt to be assumed.

- Identification. Project Worksheets must be submitted by the transferor at least seven days prior to transfer closing. Project Worksheets must reflect the prior month's activity that will be credited to the transferor's account. This will ensure the transferor receives the RA check and has time to deposit it into the project account. Refer to MFIS Tip #2 (January 2008, revised August 2012) for additional guidance on processing transfers in AMAS.

- Payment. An interest-only installment payment may be required from the transferor. Refer to the AMAS Manual for further guidance on when this would be collected and how it is to be processed. Refer to MFIS Tip #2 (March 2008) for additional guidance on processing transfers in AMAS.

E. Uncompleted Transfer

If for any reason a transfer will not be completed after approval, the Loan Servicer will immediately notify the State Office Loan Underwriter of the reason with a request to withdraw the application and resume normal servicing of the project account.

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SECTION 2: POLICY CONSIDERATIONS

7.7 RENTS

A. Budget/Reasonable Rents [7 CFR 3560.406 (d)(2)]

The Loan Servicer must review the budget submitted by the transferee to determine whether the budget provides for reasonable rents that the persons eligible for the units in question can afford. If the transferee is proposing a rent increase, the submission from the transferee should include information on market rents for comparable units in the area, and documentation that the units will be marketable at the proposed higher rents. In addition, the proposed basic rents for the project upon completion of the transfer must be the lesser of CRCU or the restricted rents. This standard is a benchmark meant to maintain the affordability of program units and avoid increasing RD Rents above local conventional rents, a situation which could lead to non-competitive rents, excessive vacancies, or demand for new or increased rental assistance to remedy any underutilization of units by inappropriate occupancy standards.

With the case-by-case approval of the RD HQ the rent standard may be exceeded in a transfer, but only if the buyer agrees to fund a cash escrow from non-project and non-amortizing funding sources such as grants, soft loans, etc. sufficient to cover necessary operating, maintenance, and reserve costs at the property being transferred for the term of the RD loan for any amount exceeding the CRCU rents. This might occur in areas experiencing an economic decline that has led to rents in conventional properties being set below break-even levels. While an increase in RTO or financing equity payout to a seller may sometimes be an appropriate servicing action, neither will be authorized. These are not valid factors to consider in assessing whether property viability creates a need to exceed CRCU.

The Loan Servicer should be particularly diligent in analyzing the budget and proposed rents when the transferee will also receive a subsequent loan or other third-party financing, or there are significant repairs or rehabilitation plans. The Loan Servicer must consider both the short-term impact of loan payments the transferee must make immediately following the transfer, and the long-term feasibility of the budget and rents to allow for a successful project. If there is any deficiency in the budget or rent structure, the transferee must take appropriate corrective action as part of the transfer actions.

Third-party debt-service increases can be built into the rent only if the new debt is designated for, and actually disbursed for, eligible Section 515 loan purposes unless otherwise used for necessary eligible purposes as prescribed when using a Section 538 GRRH loan. If the transaction includes a GRRH loan as part of the final underwritten transaction, a portion of the maximum total allowable development fee may be included as part of the GRRH loan provided there is sufficient cash flow at the rents determined appropriate for the specific transaction and which do not exceed the lesser of CRCU or the allowable LIHTC rents in effect at the time of transfer approval. Loan Servicers will ensure the developer fee is reasonable, and does not exceed the maximum allowable by their state tax-credit allocating agency.

Eligible Section 515 loan purposes include costs that are RD-approved repairs and improvements, and eligible soft costs which include legal, technical, environmental, and professional services [7 CFR 3560.53]. For additional guidance on eligible loan purposes, see Paragraph 12.6 of RD Handbook 3560-3, Attachment 4-B of HB-1-3560, and 7 CFR

3565.205 if a GRRH loan is also authorized for the transaction. If additional debt is being allowed for projects using a RD Section 538 GRRH loan, eligible purposes may also include those defined in 7 CFR 3565.205.

The effective date of any rent increase resulting from a repair/rehabilitation loan is following the completion of the approved repairs and/or improvements.

In addition, the Loan Servicer should review the budget:

- To determine if the project reserve levels are sufficient to allow for the necessary maintenance of the property over a 20-year CNA period. If there are any deficiencies, the borrower must take appropriate corrective action; and,

- To ensure a minimum combined operating allowance and vacancy loss is provided that does not fall below the industry standards outlined previously in Chapter 7.2 D 2.

B. Conventional Rents for Comparable Units (CRCU) Limitation [7 CFR 3560.406 (d) (2)]

In addition to RD's contractual requirements and any HUD Section 8 requirements, rents in RD-transfer properties are further limited by Federal regulations. Program regulations [7 CFR 3560.406(d)(2)] require the buyer to agree to set Basic Rents at the housing project, covered by the assumed loans, at levels that do not exceed CRCU rents in the area.

Attachment 7-A, Revitalization Guidance, under Revitalization principles number (5) states that post- transaction Basic Rents will not exceed the lesser of CRCU or restricted rents. All the following must be reflected in project Basic Rents except as provided below:

- project equity;
- rehabilitation;
- RD or non-RD debt service;
- reserve deposits;
- operating costs; and,
- RTO.

Before determining the amount of equity pay out or the amount of the new RTO, RD will first establish a new reserve deposit level that is adequate to fund all reserve-eligible needs according to the CNA, and will establish a new O&M expense level that is adequate to support the project.

The CRCU rents used for transfer underwriting are established using information from one of the following:

1. An appraisal meeting RD requirements (See HB-1-3560, Chapter 7 and Attachment 7-C of HB-1-3560); or

2. An Area Market Rent Survey (AMRS) meeting RD requirements. If an AMRS is used, RD's Statement of Work (SOW) should be used. RD's guidelines for an AMRS are available in any RD office.

3. When no appraisal is required, i.e., no new RD funds are provided, the transfer is on same rates and terms, no additional senior debt or subordination is being requested, and there is no change in the currently authorized RTO, and a current AMRS has not been provided, one of the following alternative methods may be used to establish CRCU rents:

   a. Determinations by third parties:

   - Paragraph 4.18 of HB-1-3560 discusses a market study to establish the project need which may be conducted by an appraiser, and a market survey by a non-appraiser to establish the market need for the units. These are two different types of analysis used for different purposes. The market study by an appraiser to establish a possible rent for valuation purposes does not establish CRCU rents; however, a market survey by a non-appraiser would be acceptable to establish CRCU rents.
   - If the third-party is an appraiser, an AMRS would be appropriate as discussed above. There is no need to order a market study.
   - If the third party is not an appraiser, a market survey may be used to establish CRCU rents.

   b. Determinations by State Office staff:

   - State office review of advertised rents for comparable conventional properties.
   - State Office knowledge of rents being charged in the area.

Basic Rents used in RD underwriting are capped at 100 percent of the lesser of CRCU or the restricted rents if the proposed transfer includes any increased RTO or an equity payout to the seller. Non-equity compensation cannot have an impact on rents.

In other situations when the proposed post-transfer rent increase is solely to support operations, including increased annual reserve deposits based on the approved CNA, Basic Rents may exceed CRCU, but may not exceed 150 percent of CRCU [7 CFR 3560.406(d)(2)]. RD HQ prior concurrence is required when Basic Rents exceed CRCU.

NOTE: Loan Servicers should note that field office authority is capped at 100 percent of CRCU for transfer transactions. RD HQ Multi-family Preservation and Direct Loan (PDLD) concurrence is required for any situation in which CRCU will be exceeded for any transfer transactions.

A rent increase may be justified when it is solely to support operations for increased O&M expenses and/or an increased reserve deposit. Annual rent increases should be limited to not more than 10% per year. If a larger rent increase is necessary to meet required third party underwriting requirements, the rent increase may be phased in to meet such requirements.

If the rent increase includes debt service on a new loan, Basic Rents must be at or below CRCU. RD may consider an exception if the rent increase is solely to support operations if all of the following are true:

- No equity is being paid out;
- No increase in RTO;
- 100 percent of loan proceeds are used for the hard cost of repairs and other eligible purposes; and
- The rents are phased in by the transferee at not more than 10% per operating year. Shortfalls must be offset by the transferee from non-project sources or funded with additional third-party debt.

In cases in which the existing Basic Rents exceed CRCU, the Loan Servicer must document to the approval official that the above-CRCU rents were needed solely to meet operational requirements. No increased RTO or equity pay out was built into the pre-transfer rents. If this documentation cannot be provided, a violation of [7 CFR 3560.406(d) (2)] has occurred, and the State Office and PDLD must appropriately service the account to restore program compliance. This may impact the proposed transfer transaction.

C. Increased Basic Rents Because of New Debt Service

If rehabilitation will be performed, Basic Rents should not increase until after completion of construction/repairs and RD acceptance. Debt service on new debt (not construction permanent, bridge or interim/temporary) resulting from construction, improvements and repairs should not be included in Basic Rents until all eligible costs, funded with the proceeds of the new debt, have been expended. Interim rent increases may be considered for payment of that portion of the new permanent debt used to pay acquisition equity only if not otherwise funded with interim or bridge financing included with interim construction financing.

Loan Servicers may begin the rent increase and tenant notification processes prior to completion of repairs so that Basic Rents can be increased as soon as possible following completion of repairs. Depending on the nature of the repairs and the length of the tenant notification period, processing of the rent increase may need to begin when repairs are no less than 50 percent complete so that rents can increase soon after completion of repairs.

If debt service is included in the Basic Rents, the proceeds of the loan must be used for eligible Section 515 loan purposes or allowable Section 538 loan purposes as underwritten for the transfer. See [7 CFR 3560.53], Attachment 4-B of HB-1-3560, and 7CFR 3565.205.

Often, new third-party debt is proposed to have a first-lien security position, and existing USDA loans are proposed to be subordinated and be in a second lien position. Subordination will not be allowed unless all proceeds of the new debt are for eligible RD uses.

7.8 SALES PRICE

A. Limitations

There is no limitation on the sales price that is paid solely from assumption of existing debt plus non-RD funds that do not affect Basic Rents, e.g. LIHTC equity, and the purchaser's personal equity.

In all other situations, the sales price should not exceed the lower of two limitations:

1. The first limitation is the total of:
   a. The appraised present market value of the real estate; and

b. The balance of the Reserve for Replacements account. The balance itself must pass to the purchaser, but the amount can be included in the sales price when the approved transfer-underwriting Sources and Uses includes other sufficient non-permanent debt sources of equivalent amounts.

2. The second limitation is the amount of sales price that can be supported within CRCU rents. For example, if the cash portion of the sales price is paid with third-party debt, the new debt service plus all other costs of operation including adequate O&M expenses and an adequate Reserve deposit must be supportable at Basic Rents that do not exceed CRCU.

B. Equity Payout (General)

The intended purpose of this section is to clarify RD's position as it pertains to paying out equity depending on different loan situations. Generally, an equity payout pertains to transfers in which the seller desires an equity payment and the transfer will avert prepayment of the existing RD loan(s) and removal of needed affordable rental housing units.

1. Equity Sources Not Affecting Basic Rents.

As long as the requirements of 7 CFR 3560.406(e) are met, RD generally does not place any restrictions on payments of equity funded with the purchaser's cash, grants, tax credit equity, or third-party loans that do not depend on rental income for repayment. Such equity payments do not result in any increased RTO or in any adjustment to the Basic Rents. RD will not subordinate its first lien position to any such third-party loan. Owners who have previously received incentives not to prepay may receive additional equity from these sources.

2. Equity Funded With RD Debt Repaid Through Rents.

Current RD policy is to fund equity payout with RD loans only in prepayment situations. These situations are not addressed in this Chapter. See Chapter 15 of HB 3-3560.

3. Equity Funded With Third-Party Debt Repaid Through Rents.

Equity can be funded from a third-party loan including a Section 538 guaranteed loan that is repaid from rental income only if:

a. The equity amount is limited to the lesser of an amount documented in an appraisal acceptable to Rural Development (See HB-1-3560, Chapter 7 and Attachment 7-C of HB-1-3560), or an amount supportable at rents within CRCU, after allowing for adequate O&M expenses and an adequate Reserve in accordance with this chapter.

b. The restrictive-use period has not expired and the appraisal determines the reduction in value attributable to the remaining period of restricted use, using a method acceptable to RD. See Attachment 7-D and Attachment 7-A of HB-1-3560.

c. A new 30-year Restrictive-Use Provision (RUP) is required. See Paragraph 7.31 D and [7 CFR 3560.406(g)] and the project received an initial loan to construct new units that was approved on or after December 15, 1989, and at least 20 years have elapsed since the date of the closing of the loan

d. Subject to the restrictions of [7 CFR 3560.409], RD may subordinate its first lien position to a third-party equity loan that meets the requirements of this chapter provided RD determines that there is adequate Security Value to cover RD's loans and any loans senior to the RD loans.

4. Buyer/seller/cash flow notes.

If full payment is not made in cash to the seller at closing, no rental income may be used to pay any of the remaining amount of the purchase price, no lien may be placed on the project assets or income, and there must be no provisions that provide the note holder with any present or future interest or claim in the property, income, or assets of the property being sold or relinquished. 7 CFR 3560.406(c)(5) further provides that there must not be any provision that allows the property to revert back to the original owner for any reason during the term that any RD loan remains outstanding. These types of transactions are frequently referred to as buyer, seller, cash flow or carryback notes and do not meet RD requirements for recognized debt types. Therefore, they cannot be paid with project revenues or subsidies at any time an RD direct loan, grant or other RD authorized assistance remains outstanding on the property.

5. Use of Equity Loan Proceeds.

Proceeds of a proposed equity payout must be in accordance with [7 CFR 3560.406(e)].

The Agency cannot permit any equity payment to the borrower as part of an ownership transfer or sale of a property if any of the following conditions exists:

a. The borrower's indebtedness to the Agency is not being paid in full or is not being assumed by the transferee. The Agency will require that all or part of an equity payment be applied against other Agency loans owed by the borrower if payments on the other loans are not current.

b. Any prior non-Agency liens against the property that are not paid in full or not being assumed by the transferee under this Chapter.

c. Any required housing project financial accounts are not funded at required levels, less authorized withdrawals; or any payments due for operation and maintenance expenses, tax assessments, insurance premiums, tenant security deposits or other obligations incurred as a part of housing project operations are not paid in full.

d. Any management, operation and/or maintenance deficiencies cited in a compliance violation notice issued to the borrower by the Agency are not being corrected as part of the ownership transfer process.

e. The borrower entity is, at the time of the ownership transfer or sale, cited by the Agency or other Federal, state, or local agencies for violations of Fair Housing or Equal Opportunity requirements without prior consent of RD HQ.

6. Determining Equity When Repairs Are Required.

When repairs are required to be completed before any equity is paid out to the seller and all parties to the transaction, including all participating lenders, mutually agree that such repairs cannot be completed due to seasonal opportunity or other circumstances beyond the seller's control before the transfer occurs, the Repair Agreement (See Attachment 7-B-1, Transfer Application Documents) must include a guarantee acceptable to RD, that the actual repair costs will not exceed the estimated repair costs. This guarantee, which may take the form of a cash escrow, bond, enforceable letter of credit or other valid form of surety acceptable to RD, will be provided by either the seller or purchaser to assure timely completion of the repair.

7. RD Approval.

The State Director may authorize a transfer involving equity payout only if:

a. Any equity payout being proposed is paid from non-USDA funds,

b. The equity payout will not result in an increase to the Basic Rents,

c. No increase is proposed to the RTO,

d. There is no modification of any USDA loan, and

e. The buyer and seller do not hold an Identity of Interest (IOI) as defined by RD regulations.

C. Equity Payout during the Term of an Existing RUP

When the property is nearing the end of its RUP, borrowers who are considering a transfer sometimes want to be compensated for the profits they hope to make from a future prepayment. The purpose of this section is to discuss how USDA will respond to requests to include equity payments to the seller as a Use of Funds in transfer transactions when the property is still within its RUP period.

a. No equity payout is allowed from USDA loan funds.

b. Equity payout is allowed from other funds, typically using a third-party loan, provided that the transfer otherwise meets the requirements of this chapter. See the discussion above for Agency requirements for third-party equity loans.

c. RD understands that the Uniform Standards of Appraisal Practice do not permit the prospective value of a conversion to market-rate operations to be taken into account in determining market value if there are 10 years or more remaining in the RUP.

d. RD requires appraisers to use a discounted cash flow approach to value in determining market value (unrestricted) when the RUP has not expired. The discounted cash flow projection would reflect regulated operations through the end of the RUP, through a conversion period to market-rate operations.

D. Non-Equity Compensation Payments

When there is no equity in the project, the transferee may choose to pay additional compensation as part of the negotiations with the transferor to reach a mutual agreement for the transfer. This situation is most appropriate when the buyer determines that the transfer will be in their best interests if they were to offer assistance to remove an existing RD borrower with compliance or performance problems, and RD concurs that non-equity compensation is less expensive than liquidating the property.

The State Director must request RD HQ to authorize the transaction. No RD loan funds may be used to pay the non-equity compensation. See Paragraph 7.29 F.

The proposed non-equity compensation must be applied first to satisfy any non-USDA claims, e.g. third-party loans, before any amounts may be paid to the seller/transferor.

7.9 RETURN-TO-OWNER (RTO)

A. RTO in General

The transferee's initial investment and RTO, will be determined by RD analytical analysis at the time of transfer approval. The new owner's RTO will be computed based on the provisions of the Agency's current transfer guidance and principles.

The maximum potential RTO for RD MFH transfers is based on the net cash flow from project operations, as determined by use of the RD analytical tool, PAT. The RTO calculation considers the amount of tax credit equity [as defined in 7 CFR 3560.406(d)] that is used for the RD RRH eligible hard costs of construction purposes (defined in 7 CFR 3560.68) and any additional owner contribution for hard construction costs in establishing the maximum RTO the specific project will support. The maximum potential RTO the buyer may be eligible to earn annually throughout the term of the loan is determined by RD at the time of transfer approval. This maximum RTO is computed through an analysis of the Rehabilitation total hard costs eligible under the RD Section 515 Program less all new Loans that do not exceed the RD as improved Security Value determined at the time of loan approval.

The new RTO may not exceed the amount remaining from the projected Net Operating Income (NOI) less debt service for all loans without agency debt deferral as determined in the final RD underwriting used for the transfer approval. NOI for payment of RTO will be based on the project budget post-rehabilitation, using rents not exceeding the lessor of CRCU or LIHTC or other restricted program rents, and after deducting all operating, reserve, vacancy, and other cushions and approved project operating costs.

If the transfer is from a non-profit to a limited-profit borrower, the initial investment to be shown in the loan agreement or resolution will be "None" unless the transferee contributes additional equity.

RTO as established for the transfer closing will remain unchanged throughout the term of the RD loan(s) included, assumed, or modified at the time of transfer closing unless modified at a future date by RD as part of an approved servicing action.

B. RTO Based on Low Income Housing Tax Credits (LIHTC) Equity [7 CFR 3560.68] (Paragraph 5.12 of HB-1-3560)

RTO in LIHTC properties is based on cash, not loan proceeds, invested in hard costs of construction as calculated in the RD PAT.

- Cash for this purpose includes LIHTC equity as defined in this Chapter.
- Hard cost for this purpose means actual material and labor cost only and does not include general requirements, overhead, general contractor fee/profit, or development fees to be paid from LIHTC syndication proceeds.

Loan Servicers should note that the authority for this RTO calculation is found in 7 CFR 3560.406 (d). The actual calculation is carried out in the RD analytical template (PAT) required by RD HQ. Note that this RTO calculation for transfers differs from the RTO calculations for prepayment transactions and the ROI calculations used in the project's initial/original development.

If the new RTO approved for the transfer decreases, it will be effective immediately upon closing and accrue to the new owner. Increased RTO does not begin until the associated repairs have been completed, inspected and accepted by RD. Until repairs have been completed and inspected, the existing ROI/RTO authorized in the seller's RD Loan Agreement/Resolution continues to be applicable and may be earned by the buyer for as may be provided in the purchase and sales agreement.

If the new RTO will begin in the future, there should be an addendum made to the RD Loan Agreement or Loan Resolution used for the respective type of transferee. The addendum should include language such as the following:

> *A maximum potential earned annual authorized Return to Owner (RTO) in the amount of $ ( ) has been determined allowable by RD based on the Agency's analytical analysis used in authorizing the transfer to the borrower named herein. The authorized RTO replaces any previous reference to Return-on-Investment (ROI) or the payment thereof which may be otherwise referenced herein. Any increase in RTO may only be earned starting the beginning of the first project fiscal year following the completion and RD approval of the agreed-upon rehabilitation.*

The addendum must be submitted to the Regional OGC for review of any state law issues.

The maximum new RTO is the amount supportable within NOI set forth in Paragraph 7.2 D 2 for the property using the post-rehab operating budget expenses, reserves and debt service used in the transfer underwriting analysis and documented in the PAT at the time of transfer approval. However, new maximum potential RTO described in 7.2 C is also limited to an amount that is at or below the lesser of CRCU or the LIHTC rents.

In reality, the purchaser may not be able to earn the full RTO in any given year.

- The Loan Agreement will contain the maximum potential new RTO based on the RD analysis and will remain the same for the term of the RD loan.
- The RTO amount in each year's budget may be lower because there may not be room in that year's proposed rents for the full RTO.

- The amount of RTO actually earned in each year may also be below the maximum RTO.
- RTO will not be allowed for any amount that exceeds the maximum potential described in this Chapter.

Tenant protection requirements may apply when increased RTO is approved. See Section 7, Paragraph 7.27 B.

The new RTO authorized by RD is specific to the property transfer transaction and will apply for the remaining term of the loan unless authorized as a separate future servicing action by RD which allows modification of the RTO.

7.10 FEES TO DEVELOPER

A. Developer Fees in General

In accordance with §3560.54(a) (9), payment of a developer's fee is not an eligible use of RD loan funds unless they are being used in conjunction with a Section 538 GRRH loan in the transaction. The fees may be included in the total development costs if they are paid from other sources when analyzing the Federal Government assistance to the project.

- The Agency may recognize a developer's fee paid from other sources on construction or rehabilitation of ***up to*** 15 percent of the total development costs authorized for LIHTC purposes, or by another Federal Government program.
- For transfer proposals that include acquisition costs, the developer's fee on the acquisition cost may be recognized ***up to*** eight (8) percent of the acquisition costs only when authorized under a Federal Government program providing assistance.

The developer's fee is not included in determining the Agency's maximum debt limit and loan amount. Debt service on new debt may not be included in Basic Rents unless all proceeds are used for eligible Section 515 loan purposes. See acceptable uses at 7 CFR 3560.53, and 7 CFR 3565.205, if applicable.

RD recognizes, however, that some non-RD funders may allow developer/builder fees that are reasonable in their specifically defined and designated circumstances but such fees are not eligible for payment from any project revenues or sources. There is an exception for Section 538 loans, which can include a developer fee, however the maximum RD allowable rents may not be sufficient to support the amount of Section 538 debt and will require either a reduction or deferral of all or part of this fee.

B. Deferred Developer Fee

In LIHTC transactions with third-party funding, the maximum developer fee allowable may exceed the amount that can be paid in cash from the transfer transaction’s sources of funds. The amount of the unpaid developer fee is referred to as a deferred developer fee. Sponsors expect to collect their deferred developer fee from cash flow derived from the future successful operation of the property. The deferred developer fee may not be paid from operations. They may be paid from authorized RTO that is earned by the project and paid to the borrower.

RD does not permit borrowers to treat the deferred developer fee as a loan or to make payments toward the deferred developer fee from the operating account.

7.11 LOW INCOME HOUSING TAX CREDITS (LIHTCs)

A. Relationship between Basic Rents and LIHTC Rents - General (Paragraph 7.4 F of HB-2-3560)

This section applies during the term in which the LIHTC rents are in effect, generally 15 to 30 years but may be longer for some properties and in some states.

LIHTC rent limitations require that the owner charge tenants no more than the maximum LIHTC rents. Therefore, LIHTC maximum rents may differ from the Basic Rents that are established in accordance with RD requirements. It is also possible that there will be different LIHTC rents for the same unit type due to differing LIHTC affordability requirements. See Paragraph 7.11 C. of this Handbook for a discussion of Tax Credit Rents.

The following is a summary of the relevant provisions of Chapter 7 of HB-2-3560, provided here for convenience, and does not modify or supersede HB-2-3560:

1. Basic Rents continue to be set by RD at the level necessary to provide for the physical and financial viability of the project. Basic Rents may be higher or lower than the maximum LIHTC rents.

2. If Basic Rents are higher than the maximum LIHTC rents, then:
   - The tenant portion of rent may not exceed the maximum LIHTC rent.
   - For tenants receiving RA and for tenants receiving Section 8 vouchers, the borrower may collect the full amount of RA or Section 8 voucher amounts not greater than Basic Rent without violating LIHTC requirements.
   - When RA is not available, the borrower is responsible for any shortfalls in revenue including all overage. See 7 CFR 3560.202(g).

3. If Basic Rents are equal to or lower than the maximum LIHTC rents, then:
   - The tenant portion will be based on 30 percent of the adjusted monthly income.
   - If 30 percent of the tenant's adjusted monthly income is above Basic Rent:
     - If the project was allocated LIHTCs after 1990, the borrower may charge tenants the appropriate overage due without regard to the maximum LIHTC rent. [Internal Revenue Code §42(g)(2)(B)(iv)]
     - If the project was allocated LIHTCs in 1990 or earlier, the borrower may not charge tenants more than the maximum LIHTC rent, and the borrower is responsible for any shortfall in overage that the borrower must pay to RD from non-project funds. See Paragraph 7.4, Exhibit 7-3, Example 2 of HB-2-3560.)
     - The determining factor is the allocation year for the LIHTCs. This factor would need to be verified with the State agency that allocated the LIHTCs.

The LIHTC maximum rents have no bearing on Note Rate rents, which continue to be set in the same manner as in non-LIHTC projects.

B. Tax Credit Rents in LIHTC Transactions [7 CFR 3560.202(g)]

The same unit type may not have more than one Basic Rent. However, in a Section 515 LIHTC property include multiple Tax Credit Rents based on the LIHTC award granted to the transferee. See Attachment 7-C, Tax Credit Rents in Transfer Transactions, for a detailed discussion of a Tax Credit Rent.

If rental income from Tax Credit Rents is less than what is needed for the property to cash flow, the borrower will be responsible for funding this shortfall as outlined below.

C. Financial Viability When Basic Rents Exceed Maximum LIHTC Rents

If the proposed transfer involves a revenue shortfall because Basic Rents exceed maximum authorized Tax Credit Rents and the estimated shortfall is less than the post-transfer RTO, the borrower will receive less than the full RTO. Each Form RD 3560-7 must show a positive cash flow on Line 30, and will show a level of RTO that is less than the maximum allowable RTO.

However, if the estimated shortfall is more than the new post-transfer RTO, the proposed transfer is not viable unless the borrower proposes a funding mechanism together with reducing the RTO to zero that is sufficient to cover the likely revenue shortfalls. An example of an adequate funding mechanism is an operating deficit reserve, funded from non-USDA funds that is adequate to cover projected revenue shortfalls over the LIHTC compliance period. A borrower's promise to pay future shortfalls over and above reducing RTO to zero is not an adequate funding mechanism, unless the promise is backed by a guarantee from a creditworthy entity.

RD HQ will provide technical assistance to State Offices on a case-by-case basis in implementing Tax Credit Rents.

7.12 OTHER POLICY CONSIDERATIONS

A. Principal and Interest during Construction

If the transfer includes new financing, any payments toward the new financing during construction must be paid from third-party funds and may not be paid from the operating account. The Sources and Uses of Funds statement should include a category entitled Construction Loan Interest or Construction Period Interest, and should show funds sufficient to pay any construction-period interest and/or principal on third-party debt.

Principal and interest on the pre-existing USDA loan(s) will continue to be an authorized payment from the operating account during the construction period.

Loan Servicers should expect that, typically, construction loan interest will be built into the construction loan amount.

B. Transactions with Multiple Sources of Funds

Transfers may involve a variety of non-USDA funds such as LIHTC equity, HUD funds under the HOME or CDBG programs, and various State and local government programs, private loans, and private grants.

1. In these complex transactions, Loan Servicers will consider the following in order to ensure that costs are reasonable and that Basic Rents are no higher than necessary:

   a. RD requirement that Basic Rents not exceed CRCU. See Paragraph 7.7 B.

   b. RD guidelines to protect unassisted tenants against transfer-related rent increases. See Paragraph 7.27 B.

   c. Subsidy-layering analyses by other government funders. Loan Servicers should request these analyses and should review them if provided. See the paragraph below on non-USDA funds.

   d. The purchaser's applications to other funders, including any updated applications. Loan Servicers should require that purchasers provide these.

   e. The final cost certification audit, if one is required by other funders. (This is a requirement for most HUD programs and for LIHTCs.) Loan Servicers should require that purchasers provide such documents. As a reminder, RD requires a cost certification audit whenever new RD funding is provided and an identity of interest exists, as defined by 7 CFR 1924.4 (i).

   f. RD requirements that any loans, whose debt service will be built into the Basic Rents, be expended solely for eligible purposes. See Paragraph 7.7 C.

2. When non-USDA funds are involved, Loan Servicers should address the following items when evaluating a transfer request:

   a. Loan Servicers should coordinate with other government funders so that the objectives of all of the funding agencies are achieved. When all the government funders speak with a united voice, it is more likely that the appropriate public purpose objectives will be achieved. The Loan Servicer should contact the other government funders to determine their objectives, concerns, and constraints, and to share USDA's objectives, concerns, and constraints.

   b. Government providers of funds are required to have completed a subsidy layering or other analysis that is similar to the USDA Sources and Uses Comprehensive Evaluation (SAUCE) analysis to determine all the sources and uses of funds in the transaction, and to ensure that all government sources of funds are not more than necessary to carry out the transaction. This analysis will include determining that the proposed levels of compensation to the seller, purchaser, and contractor are acceptable. The Loan Servicer should request a copy of the subsidy layering analysis from each of the other government funders, including the LIHTC allocating agency. A USDA SAUCE analysis is required as follows:

- A USDA SAUCE analysis is required only if a subsequent RD loan is proposed.

- In tax credit transactions, if the RD State Office obtains and accepts the tax credit agency's subsidy-layering review, no SAUCE analysis is required.

c. Loan Servicers should determine whether the non-USDA funds are unconditionally committed, conditionally committed, or merely applied for. Loan Servicers should understand the conditions in other funders' conditional commitments. If funds are not yet firmly committed:

- Typically, USDA would withhold approval of the transfer until firm funding commitments from other funders have been received.

- However, a third-party funder may need evidence of USDA's support for the proposed transaction. The State Office may issue a conditional approval conditioned on receipt of firm funding commitments that specifies that USDA approval will be withdrawn if a firm commitment is not received, and that the transfer cannot close until a firm commitment is received.

- See Paragraph 7.29 H, for transfers involving a workout plan for a discussion of a rare situation in which it might be prudent for RD to allow a transfer to close prior to receiving the firm commitment for third-party funding.

- RD understands that purchasers who are utilizing tax credits may want to accelerate the timing of the transfer in order to meet the tax credit carryover requirement to expend at least 10 percent of total funds for the transaction. In these situations, State Offices are encouraged to cooperate with purchasers. Sometimes this will result in transfers being closed before all non-USDA funds are firmly committed. In such situations, the State Office should reach written agreements with the purchaser regarding what will happen if the intended non-USDA funds are not actually received.

d. Loan Servicers should understand the funding timetables of the other funds providers. They should be aware of when funding decisions will be made; and when initial funds will be available to be drawn by the purchaser. If the funding timetables of other funds providers are available early enough to support the viability of the transaction, the Loan Servicer should discuss the situation first with the other funders, and then with the purchaser and seller to attempt to identify solutions.

e. Loan Servicers should establish when funds will be provided. Often, loan funds are provided only when the purchaser has already incurred the costs and requests reimbursement from the funder. Typically, LIHTC equity funds are paid partially at the start of construction, with the balance being paid over an extended period typically ending at some point well after construction completion. These situations may lead to a need for interim bridge/construction financing. The Loan Servicer should request a monthly sources and uses of funds statement from the purchaser to verify whether there will be sufficient sources of funds to cover each month's estimated uses of funds.

f. Loan Servicers should determine if other funders require reserves other than the Replacement Reserve. Often an additional operating reserve, rent up/lease up reserve, or some similar account may require the owner to replenish any withdrawals that occur over the course of the loan from project cash flows or excess cash. These reserves will not be replenished by any project funds or from project operations, and must be funded directly by the owner or from earned RTO.

g. Loan Servicers should understand when funds can be withdrawn and what approvals are required for withdrawal, and then decide whether those provisions are acceptable to RD.

h. Loan Servicers should determine whether there will be conflicts in regulatory requirements; i.e., differences in reserve requirements. If so, they should work with the purchaser to identify solutions acceptable to RD. An appropriate inter-agency or inter-creditor agreement must be in place not later than the time of closing.

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SECTION 3: PRELIMINARY ASSESSMENT

7.13 PRE-REQUEST CONSULTATION WITH BORROWER AND TRANSFEREE

Purchasers are encouraged to consult with RD prior to submitting a transfer request.

Prior to submitting a transfer request, either the borrower or transferee will likely contact the Loan Servicer to discuss what documentation is required as part of a transfer. The Loan Servicer should provide the transferee with the list of required documents (See Attachment 7-B-1, Transfer Application Documents) and should encourage discussion with RD as questions arise during preparation of the transfer request. The Loan Servicer should also explain the process and provide any documentation necessary to assist the transferee in understanding RD's eligibility requirements and the basis used to evaluate a transfer application [7 CFR 3560.406].

Purchasers or Sellers may request that RD provide Attachment 7-E of HB 1-3560 Appraisal Information Sheet. Purchasers may request RD assistance in assembling the information referenced in Attachment 7-F of HB 1-3560, Appraisal Data Package Checklist. The request to RD for a transfer should come from the current borrower per [7 CFR 3560.406 (c)].

7.14 INITIAL RD REVIEW FOR COMPLETENESS

A complete application must include all of the information listed in Attachment 7-D of this handbook, Transfer Request Checklist, before it can be reviewed for underwriting. If the application is incomplete, the application will be returned to the applicant with an explanation in sufficient detail outlining the items needing to be addressed to consider the application for underwriting review.

7.15 CONSULT WITH PDLD REGARDING UNUSUAL TRANSACTIONS

Unusual and complex transactions not addressed in this Chapter should be identified and resolved as early as possible. State Offices should discuss unusual transaction features with PDLD as necessary to allow continued processing of the transfer request.

Transaction features that should be discussed with PDLD may include:

- Features that may require coordination with other agencies; e.g., the transaction includes new debt that is FHA-insured or Section 8 assistance provided by HUD.
- Exceptions to regulations or exceptions to this chapter that may be required.
- Transactions with proposed third-party financing in which the new debt service is proposed to be built into the new Basic Rents. The State Office and PDLD will need to discuss the USDA requirement that loan proceeds be expended for eligible purposes [7 CFR 3560.53 and Attachment 4-B of HB-1-3560].
- Transactions that have participated in or are participating in the MPR Revitalization Loan Program.
- Unusual or novel transactions likely to raise policy issues.

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SECTION 4: EVALUATING THE TRANSFEREE

7.16 DETERMINE TRANSFEREE ELIGIBILITY

This Chapter only provides guidance to transfer a project to eligible applicants as prescribed in the Housing Act of 1949. The Loan Servicer will evaluate the transferee's eligibility based on the items submitted as part of the transfer request including evaluation and verification that:

- The transferee and the property satisfy the general program eligibility requirements;
- Identity-of-Interests are disclosed;
- Legal capability, formation, and capacity information has been provided; and
- The requirements of this Chapter are satisfied

If there are any deficiencies, the Loan Servicer will notify the transferee and, as appropriate, the borrower as outlined in Paragraph 7.6 B to establish a plan for their timely resolution.

A. U.S. Citizenship/Qualified Alien Status Requirements

Purchasers must provide to their attorney acceptable evidence of U.S. citizenship and/or qualified alien status.

Acceptable evidence of U.S. citizenship may include a valid U.S. birth certificate, a valid U.S. Passport, a valid U.S. Certificate of Naturalization, or other acceptable evidence of U.S. citizenship proposed by the applicant and determined by the Agency. Acceptable evidence of qualified alien status may include valid documentation issued by the U.S. Citizenship and Immigration Services (USCIS), or other acceptable documentation of qualified alien status proposed by the applicant and determined by the Agency.

Attorney Certification. The applicant's attorney must review applicable evidence to verify U.S. citizenship and/or qualified alien status, must certify that the Agency's U.S. citizenship and/or qualified alien status eligibility requirements are met by all purchaser applicants, and must submit the certification for Agency review.

The Loan Servicer will review the attorney certification to ensure the outlined citizenship/qualified alien status requirements are met.

B. Organizational Requirements

The Loan Servicer will ensure that the following requirements have been met.

- The organizational documents: (a) are properly signed; (b) include the correct state statute for the purchaser organization; (c) provide appropriate proof of organization and filing information; this may be in the form of a certification or opinion provided by the applicant's attorney or register; and (d) the State documentation and all necessary recording information is included. The Loan Servicer will then forward the organizational documents to OGC for review.

- Form AD 1047/1048 Certification Regarding Debarment and Form HUD-2530 Previous Participation Certification, will be used to identify the principals of the purchaser entity. The Loan Servicer will then check the principals against the list of debarred individuals at (https://www.sam.gov/portal/SAM/#1) and will document the results.
- Form RD 1910-11 Applicant Certification Federal Collection Policies for Consumer or Commercial Debts, will be properly completed and signed by the necessary parties.

C. Legal Capability

The Loan Servicer must make a determination of the transferee's legal capability to successfully assume and operate the project based on an attorney's letter and organizational documents submitted as part of the application. The Loan Servicer may obtain OGC concurrence as needed to make such a determination. If there are any deficiencies, the Loan Servicer should follow the procedure in Paragraph 7.6 C.

D. Additional Requirements for Existing Borrowers

If the transferee is an existing borrower with existing or past RD loans, and is acquiring title under the same name, refer to [7 CFR 3560.55(b)] and Section 3: 4.16, Paragraph D of HB-1-3560, for a detailed discussion on further eligibility requirements for current or previous borrowers. (Existing borrowers currently have one or more outstanding loans with RD and the ownership name will remain the same.) For existing borrowers and key principles the transferee must:

- Be in compliance with all program requirements or have been in compliance with an approved workout agreement for a minimum of six months for all other projects owned by members of the assuming entity;

- Have documented evidence that the conditions that resulted in any workout agreement were beyond the borrower's control and were not due to inappropriate actions by the borrower; and

- Have no outstanding adverse audit or investigation findings issued by the OIG. Any OIG audit or investigation must be closed or disposed of to the satisfaction of OIG. If there is an open audit or an investigation is underway, the Loan Servicer will contact OIG to determine if there are potential eligibility issues that may affect the transfer.

E. Identity-of-Interest

During the preliminary assessment, the Loan Servicer should have determined if the transfer involves an Identity-of-Interest (IOI) as defined in RD regulations. The Loan Servicer will verify that all IOI companies listed on Form RD 3560-30 have filed Form RD 3560-31.

As with non-IOI transfers, Loan Servicers must not approve IOI transfers until the State Office can certify that the following conditions are met:

- All RD loan accounts being transferred must be current.
- The reserve account is on schedule, less any authorized withdrawals.

- The taxes and insurance account is on schedule, and all outstanding bills are paid.
- The tenant's security deposit account is fully funded.
- All outstanding unacceptable maintenance items have been resolved to RD satisfaction.
- Management is satisfactory, and there is an approved management plan and management agreement, if applicable.
- The transferee is in compliance with equal opportunity and fair housing requirements.

Completion of this step ensures that IOI transferees receive appropriate RD assistance in restoring security properties to compliance through transfers.

F. Insurance

All RD properties are required to be able to obtain and maintain insurance as require by program regulations. Applicants incapable of providing evidence of insurability prior to closing, are not eligible and will be processed under Paragraph 7.6 C. Completion of this step ensures that RD's security properties will be protected from all damage and loss following transfers.

G. Site Control

The transferee's documentation must show enforceable control of the property as described in Paragraph 7.6 A 2. As explained under [7 CFR 3560.61(d)], the transferee must own the land when the transfer is closed, or have an RD approved leasehold interest in land. Most commonly in transfer situations, site control will be in the form of an option-to-purchase from the borrower or in the form of a purchase contract. If the purchaser does not yet have site control, i.e., the right to purchase the project without further consents from the seller, the Loan Servicer should decline the transfer request and return the application to the purchaser.

H. Eligible Transferee

Attachment 7-A, Revitalization Guidance, states that when the transaction is complete, the property will be in the hands of eligible owners. The post-transaction owner must be capable and willing to operate the revitalized property in accordance with the purpose and intent of the RRH program, and be considered eligible within program requirements.

An applicant will be considered ineligible if the applicant is currently in non-compliance with existing RD regulations including equal opportunity, fair housing, and accessibility requirements; or has an outstanding finding of non-compliance issued by RD including failing to follow any outstanding workout plans to which they are a party.

7.17 FINANCIAL REQUIREMENTS

Refer to Paragraph 4.16 C of HB-1-3560 for a detailed discussion on reviewing the transferee's financial capability. The credit report and financial statement are the two primary documents the Loan Servicer uses to determine financial capacity.

As part of this financial review, the Loan Servicer must verify that:

- The transferee possesses the financial capacity to carry out the obligations required for the loan;
- If applying for a subsequent loan, the transferee is unable to obtain sufficient credit elsewhere at rates that would allow for project rents within the payment ability of eligible residents; and
- The transferee has the financial ability to meet the program's requirements unless mitigated by the strength and ability of the key principles and documented in the application. In some cases, the applicant may voluntarily offer mitigation considerations (e.g. the principals offer evidence to document having clean credit, strong diversified financial capacity and the property will be managed by a third party management agent with relevant and positive MFH experience) to compensate for any short comings.

In transfer situations, the Loan Servicer's review of transferee financial capacity can generally be limited to the following:

- A determination that the transferee is solvent, i.e., not in danger of financial failure because of debts and obligations unrelated to the project.
- By reviewing the current comprehensive credit report, the applicant entity and the principals have demonstrated credit worthiness in meeting past and present financial obligations.
- The absence of financial issues that might call into question the transferee's ability and willingness to operate the project in accordance with RD requirements, e.g. evidence that the transferee has a history of financial compliance violations.
- If the transaction calls for cash equity from the transferee, documentation that the transferee has sufficient financial capacity to provide that amount of cash equity. See above mitigation considerations.

7.18 MANAGEMENT CAPACITY

The transferee must demonstrate that it will provide management acceptable to RD under [7 CFR 3560.102(e)] to ensure successful operation of the project. The Loan Servicer should refer to:

- Paragraph 5.9 E of HB-1-3560 for guidance on analyzing overall management capacity.
- Chapter 3 of HB-2-3560 contains detailed information on analyzing the management plan and the management certification, if applicable.
- IOI management companies being retained by a transferee must be held to the same standards as all other management agents successfully managing RD properties.

SECTION 5: EVALUATING THE PROJECT
[7 CFR 3560.406(c) and (d)]

7.19 DETERMINE PROJECT SUITABILITY

The purchaser's written statements and the financial and operational history of the project will typically demonstrate that there is still a need for the project, and that the project is not obsolete. If there are questions, however, the Loan Servicer should refer to Chapter 6 of this Handbook to determine if additional analysis is required to verify that there is still a need for the project and the project is not obsolete. Any additional analysis should be prioritized in order to meet the timeframes for processing the transfer request.

Prior to entering into a transfer or other revitalization process, RD must be satisfied that favorable patterns in housing and population statistics indicate the property will be needed to provide affordable rental housing to eligible tenants in the community.

- The determination of need will be documented in the case file. More complete documentation will be required if vacancy exceeds 10 percent during the most recent 12 months.

- [7 CFR 3560.651 through 3560.663] may also be used during the transfer process for guidance in making this determination.

7.20 DETERMINE PROJECT ELIGIBILITY

The Loan Servicer should ensure that major components of project eligibility were verified during the loan origination process and are not affected by a transfer. However, the Loan Servicer should take the necessary steps to ensure that the project remains an eligible property. Typically, the purchaser's written statements (See Attachment 7-B-1, Transfer Application Documents) and the project's operational and financial history will provide the primary foundation for determining that the project will continue to be eligible.

The following addresses the various aspects of the project eligibility that are required in Paragraph 4.17 of HB-1-3560 and that were reviewed when the project was originally developed. In processing the transfer request the Loan Servicer should consider all of the following.

A. Civil Rights Impact Analysis

This requirement is satisfied through the civil rights review discussed in Paragraph 7.21. In addition, the State Civil Rights Coordinator is invited to participate in the site inspection. See Paragraph 7.22 B.

B. State Historic Preservation Office

This requirement is generally not applicable. See [7 CFR 1700] for additional guidance.

C. Flood Hazard Determination

See Paragraph 7.22 E 3 for a discussion of when Form FEMA 81-93 Standard Flood Hazard Determination will be required.

D. Design Review

If required by local building codes or enforcement agencies, or due to the scope and nature of the planned rehabilitation, the applicant, loan servicer and underwriter should consult RD Instruction 1924-A, any outstanding CNA guidance, and the respective program requirements for rehabilitation and repair designs that may require professional and technical assistance.

Applicants also intending to participate in the LIHTC program should discuss any additional design reviews that may be required to receive tax credits with the RD staff to coordinate development plans. See also Chapter 7.21 to determine if additional design review is needed to ensure full compliance with requirements.

E. Prohibited Conditions

An example of prohibited conditions for a transfer is high vacancy in the area. This requirement is not applicable as an eligibility factor unless additional RD funding is proposed, in which case the Loan Servicer will consider Prohibited Conditions in connection with the new funding. See Paragraph 4.17 of HB-1-3560. High vacancy in the area would, of course, be a significant factor affecting project feasibility. Any other affordable housing projects in the market area also need to be evaluated to determine if there is a continuing need for the property being transferred.

F. Other Project Eligibility Requirements

The Loan Servicer must verify that all Required Written Statements for a transfer as outlined in this Chapter were provided. See Attachment 7-B-1, Transfer Application Documents.

A restrictive-use agreement will be required [7 CFR 3560.406 (g)]. See also Paragraph 7.31 D.

7.21 CIVIL RIGHTS AND ACCESSIBILITY COMPLIANCE

1. The Civil Rights Coordinator or designee will conduct a civil rights and accessibility compliance review, provided one has not been completed in the past 12 months. This review is usually conducted during the physical inspection. The review must be conducted to ensure that the project complies with the:

   - Section 504(c) of the Americans with Disability Act, which covers accessibility requirements;
   - Section 504 of the Rehabilitation Act of 1973;
   - Title VI of the Civil Rights Act of 1964; and
   - Title VIII of the Fair Housing Act of 1968.

2. The transferee must take action to mitigate any civil rights and accessibility concerns identified. Examples of civil rights deficiencies may include, but are not limited to, the following:

   - Failure to market units in accordance with Form HUD 935.2A, Affirmative Fair Housing Marketing Plan (AFHMP) - Multifamily Housing;
   - Inconsistent treatment of applicants when screening for occupancy;
   - Inconsistent treatment of tenants when assigning units;
   - Borrower failure to have documented the self-assessment review of civil rights and accessibility practices;
   - Improper waiting lists and tenant selection routines;
   - Delaying or deferring maintenance; and
   - Handicapped accessibility concerns.

Any project in which civil rights and accessibility concerns have been identified will not be approved for transfer without review by the Civil Rights Coordinator. The transfer file must include the civil rights and accessibility review by the Civil Rights Coordinator.

7.22 PHYSICAL INSPECTION

All transfers require completion of a Capital Needs Assessment (CNA). For properties of nine units or more, an independent third-party CNA is required.

For properties with eight units or fewer, this requirement may be satisfied in either of the following ways:

1. A third-party CNA.

2. The purchaser accepts RD underwriter's average CNA needs for projects of similar age and condition.

   - RD underwriters will compile the amount of CNA needs approved for transfers and MPR transactions for the present fiscal year and most recent past 2 fiscal years to determine the approximate total CNA needs per unit in their respective state office areas and obtain HQ PDLD concurrence prior to utilization.
   - The average needs would be entered into the PAT and adjusted to add inflation for years 2-20 using the same inflation rate as used for O&M expense assumptions in the specific project's underwriting.
   - RD HQ may publish from time to time a revised per-unit-per-year amount reflecting the average needs from recent CNAs on a national basis which may be used if the state data is insufficient to present representative CNA cost estimates.
   - Underwriters should contact their respective HQRU for assistance.

Based on this information, transfers may require re-sizing of the reserve balance, i.e., a one-time additional deposit to the reserve may be required at the closing of the transfer; and/or re-sizing of the ongoing deposits, i.e., a higher on-going deposit may be required, so that future major repairs and replacements can be funded solely from the reserve.

The CNA includes an evaluation of any accessibility needs [7 CFR 3560.406(d)(9)] and must identify all immediate and long-term repair and rehabilitation needs. See [7 CFR 3560.406(d) (5)].

A CNA provides a repair schedule for the property in its present condition, indicating repairs and replacements necessary for a property to function properly and efficiently over a span of 20 years. It is not an estimate of existing rehabilitation needs, or an estimate of rehabilitation costs. If any rehabilitation of the MFH property is planned as part of the proposed transfer, the rehabilitation repair list (also called a "Scope of Work") should be developed outside of the CNA and must fit within the available funding resources being proposed. This rehabilitation repair list may be developed by the owner, a project architect, or an outside party (such as the CNA Provider, when qualified) hired by the owner. A copy of the rehabilitation repair list or Scope of Work should then be provided to the CNA Provider and will be reviewed and incorporated into the transfer underwriting analysis. The cost of such repairs and rehabilitation will be shown in the Sources and Uses in the PAT. The as-improved CNA/Reserve Analysis section of the PAT, will reflect only those capital items not initially fully cured in the RD approved Scope of Work and will be required to repaired or replaced within the 20-year analysis period of the PAT

A. CNA Requirements

See the current RD CNA Unnumbered Letter at http://www.rd.usda.gov/files/02-18-16%20CNA%20UL.pdf or contact your local RD office for more specific information about RD CNA requirements.

At a minimum, CNA submissions must contain all of the components identified within the 20-year cycle specified by RD. Incomplete CNAs will be returned and the application may be rejected upon the applicant's failure to supply this information for any application over eight units.

For transactions that do not include third-party fully funded rehabilitation, the CNA scope of work requires the CNA provider to assess and evaluate the current 'as-is' physical condition of the property and, using the Estimated Useful Life table that is included as part of the Statement of Work, develop a 20-year Replacement Reserve schedule showing the timing and costs for the maintenance, repair, and replacement of all capital items at the property.

For transactions that include third-party funded rehabilitation, e.g., transactions involving the acquisition of tax credits, the scope of work requires the CNA provider to use the proposed and RD -approved third-party funded rehabilitation scope, and develop a 20-year Replacement Reserve schedule that assumes that the third-party funded rehabilitation will occur as planned. Because the rehabilitation will not be funded from the reserve, RD does not require the CNA to include the rehabilitation, and does not require the CNA provider to review the rehabilitation costs or scope.

Typically, the draft CNA is subsequently revised based on input from RD, the purchaser, and/or other funders to project the "Post Rehab" CNA indicating what repairs are planned for the property in the coming 20 years based on conditions after the rehabilitation is

completed. Items to be replaced during rehabilitation, such as appliances, that will need to be replaced again during the 20 years will be included in the "Post Rehab" CNA. Items, such as a new roof, that will not need replacement during the coming 20 years may also be included in the "Post Rehab" CNA- if the EUL is more than 20 years. The line item should not be removed from the CNA, but no data input will be necessary until an updated CNA is required. Appropriate comments should be included in the CNA report to acknowledge the scope of work or rehabilitation repairs that were considered.

B. State Office Review of CNA

A draft of the completed CNA should be submitted by the CNA provider to the State Office for review by the State Designated CNA Reviewer. The State Designated CNA Reviewer will advise the CNA provider of any deficiencies in the report and, when these have been addressed by the provider, the state designated CNA reviewer will sign off on the final report. Processing of the CNA will begin when the State Designated CNA Reviewer's approval of the CNA has been provided.

After receipt of the draft CNA, the Loan Servicer will make an on-site inspection of each vacant unit and 10 percent of the remaining units in the project being transferred. When substantial rehabilitation issues are involved, additional units may be inspected. The State Architect and Civil Rights Coordinator are encouraged to participate in the on-site inspection.

The purpose of the inspection is to ensure that the transferee's plans are adequate to ensure that RD's decent, safe, and sanitary criteria are met. The inspection will also help RD assess compliance with applicable civil rights, accessibility, and environmental requirements.

The Loan Servicer will conduct a compliance review if one had not been completed in the past 12 months prior to the physical inspection. Pictures of any deficiencies will be made part of the applicant's file.

C. Finalize Detailed Repair and Rehabilitation Plans and Costs [7 CFR 3560.406(d) (7)]

For RD-funded repairs, the detailed repair and rehabilitation plans and costs will be based on the CNA. The Loan Servicer should consider whether some or all of the repairs should be supported by contractor bids. For third-party funded repairs that were excluded from the CNA, the detailed repair and rehabilitation plans and costs will be based on similar analyses conducted for the purchaser and third-party funder that the Loan Servicer will review.

RD and the transferee must agree to and document all necessary repairs to make the housing decent, safe, and sanitary. The funds with respect to any work that will be completed after the transfer will be escrowed or otherwise placed under funding controls acceptable to the RD, and a plan for such work must be submitted. The plan will identify each repair, the time frame for completion, an estimate of costs for each item, who will do the work, and any Identity-of-Interest between the transferee and the parties doing the work or providing materials or services. RD must concur with the plan as part of the approval of the transfer.

If any tenants will be temporarily relocated during the rehabilitation, the transferee must have a detailed plan, acceptable to RD, for providing housing and services to these tenants. RD must concur with the plan as part of the approval of the transfer. The relocation

plan should detail the number of tenants who will be relocated, the number of days each tenant will be displaced, the daily estimate for lodging and meals, and details of other costs as applicable; e.g., temporary storage costs and transportation costs.

The level of review and documentation of a transferee's repair and rehabilitation plans should be adequate based on the level of repairs and rehabilitation required for the property. The objectives of the analysis are to ensure that the property is in full compliance with program requirements, the plans meet the best interest of the tenants, and the transferee has the financial and management capacity to fulfill the plans.

Exhibit 7-2, Funding Sources for Repairs, lists acceptable funding sources used to pay for improvements or repairs.

Exhibit 7-2

Funding Sources for Repairs

The following is list of funding sources that may be used for any improvements or repairs.

- Transferee's cash contribution;
- Syndication proceeds;
- Reserve amount being transferred if the amount remaining will be adequate to meet near-term repair and expense needs;
- Transferor funds;
- Third-party funding sources;
- Junior liens;
- Subordination; and
- Rural Development loan funds only to the extent needed for essential repairs to ensure that the housing is decent, safe, and sanitary if no other funding sources are available.

D. Required Repairs and the Repair Agreement

The Repair Agreement (See Attachment 7-B-1, Transfer Application Documents) between the seller and purchaser must address all repairs that RD will require in connection with the transfer to be completed within the first 12 months of operation under the new owner.

These repairs will be identified in the CNA for completion in year 0 (for health and safety related repairs) or year 1.

- Year 0 health and safety-related repairs must always be addressed in the Repair Agreement.

- Year 1 repairs must be addressed in the Repair Agreement unless the Loan Servicer directs otherwise. For example, the Loan Servicer might agree to exclude year 1 items that are currently functioning but are estimated to require replacement within one year so long as they are specifically identified and addressed in underwriting and the PAT.

The Repair Agreement must ensure satisfactory and timely completion, generally within 12 months following closing. Satisfactory arrangements could include any of the following:

- Completion of urgent repairs as a precondition to RD's acceptance or approval of a transfer request, or the closing of the transfer.
- Withholding of funds to pay for repairs from proceeds of the transaction with the funds being under RD's control.
- Funding of RD required repairs from the proceeds of a subsequent Section 515 loan.
- Inclusion of funding for RD-required repairs in a repair escrow that is administered by a third-party lender, under procedures acceptable to RD.

E. Environmental Review [7 CFR 3560.406 (d)(4)]

1. Environmental Review under the National Environmental Policy Act (NEPA).

   RD approval of a transfer will normally qualify as a categorical exclusion and will not require preparation of any environmental review document, provided the proposed transfer will not alter the purpose, operation, location, or design of the project as originally approved. If the transfer includes additional financial assistance, the appropriate level of environmental review will be completed in accordance with 7 CFR part 1970 and Chapter 3, Section 3 of HB-1-3560.

2. Due Diligence.

   When additional RD financial assistance is involved, due diligence will be performed for a transfer in accordance with the procedures identified in Chapter 3, Section 3 of HB-1-3560. Normally, due diligence will be completed in conjunction with the appraisal, if one is being done.

3. Documentation of Flood Hazard Determination.

   Form FEMA 81-93 will be completed for all transfers involving new RD funding, and for any projects that did not have a flood hazard determination at the time of original development.

4. Correction of Deficiencies and Documentation.

   Both the NEPA review and the due diligence report, as appropriate, will be made a part of the transfer file. Any outstanding concerns noted in either document must be resolved prior to approval of the requested action. The State Environmental Coordinator should be consulted for further evaluation and guidance on any such problems.

F. Advance RD Approval Required for Third-Party Funded Repairs

When there are third-party funded repairs, RD must approve the repair plan and cost estimate for the third-party funded repairs. Costs in the final plan will be evaluated by RD using cost data sources recognized by the housing industry.

G. Reserve Must Be Adequate to Meet 20-Year Capital Needs Based on CNA

Funding of the reserve account should be adequate in accordance with CNA requirements to meet estimated reserve-eligible needs over a 20-year analysis period. If appropriate, a one-time additional reserve deposit to be made at the closing of the transfer will be included in the costs of the transaction, and may affect the revitalization transaction's feasibility. Increases to annual reserve account funding will be included in the estimation of post-transaction rents and may affect the revitalization transaction's feasibility. The Loan Servicer will implement the reserve account changes approved in the transfer as required by 7 CFR 3560.306(j) which provides guidance for any change to reserve account requirements. The minimum reserve deposit that RD may consider will be the greater of (a) the amount required by the most restrictive rent program or third-party lender that will be in place on the property upon completion of the transfer and all repairs; or (b) rehabilitation or other improvements. Reserve accounts shall not be used to meet the CNA needs during the period covered to such an extent that the project will no longer have sufficient amounts to meet the routine servicing needs typically anticipated in the annual budget cycle unless appropriate servicing actions have been initiated by the RD servicing office.

SECTION 6: EVALUATING FEASIBILITY

7.23 EVALUATE FEASIBILITY

Feasibility analysis is the process by which RD determines that the proposed transfer, if implemented, would support the property's long-term viability.

Feasibility analysis involves, without limitation, assessment of the proposed budget, the CNA, the proposed reserve deposit, any proposed payment to the seller, the proposed financing, and the proposed rents. For transfer analysis, the underwriting tool (PAT) considers the ongoing future operations by assuming that Basic Rents rise no faster than inflation to be consistent with typical third-party lending principles that the property should be viable for at least the 20-year CNA analysis period provided it also complies with required RD servicing regulations. This analysis assumes the new owner will comply with the ongoing terms and conditions over the term of the RD direct loan program servicing requirements.

A. Analytical Template

In order to evaluate feasibility, the Loan Servicer will complete an analytical template (PAT) in the format prescribed by PDLD, and found on SharePoint. The template is designed to support decision-making regarding feasibility, and to serve as a record of feasibility decisions in processing the transfer.

B. Compliance Issues

The transfer must address all known compliance issues whether relating to physical condition, financial condition, management findings, occupancy findings, civil rights and accessibility findings, or other issues that must be resolved in order to maintain compliance with RD requirements.

C. Repair Related Issues

The Loan Servicer will ensure that the CNA complies with the statement of work, that it accurately reflects the property's physical needs, and that the transfer is otherwise acceptable to RD.

- If the transferee is planning to make substantial repairs or undertake rehabilitation of the property, the Loan Servicer will consider whether the transferee's initial plans seem reasonable and that the estimated repair costs seem reasonable.

- If the transferee is proposing significant up-front rehabilitation, that there are adequate provisions for supervising the work, inspecting the work, and controlling the repair funds.

- The Loan Servicer will ensure there are sufficient sources of funds to carry out repairs and to pay other costs of the proposed transaction.

D. Third-Party Funding Issues

The Loan Servicer will determine whether:

- All sources of funds are committed. If not, whether it is plausible that firm commitments will be received in time to close the transfer as planned;

- Any third-party funding sources impose additional restrictions on the real property;

- Any third-party funding sources impose additional affordability requirements; or

- Any third-party funder requires a balloon payment prior to the expiration of the proposed RD loan terms.

The Loan Servicer should document any additional requirements and determine how they affect the operation of the project. For example, LIHTC and HOME funding involve additional restrictions on tenant eligibility and the maximum rents that may be charged.

E. Tenant Impact

If the proposed transfer is likely to result in the physical displacement of tenants, e.g., because of planned rehabilitation work, the Loan Servicer will consider whether the proposed transfer includes an adequate tenant relocation plan.

If it is likely that the proposed rent increase will result in the economic displacement of tenants, unless adequate protections are in place, the Loan Servicer will consider whether the proposed transfer includes adequate protections for tenants and the terms, conditions and funding source for such protections.

F. Rents and the Proposed Operating Budget

The Loan Servicer will consider the following to determine if the rents and proposed operating budget are sufficient for the operation of the housing as follows:

- Whether the CRCU rents are sufficient; see Paragraph 7.7 B;

- Whether the proposed transfer requires a rent increase; if so, determine whether the proposed rents will be at or below the lesser of CRCU or restricted rents;

- Whether the proposed O&M expenses are sufficient to support the property's long-term viability;

- Whether the proposed budget meets the minimum combined cushion and vacancy loss, see Paragraph 7.2 D 2;

- Whether the NOI is sufficient to meet the industry standard debt service coverage ratio (DSCR); see Paragraph 7.2 C 13 or 7.2 D 2;

- Whether the level of rent loss. i.e., vacancy plus bad debt, is reasonable in relation to the property's historical performance and local market conditions; see Paragraph 7.2 D 3;

- Whether the proposed operating budget includes an adequate operating margin equal to 20 percent of the total operating expense as underwritten (See Paragraph 7.2 D 5) so that the property can absorb reasonable, foreseeable fluctuations in revenues and expenses without risking deferred maintenance, default on RD loans, or other financial stresses;

- Whether the Debt Service Coverage Ratio (DSCR) is within the established Agency thresholds, see Paragraph 7.2 C 13 or 7.2 D 2;

- Whether the proposed rents are adequate to support adequate O&M expenses, an adequate Reserve deposit, and other costs of operation;

- Whether the proposed rents are otherwise achievable, e.g., in relation to tenant incomes; and

- Whether it is likely that the purchaser will need a future rent increase above the rate of inflation in order to provide for property viability; if so, the transfer does not satisfy viability principles and is not approvable; see Paragraph 7.29 H for a potential exception.

G. Sales Price/Equity Payout

If the transfer calls for equity distributions to the existing owner:

- The appraisal report should meet RD requirements for determining equity;

- The proposed equity payout should comply with RD requirements; and

- The proposed transfer includes adequate provisions to ensure that the seller has met all applicable requirements before equity is paid.

H. RD Loans

Normally a transfer will involve assumption of the entire balance of the borrower's existing loan. If, however, there is insufficient Security Value that will result in a shortfall, the Loan Servicer should determine the borrower's intentions to address any outstanding balance, and whether a write-down may be required as part of the transfer. See Chapter 11 of this Handbook for more information on write-downs.

After the transfer, the Loan Servicer should confirm:

- All RD loans will be current;

- The taxes and insurance account will be adequately funded, with all outstanding bills paid; and

- The security deposit account will be fully funded.

If the transferee is requesting a subsequent loan, the proposed amount of the subsequent loan should be reasonable and sufficient, based on the information and supporting documentation reviewed by the Loan Servicer. If any RD requirements are not likely to be met, the Loan Servicer and Underwriter, through negotiations with the applicant, should enter into a credible plan to cure all of the most serious deficiencies within 12 months and the remainder within the first 3 years using funds provided by the applicant unless the general operating account is adequately funded thru planned project operations under a detailed workout plan, or the application should be rejected and provide the applicant with appropriate appeal rights.

I. Other Feasibility Issues

The Loan Servicer will consider whether the proposed transfer will result in a project classification of A or B in the MFIS system; and if there are any other conditions in the proposed transfer or the proposed budget, that either RD or the project's tenants may find objectionable. See Chapter 4 of this Handbook.

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SECTION 7: EVALUATING RD LOANS AND OVERALL RISK

7.24 EXISTING RURAL DEVELOPMENT LOANS

A. New Terms or Same Loan Terms [7 CFR 3560.406 (j)]

Loan Servicers will review the account to determine which type of transfer needs to occur. RD generally completes transfers on new rates and terms to extend the amortization period thereby reducing the amount of debt service needing to be included in tenant rents. RD may allow transfers at same rates and terms even if the transfer does not involve an increase in rents. In order for this latter type of transfer to take place, it is incumbent upon the borrower to demonstrate how a transfer under same rates and terms is in the best interest of the Government. For example, if the new owner under a transfer has applied for tax credits, and to qualify for 9 percent credits it is necessary to retain same rates and terms, a same-rates-and-terms transfer may be justified on a case-by-case basis by RD HQ.

Before making a recommendation on the transfer, the Loan Servicer should determine if the transfer will be on new terms or the same terms, and address any issues or obstacles that this may present.

B. Existing Loans/New Terms - Amortization Period and Loan Term

New rates and terms transfers require that the remaining term of the loan, i.e., the maturity date, does not extend past the lesser of (a) 30 years from the date of transfer; or (b) the remaining useful life of the property. The loan may be re-amortized over a period not to exceed 50 years or the remaining economic life of the property as determined by the appraisal report of the property, whichever is less.

The Loan Servicer typically will determine the remaining economic life of the housing based on the appraisal. However, the Loan Servicer may consider other information, including knowledge and experience of RD staff. If the remaining economic life as determined in the appraisal is not used, the Loan Servicer must document in the file why a different economic life was selected.

C. Existing Loans/New Terms - Interest Rate

Transfers on new terms are subject to the interest rate conditions described below. If rents are increased due to the transfer, the transfer will be done under new rates and terms if RD determines that this is in the best interest of the Government.

- The interest rate charged for all loans, except Labor Housing loans, will be the current rate being charged for those loans at the time of loan closing or the interest rate at the time of loan approval, whichever is lower.

- The interest rate on Labor Housing loans will be the rate specified in the note, generally 1 percent, except those on farm loans at the exception rate when credit elsewhere is available.

D. Closing Out An Existing Loan That Will Not Be Assumed In Full

Typical transfers will result in the seller assuming the entire balance of the existing loan(s). If, however, there is insufficient Security Value and the existing loan balance will not be assumed in full, the Loan Servicer and the existing borrower must agree on the debt settlement of the existing loan. This is particularly important if the transfer will result in a loan shortfall or the borrower is requesting an equity payment because no equity will be paid.

The remainder of this paragraph discusses considerations that the Loan Servicer should take into account when the full balance of the existing loan will not be assumed by the purchaser.

The Loan Servicer should ensure that the agreed-upon resolution of a shortfall maximizes the borrower's repayment ability, and avoids or minimizes loss to the Government unless it is in RD's best interest to accept an option that is less than the lowest-cost option. The Loan Servicer should ensure that the necessary actions to resolve any issues with the existing borrower are completed, or sufficiently complete to allow for the approval of the transfer. The Loan Servicer should:

- Determine if the transfer will result in a shortfall on the existing loan. If a write-down is needed, see Chapter 11 of this Handbook for more information;
- Initiate the debt settlement process, in accordance with Chapter 12 of this Handbook, if appropriate; and
- Determine if RD should pursue legal remedies against the borrower.

If there is insufficient Security Value to support the existing RD debt, the seller will not have equity in the property. If the seller does have equity that is supported by an appraisal meeting RD requirements and equity payout is proposed, consultation with PDLD would be appropriate. If the seller does not have equity, and non-equity compensation is proposed, see Paragraphs 7.8 D and 7.29 F.

7.25 SUBSEQUENT RD LOANS [7 CFR 3560.406 (h) and (i)]

RD may provide a subsequent loan or approve one from a third-party source in conjunction with an ownership transfer or sale of a housing project. An RD subsequent loan may be:

- a parity loan; sharing the first lien position with the existing RD loan;
- a junior loan; junior to an existing non-RD loan and sharing the second lien position with the existing RD loan; or
- a soft second from a non-RD third-party.

A third-party subsequent loan may have the first lien position, with the existing RD loans accepting second lien position if the loan(s) are sufficiently secured. RD will execute its standard Subordination Agreement.

In any case, the Government must be in a secure position. If the transferee is requesting or receiving a subsequent RD loan, the Loan Servicer should refer to Chapter 10 of HB-1-3560 to ensure that the transferee's application is complete and being processed. The Loan Servicer should verify:

- The subsequent loan process will be completed to coincide with the transfer closing to ensure a smooth closing process; and

- The subsequent loan and its impact are accurately reflected in the transferee's budget and repair and rehabilitation plans.

7.26 VERIFY ADEQUATE SECURITY VALUE [7 CFR 3560.406 (d) (3)]

The Security Value (determined in accordance with the regulations cited above) of the project covered by RD loans to be assumed by the transferee must be sufficient to ensure that all RD loans being assumed and all subsequent loans offered as a part of the transfer can be secured to a level that fully protects RD. Soft second and deferred loans are not included in this determination.

The proposed debt, including existing debt being assumed and any additional debt, shall be counted for determining the Security Value limitations set out in [7 CFR 3560.63]. Third-party soft second mortgages secured only by proceeds from a future sale of the property may be excluded from the debt ceiling and Security Value calculations.

In all cases, Agency-approved appraisals will be required when new debt is added or when the transfer will be approved and closed with new rates and terms. The amount of indebtedness to be assumed will be based on an appraisal that complies with the Uniform Standards of Professional Appraisal Practices (USPAP). In no instances may appraisals be inflated to defer loan losses and write- offs, to avoid adverse tax consequences, or to support a higher tax credit basis.

7.27 ASSESS THE OVERALL RISK AND IMPACT ON RD AND TENANTS

The Loan Servicer compiles the evaluation of the eligibility, transferee, and the property and decides whether to recommend the transfer. Regardless of the level of detail the Loan Servicer went into in evaluating the transfer, the questions and process that the Loan Servicer must follow remain the same.

Based on the transferee's application and the Loan Servicer's knowledge of the existing borrower and property condition, the Loan Servicer should ask three questions as discussed in the following.

A. Is the Potential for Financial Loss to RD Better or No Worse Than With the Existing Borrower?

For both the seller and purchaser, the Loan Servicer should consider financial strength, managerial strength, and prior experience. The Loan Servicer should examine the security for any increase in per unit debt for RD funding. The Loan Servicer should consider whether any proposed third-party funds are fully committed; if not, the transfer approval should be contingent upon receipt of a binding commitment for the third-party funds.

B. Will Any Financial Impact on Current and Future Tenants be Reasonable?

The Loan Servicer should consider any significant change in property rents in relation to tenant incomes. If post-transfer rents approach or exceed CRCU and not all units are

covered by RA or Section 8, the Loan Servicer should consider whether the non-assisted units will be marketable at the proposed rents.

For current unsubsidized tenants, RD may require the tenant protections described below as a condition of approval, in order to determine that the transfer is in the best interests of residents and the Federal Government pursuant to [7 CFR 3560.406(b)].

a. In these situations, RD may require that post-transfer rents for unsubsidized tenants be subsidized by the owner foregoing any authorized RTO, to the extent necessary to reduce the rental payment to the pre-transfer rent, or 30 percent of adjusted income, if higher.

b. If RD requires the above condition be met, the applicant/transferee will only be required to subsidize the difference in rents that exists at the time of the transfer closing for any unsubsidized tenant that is negatively impacted by the post-transfer rents. For example, if at the time of the transfer, the 2BR rent increased by $75, one unsubsidized tenant was negatively impacted, and that tenant occupied a 2BR unit at the time of the transfer, the subsidy to be provided by the applicant to the affected tenant remains at $75 per month without regard to subsequent changes to the Basic Rents.

c. Annual operating budgets are to reflect the amount of foregone RTO to fund the temporary rent protections. The obligation with respect to each unsubsidized tenant in place at the time of the transfer will end when the tenant:

- Receives rental assistance;
- Receives a housing voucher;
- Voluntarily leaves the property;
- Is evicted for proper cause; or
- Has income increased to pay the post-transfer Basic Rent without being rent over-burdened. If, for example, the pre-transfer rent is $250, at each recertification the unsubsidized tenant will pay the greater of $250 or 30 percent of adjusted income, until the tenant can pay the full post-transfer Basic Rent.

d. The following is loan agreement language that may be used as an addendum to document this requirement:

As of [date], [number] income-producing units were unsubsidized units, of which [number] were occupied by the following Affected Tenants:

[Unit number, unit type, tenant name, pre-transfer Basic Rent, post-transfer Basic Rent]. Notwithstanding the authorized Return to Owner (RTO) level discussed in paragraph [x], the owner is responsible for any shortfall in overage that the borrower must pay to RD from non-project funds to subsidize the rents of all affected tenants. The subsidy for each unit is the difference between the pre-transfer Basic Rent and the post-transfer Basic Rent; that is, the rent to be paid by each affected tenant will be the then current Basic Rent minus the subsidy. The subsidy shall not increase or decrease based on

subsequent adjustments in Basic Rents. The owner is to fund the subsidy by foregoing otherwise allowable Return to Owner. Annual operating budgets are to reflect the amount of foregone Return to Owner to fund the temporary rent incentives.

This obligation will end when the last of the Affected Tenants is either assigned rental assistance, receives a housing voucher, voluntarily leaves the property, has his or her tenancy properly terminated for cause, or achieves increased income sufficient to afford the then current Basic Rent without exceeding 30 percent for rent and utilities. Furthermore, the borrower at all times remains obligated to observe all applicable occupancy and tenancy requirements of USDA regulations, including 7 CFR part 3560. When proposing and approving rent changes during the transition, the borrower and USDA agree that the Basic Rent rates and utility charges for a unit will not be affected by whether the tenant is an Affected Tenant.

All addendums will be reviewed by the Regional OGC.

C. Will Housing Conditions Be Better or No Worse Than under the Current Borrower?

The Loan Servicer should consider existing property conditions, any repair plans, or plans to increase available reserves. In addition, the Loan Servicer should examine the purchaser's demonstrated record of managing property effectively, maintaining good physical conditions, and providing services to tenants while keeping expenses reasonable and necessary in comparison with comparable RD properties in the state or region.

The Loan Servicer must be able to answer these questions and explain the answers through the transfer application and case file documentation. The Loan Servicer must answer yes to all questions in order to recommend the transfer. If the Loan Servicer answers no to one or more questions, continue to work with the transferee to resolve any outstanding issues before recommending the transfer. The information the Loan Servicer receives as part of the application and documentation completed during the review process will account for most of the documentation required. However, the Loan Servicer should include a narrative statement in the case file explaining how the Loan Servicer reached the conclusion that the transfer meets RD objectives.

7.28 COMPLETE AND VERIFY APPLICABLE FORMS

Throughout the review process, the Loan Servicer must prepare relevant forms to facilitate the transfer and ensure that each form is prepared correctly. The forms listed below must be filled out to complete a transfer:

- To transfer multiple housing loans to borrowers assuming the obligations, Loan Servicers must prepare *Form RD 3560-21*. One signed copy of this form should be given to the transferee, another signed copy kept in the Field Office case file, and the original form kept in a secure location such as the Field Office safe.

- To transfer rental assistance, Loan Servicers need to prepare *Form RD 3560-55*.

- To record borrower eligibility to receive interest credit or rental assistance, Loan Servicers need to prepare *Form RD 3560-9*.

- The proposed transfer conforms to the applicable procedural requirements and that determinations of hardship status, eligibility, etc. are clearly documented in the case file;

- Each form is prepared correctly according to the Forms Manual Insert (FMI) or other appropriate regulations; and

- Items such as names, addresses, and the amount of the indebtedness to be assumed are the same on all forms in which those items appear.

7.29 OBTAIN PDLD CONCURRENCE

When the Loan Servicer determines that all conditions have been met and is ready to recommend approval of the transfer, the Loan Servicer forwards the application docket and the official case file, with comments and recommendations, to the State Office.

If PDLD concurrence will be needed, the Loan Servicer will include in the docket the appropriate analytical template and any other information that will be needed for PDLD's review. When requesting PDLD concurrence, the State Office will forward only the materials needed for PDLD's review. The docket itself will not be forwarded to PDLD unless requested by PDLD, but the Loan Servicer needs to include in the docket all materials that the State Office will need to forward to PDLD.

To request PDLD concurrence, the State Director emails RD HQ to request PDLD's concurrence, attaching only those materials that are needed for PDLD's review. The following should be attached to the email:

- A transmittal summary outlining the areas in which concurrence is requested, discussing the relevant aspects of the proposed transfer, and certifying that the proposed transfer meets applicable RD transfer requirements. Use Form RD 3560-20, Multi-Family Housing Transfer and Assumption Review and Recommendation.

- If an appraisal is required by this chapter, the cover letter will certify that the appraiser evaluated the impact of any remaining RUP using methods acceptable to RD, and that the appraisal was otherwise completed in accordance with applicable RD requirements.

- The analytical template; either PAT or in the format prescribed by PDLD.

- Any additional information that may be needed for PDLD to perform its review; e.g., Loan Servicer memorandum concerning proposed business terms of new third-party debt.

The State must also email a pdf or fax a copy of the signed request letter to RD HQ.

Prior to forwarding the docket to OGC for review, PDLD's review and concurrence should be obtained and documented in the circumstances discussed below.

PDLD review and concurrence is required for all prepayment-related transfers; i.e., properties being transferred pursuant to Chapter 15 of this Handbook, and any transfers that include changes in the terms of RD's financing or additional investment of funds by RD.

For non-prepayment-related transfers unless otherwise stated below, PDLD's review will be limited to the analytical template (PAT or in the format prescribed by PDLD) supplied by the Loan Servicer.

A. Equity Payout to Seller

Using the PAT supplied by the Loan Servicer, PDLD will verify that the equity payout amount was correctly calculated and that the Basic Rents, including an adequate reserve deposit and adequate O&M expenses, do not exceed CRCU.

B. Increased Debt Service Built Into the Basic Rents

Using the PAT analytical tool supplied by the Loan Servicer, PDLD will verify that Basic Rents including an adequate reserve deposit and adequate O&M expenses do not exceed CRCU. On a case-by-case basis, PDLD may also ask the Loan Servicer to submit the Loan Servicer's determination that all uses of loan proceeds are eligible uses. In addition, the Loan Servicer must include in the docket, for PDLD review, a memorandum stating that the Loan Servicer has reviewed the proposed business terms of the new debt to verify the applicable RD guidelines listed below have been satisfied:

- The debt is fully amortizing;
- The maturity date is after the maturity date of all RD debt; and
- There is an agreement by the third-party lender, acceptable to PDLD, to extend the scheduled maturity on terms that do not require rents above CRCU.

C. Increased Return to Owner

Using the PAT supplied by the Loan Servicer, PDLD will verify that the new RTO has been correctly calculated as discussed in Paragraph 7.9. PDLD will verify that the proposed Basic Rents, including an adequate reserve deposit and adequate O&M expenses, do not exceed CRCU. If there are unsubsidized tenants, the Loan Servicer must include in the docket, for PDLD review, documentation that applicable tenant protection requirements have been satisfied as discussed in Paragraph 7.27.

D. Section 515 Loan Modified

If the underlying Section 515 loan(s) will be modified, e.g., change in rate, change in maturity date, change in Interest Credit payment or Note Rate payment, subordination, or modification to balance due, the Loan Servicer will document in the analytical template each of the proposed modifications. PDLD will review the proposed modification(s) to verify that applicable RD requirements have been satisfied.

E. Basic Rents Increase More Than $25 per Month, and There Are Unassisted Tenants

If Basic Rents increase more than $25 per month and there are unassisted tenants, the Loan Servicer must include in the docket, for PDLD review, a discussion of:

- Whether the proposed Basic Rents include an adequate reserve deposit and adequate O&M expenses; if not, a workout agreement should be included.
- Any measures already taken to minimize the increase in Basic Rents.
- Any commitments by the State Office to transfer unused RA to this project, including an estimate of when unused RA might become available to this project.
- The impact of the proposed increase on current unassisted tenants.
- Any commitments by the purchaser to minimize the impact on current unassisted tenants.

F. Non-Equity Compensation

PDLD's concurrence is required and PDLD will review the analytical template if the transfer involves non-equity compensation. See Paragraph 7.8 D.

G. Exceptions to Regulations

If elements of the proposed transaction are not in accordance with applicable regulations, PDLD's approval of those elements must be obtained. PDLD will coordinate the approval of any exceptions that are required. Requests for exceptions must be made in accordance with [7 CFR 3560.8].

H. Transfers Not Meeting Viability Criteria (Transfers with Workout).

This chapter requires post-transfer Basic Rents must support an adequate reserve deposit so that all projected reserve-eligible needs can be funded from the reserve, and are adequate to pay O&M expenses. However, from time to time, State Offices may propose for approval transfers that do not meet these criteria; for example, when there are compelling reasons such as outstanding physical issues and there is a credible plan to secure additional funding after the closing of the transfer.

When proposing a Transfer with Workout, the Loan Servicer must include in the transmittal letter to PDLD:

- A comparison between the proposed post-transfer rents and the (higher) rents that would otherwise be required under this chapter.
- The purchaser's plans for achieving financial viability and the time frame in which the purchaser plans to achieve viability.
- The written agreements between the State Office and the purchaser concerning the consequences to the property and the purchaser if the purchaser's plans cannot be implemented. If the proposed consequences include higher Basic Rents, a discussion of tenant impact must be included, covering the issues outlined in Paragraph 7.27 B.

I. MPR Program Tools

For transferees that have applied for or are currently participating in the MPR Program, awards of MPR Tools such as debt deferral of existing RD loans, grants, deferred payment or soft loans may be offered under an MPR NOSA. These require PDLD prior approval.

J. Authorization

RD HQ will provide the respective RD State Director with project-specific authorization based on the underwriting proposed and recommended by the state office. Authorities will include any appropriate waivers, exceptions, or other special conditions for the specific transaction. Each authorization is unique to the individual transfer transaction and does not establish policy or precedent. Each transfer stands on its own merits.

SECTION 8: MAKING THE DECISION

Once RD has made the decision to approve a transfer and issue closing instructions, it must undertake a number of steps to implement the transfer. The steps RD takes to process and close a transfer on either new or same terms are similar to each other.

7.30 OVERVIEW [7 CFR 3560.406 (k)]

RD has established specific requirements for implementing project transfers to ensure that the obligations and responsibilities of the transferor are formally passed to the transferee and that RD's security interests are protected. Specifically, these requirements ensure that:

- All accounts, property, and subsidy as applicable, with advice from regional OGC are properly assigned to the transferee;
- A proper loan agreement or loan resolution for the type of transferee is in effect and secured in the mortgage or deed of trust (typically a same rates and terms transfer does not require a new mortgage or deed of trust unless required by the Regional OGC);
- The transferor is released from liability when all RD security is transferred and the total outstanding debt is assumed; and
- Applicable restrictive-use provisions are required for the transferred loans.

Exhibit 7-3, Basic Steps in Implementing Transfers, summarizes the steps Loan Servicers and Underwriters should take to implement approved transfers and may the order may be adjusted to meet the specific timelines necessary to successfully complete the transaction. These steps should be reviewed and coordinated with the RD Underwriter processing the transfer request and the RD Servicer.

Exhibit 7-3

Basic Steps in Implementing Transfers

1. Determine current loan balances for transfer;
2. Prepare the closing package;
3. Review applicable closing requirements with the transferee;
4. Determine the new RUP;
5. Prepare and discuss the Letter of Conditions with applicable parties;
6. Obligate the subsequent loan, if applicable;
7. Approve the transfer;
8. OGC review for closing;
9. Close the transfer;
10. Release the seller from liability when authorized by OGC;
11. Assign leases and other legal documents to transferee;
12. Shift accounts, funds, and assets to transferee;
13. Inform new borrower of administrative responsibilities;
14. Schedule a follow-up servicing visit; and
    Monitor rehabilitation work.

7.31 MAKING THE DECISION

A. Determine Current Loan Balances for Transfer

1. Determine the Loan Balance

To determine the current loan balance for transfer, the Loan Servicer must execute Form RD 3560-21 according to the FMI. The unpaid principal balance and accrued interest to be shown on Form RD 3560-21 is determined by accessing the project account record via field terminal. The Loan Servicer should contact NFAOC to verify the correct amounts and dates to be used in closing the transaction. The Loan Servicer will advise the transferee of:

- The total amount paid as of the closing date that has not been credited to the account;
- The payment required to place the account on schedule as of the previous installment due date;
- Payment required to bring any monthly or annual payment current; and
- The amount needed to bring the reserve account current less any authorized withdrawals.

The Loan Servicer must base the amount of indebtedness to be assumed on current appraisal regulations.

In the case of a transfer with assumption of less than the full debt, the Loan Servicer will attach a copy of Form RD 3560-52 to Form RD 3560-21 MFH Assumption Agreement, and place it in the field office safe.

2. Adjustments to the Account

Same-terms transfers, when the transferor has been converted to Predetermined Amortization Schedule System (PASS), must take place in a current loan status on the date of transfer. Thus, transferors must bring any delinquent principal and interest current prior to the transfer.

Overpayments and advance regular payments made on PASS accounts result in the creation of a future paid status account under Automated Multi-Family Housing Accounting System (AMAS). The Loan Servicer must work with NFAOC to determine the disposition of future payments; e.g., as a refund to transferor or applied as an extra payment to the transferee's account. Loan Servicers should refer to the AMAS Manual, Chapter 4, for additional guidance and document the verified information with NFAOC prior to closing.

B. Prepare the Closing Package

1. Basic Components of the Docket

The Loan Servicer should verify that any items listed in the Transfer Request Checklist (Attachment 7-D) and not provided earlier; e.g., evidence of insurance, have been submitted by the transferee.

2. Other Supplemental Documentation

Other transfer docket items may include:

- Letter of Conditions;
- Mortgagee title policy;
- Title evidence or report of lien search;
- Original or certified copy of deed to any property;
- Purchase contract or other instrument of ownership;
- Assignment of HUD Section 8 Housing Assistance Payments contract; and
- Information on prior or junior mortgage(s).

Completion of this step ensures that the entire history of the transfer, from request through final approval, is adequately and legally documented. Maintenance of this history allows RD to hold transferees accountable for compliance with all agreements signed during the transfer process.

C. Review Applicable Requirements with the Transferee

After closing instructions have been issued but before the transfer is closed, the Loan Servicer will carefully review with the transferee the applicable loan program regulations, and loan agreement or resolution if this was not fully completed during the preliminary request meeting in accordance with Paragraph 7.13.

D. Determine New Restrictive Use Period Requirement

Exhibit 7-4, RUPs for Transfers Outside the RD Prepayment Process does not address borrowers who are in the prepayment process (including re-amortizations in conjunction with incentives to avert prepayment).

For borrowers outside the prepayment process, restrictive-use provisions must be included in: (a) the release documents; (b) a restrictive-use agreement acceptable to RD and signed by the borrower; and (c) a deed restriction.

Exhibit 7-4

RUPs For Transfers <u>Outside the RD Prepayment Process</u>

[7 CFR 3560.406(g) and 7 CFR 3560.662 (b)]

Type of Transfer (Outside the Prepayment Process)	**20-Yr**	**30-Yr**
Third-party with debt for equity; USDA is not the lender		30-yr
All other transfers outside the prepayment process (no equity paid with loan funds of any type)	20-Yr	

For transfers occurring in the prepayment process, the State Office should work closely with PDLD, and the new RUP will be determined in accordance with applicable regulations and other guidance. See Chapter 15 of this Handbook.

E. Prepare the Draft Letter of Conditions

Prepare the draft Letter of Conditions, containing the proposed conditions to RD's approval for the purchaser and seller to close the transfer. Review the draft Letter of Conditions with the purchaser. See also Paragraph 7.29.

F. Prepare to Close the Transfer and Obligate the Subsequent Loan

Normally, a new Loan Agreement/Resolution will be required for all transfers with guidance from the Regional OGC. The following forms are always required if changes must be made to the existing loan agreement or the transfer is a new terms transfer.

1. Form RD 3560-33, Loan Agreement
2. Form RD 3560-34, Loan Agreement
3. Form RD 3560-35, Loan Resolution
4. Form RD 3560-51, (Required if new RD funds are being provided).

The Loan Servicer enters the required data on borrower and project characteristics into the appropriate AMAS screens. The account and project numbers is updated by AMAS to identify the transferee when completing the transfer closing documents.

The Loan Servicer must also ensure that the proper type of loan agreement or loan resolution is in effect, and secured by the mortgage or deed of trust at the time of transfer.

G. OGC Review

After receiving any required PDLD concurrence, the State Director will forward the docket to OGC for review and preparation of final closing instructions. When transmitting the docket to OGC, include the draft Letter of Conditions for OGC review unless otherwise instructed by OGC.

If the transfer is approved, OGC will issue closing instructions. The State Office forwards any comments and conditions to the Field Office and gives them authority to issue the Letter of Conditions to the transferee. Within 10 days of receipt, the transferee will return a copy of the Letter of Conditions, signed and dated, to the Servicing Office. After receipt, the Field Office will schedule a meeting with the transferee to execute the obligating documents.

H. Approve the Transfer

When the transfer is approved, the Loan Servicer completes Form RD 3560-20. Form RD 3560-20 is primarily a record of RD's determinations regarding the transfer.

Form RD 3560-20 should summarize all transactions involved relating to equity including disposition of syndication proceeds between the transferee and transferor, method and source of payment, payment of recoverable costs items, disposition of future payments, assignment of project accounts, and leases and disposition of any equipment purchased with loan or project funds.

The Loan Servicer documents:

1. That the transfer will result in post-transaction balances in the project's operating, reserve, taxes and insurance, and tenant security deposit accounts to at least equal pre-transaction levels.
2. Any necessary actions to bring the project into compliance with regulations and loan instruments, such as Identity of Interest Statements, delinquent payments, under-funded reserves, accessibility issues, and deferred maintenance.
3. That any Required Repairs that were to be completed prior to closing have been completed. See Paragraph 7.22 D.

If Required Repairs were determined necessary, the Loan Servicer ensures that the Repair Agreement (See Attachment 7-B-1, Transfer Application Documents) provides for completion of the Required Repairs and states which party will be responsible and the source of funds.

The seller and purchaser will sign page 6 of Form RD 3560-20 to certify their agreement with the statements within the Form that relate to the purchase contract. The purchase contract between the buyer and seller is attached to the form as an addendum.

Upon receipt of the transfer authorization memo from RD HQ, the State Director or authorized designee will prepare and issue to the Applicant the formal approval letter based on that authorization, including any waivers, exceptions, or other special conditions; and any other specific conditions unique to the individual transfer transaction deemed necessary and appropriate.

Frequently, the transfer approval and closing conditions are addressed in the same letter. However, this should be discussed with the individual regional OGC to ensure the timely and efficient closing of the approved transaction.

Transfers that have been underwritten, reviewed and authorized will require reconsideration by RD HQ if they are not closed within six months from the date of the transfer authorization memo.

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SECTION 9: IMPLEMENTING THE TRANSFER

7.32 CLOSING THE TRANSFER

A. Overview

RD will close the transfer according to the closing instructions received from OGC. After the transfer is approved, the Loan Servicer enters the transfer into the AMAS system within five business days after closing. The transferee has now become the new borrower.

Upon completion of the transfer, there must be no liens, third-party loans, judgments, or other claims against the security being transferred other than those by RD and those to which RD has previously agreed, unless prior written approval is obtained from RD HQ.

The parties to the transfer are responsible for obtaining legal services necessary to accomplish the transfer.

- A for-profit or limited-profit organization transferee may use any designated attorney or title insurance company to close the transfer according to the applicable closing instructions from OGC. The attorney or title insurance company and its principals or employees must not be members, officers, directors, trustees, stockholders, or partners of the transferee or transferor entity.

- Non-profit organization transferees may use a designated attorney who is a member of their organization if the cost is reasonable, typical for the area, and earned.

B. Release the Seller From Liability

RD should release the seller from liability from any debts owed to RD when the housing project and all equipment, related facilities, and housing project financial accounts have been transferred or sold to the transferee and the transferor's outstanding RD debts have been assumed or satisfied.

If all of a transferor's outstanding RD debt is not assumed or paid off at the time of the transfer or sale, RD will not release a borrower from liability unless RD determines that the borrower is unable to pay the remaining debt from assets taken as security through the debt settlement procedures.

Refer to Chapter 12 of this Handbook for debt settlement procedures.

C. Assign Leases to Transferee

All leases must be assigned to the transferee no later than the date of closing.

D. Assign Rental Assistance Agreement to Transferee

When a transferee assumes a rental assistance agreement, the Loan Servicer will complete Form RD 3560-55, and attach it to Form RD 3560-27, Rental Assistance Agreement. In addition, they will process the transfer of RA through the AMAS system. If the transferee does not assume an existing agreement, the units will be considered unused and will be recaptured in accordance with 7 CFR 3560.259.

E. Assign Other Agreements to Transferee

If a project operates under the HUD Section 8 program, the Housing Assistance Payment contract must also be assigned to the transferee with prior HUD approval.

When the full amount of the debt is being assumed and an amount has been advanced for insurance premiums or for any other purpose, the transfer will not be completed until NFAOC has charged the advance to the transferor's account.

F. Shift Accounts, Funds, and Assets to Transferee (General)

Following the assignment of leases, responsibility for the accounts, funds, and assets listed below is shifted from the transferor to the transferee:

- Project operating accounts;
- Reserve account;
- Tenant security deposits;
- Supervised bank accounts;
- Any funds remaining in rental assistance contract; and
- Equipment purchased with project funds.

7.33 POST-CLOSING

A. Inform Borrower of Administrative Responsibilities

Following completion of a transfer, the transferee has several reporting and other administrative responsibilities that need to be satisfied. The Loan Servicer must inform the transferee of these requirements shortly after the transfer is closed. RD HQ may also conduct post-closing reviews and analysis as they deem appropriate for program monitoring and administration.

B. Schedule a Follow-Up Servicing Visit

The Loan Servicer should schedule a servicing visit within 90 days after closing to verify the transferee's compliance with all applicable program requirements.

C. Monitor Rehabilitation Work

RD will monitor all repairs and approve payments using the procedures outlined in Chapter 9 of HB-1-3560. Completing this step allows RD to verify that the property will continue to operate in a decent, safe, and sanitary condition.

D. Reporting

Following the transfer, transferees must submit monthly or quarterly project financial reports to RD to document the financial viability of the project.

E. Tenant Certifications

Transferees must ensure that current executed tenant certifications are on file with RD or provided for each tenant following the transfer.

F. Identification of All Creditors

At completion of the transfer, transferees must establish that there are no liens, judgments, or other claims against the security being transferred other than those by RD and those to which RD has previously agreed.

G. Verify All AMAS/MFIS Data

At completion of the transfer, the Loan Servicer will verify that all AMAS/MIFS data has been input or updated to accurately reflect the loan approval and closing conditions as underwritten, including the approved CNA and reserve funding schedules within 30 days of closing.

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ATTACHMENT 7-A

REVITALIZATION GUIDANCE

This Attachment contains Revitalization Principles adopted by Rural Development to guide all multifamily housing activities.

This Attachment provides guidance on using Rural Development's regulatory authorities to revitalize and preserve the existing MFH portfolio through transfers and assumptions. Prolonged reduced program funding, the portfolio's increasing age, and existing owners seeking viable program exit strategies are key reasons why exceptional efforts are now needed to revitalize the portfolio. It will take extensive cooperation by existing owners, potential purchasers, non-Rural Development financiers, and Rural Development to help preserve this irreplaceable affordable rental housing option in rural America.

Rural Development will seek to find solutions to extend and enhance the use of each MFH property that continues to serve the affordable housing needs in its community. This attachment establishes guidance for revitalizing MFH projects using the transfer authority of *[7 CFR part 3560]*.

Revitalization Principles. The goal of revitalization is to refocus resources on existing properties so they can meet affordable rental housing needs well into the future. Basic revitalization principles are summarized below.

1. There is a need for the property in the community.
2. When the transaction is complete, the property will be in the hands of eligible owners.
3. The transaction will address the physical needs of the property.
4. Existing tenants will not be displaced because of increased post-transaction rents.
5. Post-transaction basic rents will not exceed comparable market rents.
6. Any equity loan amount will be supported by a market value appraisal.
7. The PDLD concurs with equity loan amounts and new RTO, and coordinates the approval of waivers, National Office approvals, or revitalization related policy issues.

These principles must be documented by Rural Development's loan servicer.

Use effective processing strategies. Rural Development must work effectively to help purchasers to meet timeframes and other requirements of third-party funding sources. Key methods to foster cooperation and efficiencies within State Office jurisdictions include:

1. The State MFH Preservation Contact coordinates State revitalization activity.
2. Develop and maintain standard transfer processing guidance and checklists.
3. For each transaction, establish an up-front understanding for assessing capital needs, establishing the scope of rehabilitation and determining the appraised value.
4. Develop a good working relationship with third-party funding sources.
5. Understand processing timeframes and requirements for third-party funding sources.
6. Process and approve transactions to assist owners to meet timeframes and other requirements of third-party funding sources.

Fully use servicing authorities. Rural Development must creatively consider and use when practicable other servicing authorities to facilitate revitalization. These authorities include:

1. Subordination for third-party equity or rehabilitation loans.
2. Accept parity or junior liens for equity or rehabilitation purposes.
3. Accept pre- or post-transaction consolidations to facilitate efficient management.
4. Re-amortization of existing Rural Development debt to reduce debt service.
5. Reallocate unused RA units to assure affordability by existing tenants.
6. Allow for post-transaction asset management fee to a non-profit or public body.
7. Other waivers and National Office approvals as necessary.

ATTACHMENT 7-B-1
TRANSFER APPLICATION DOCUMENTS

The following is a list of the documents constituting a complete application for Rural Development approval of a proposed transfer. Rural Development processing will begin only when a complete transfer request package has been submitted.

Transfer requests must be submitted at least 45 days prior to the proposed transfer approval date. *[7 CFR 3560.406 (c)]*. Unless otherwise noted, all documents are to be submitted at the time of application. Form numbers and references to applicable guidance are shown in italics.

The Proposed Transaction

1. **Executive Summary.** An executive summary of significant aspects of the proposed transaction. Because each of the following will be supported by more detailed information that will also be provided, discussion should be brief in the executive summary. The following should be discussed:

   A. Acceptable Reason for Transfer. Why the transfer satisfies at least one of the following (see paragraph 7.5).

   - Facilitates the physical and financial revitalization of the property.
   - Needed to remove a hardship to the current borrower that was caused by circumstances beyond the borrower's control (circumstances constituting 'hardship' are discussed in Paragraph 7.5.
   - The transfer is a result of a court order requiring the division of security property.
   - The transfer is being requested as an alternative to prepayment. Chapter 15 of HB-3-3560.
   - The transfer will do no harm to Rural Development or tenants.
   - Other circumstances exist which make the transfer in the best interest of the Government and the tenants of the project.

   B. How the proposed transaction will improve or maintain:

   - The viability of the property. Discuss the nature and extent of repairs. If the project is in an area experiencing economic stress, or if the project is experiencing occupancy challenges, discuss plans for ensuring that the project remains viable.
   - The likelihood of loan repayment to Rural Development.
   - The quality of housing for the tenants.

C. Any concerns previously identified by Rural Development (e.g., maintenance issues, compliance findings) and how these concerns will be addressed.

D. Proposed purchaser.

E. Proposed management.

F. Establish that the purchaser has site control. For example, sit control can be established through an option to purchase, or through a purchase and sale agreement.

G. If the new proposed Return to Owner (RTO) differs from the RTO currently applicable to the seller, explain the reason for the proposed change and show that the proposed change is in accordance with applicable Rural Development requirements. See paragraph 7.0 and Exhibit 7.3

H. Any financial commitments, financial concessions, or other economic benefits proposed to be provided by Rural Development. For example:

- A change in rents
- A change in interest rate or loan term or amortization.
- Rental Assistance.
- A subsequent Section 515 loan.
- Subordination in lien position.

I. Third-party funding. For each third-party funding source, discuss briefly (providing highlights of the more detail information called for under items 19 through 23 below):

- Funding provider (names of debt/equity providers).
- Commitment status (e.g. application submitted, conditional commitment received). Unless all non-USDA funds are fully committed, including a discussion explaining how the proposed transaction will change if some or all of the conditionally committed funds are not realized.
- Timing issues, including:
  - ◊ Any deadlines for Rural Development approval of the transfer, or for closing the transfer.
  - ◊ When the proposed third-party funding is expected to be available to the project.
  - ◊ For loans, when it is anticipated that debt service payments will start, and how debt service payments will be funded prior to the time that Rural Development will allow project operating funds to be used to pay debt service.
- Any restrictions that will be applicable to the project and/or the purchase, for example rent limitations, tenant eligibility requirements, and regulatory agreements. Discuss the nature and duration of any such requirements.

- Whether any accommodation by Rural Development (such as subordination in lien position) is proposed.

J. Any proposed compensation to parties having an identity of interest with either the seller or purchaser.

K. Any proposed interim financing (for example, a construction or bridge loan) that may be needed to pay for uses prior to the time that third-party funding sources become available.

2. Required written statements. If there are exceptions, the statement should be worded accordingly and should include an explanation of any exceptions. For example, "there is no identity-of-interest … except that [include explanation]." If information is being provided by key principles to mitigate shortcomings in the transferee they will be added to this section and signed by the parties involved.

A. Joint Statement Concerning Project Equipment and Accounts. Acknowledgement by the seller and purchaser that, "Rural Development will require the borrower to transfer all equipment, related facilities, and housing project financial accounts to the transferee including the operation and maintenance account, reserve account, tenant security deposit account, tax and insurance escrow account". See *[7 CFR 3560.406(k)]*.

B. Joint Statement Concerning Identity of Interest. "A statement disclosing any identity-of-interest between the borrower and the party to which the housing project ownership is being transferred or sold." See *[7 CFR 3560.406(c)(1)]*.

C. Joint Statement Concerning Environmental Review. Statement by the seller and purchaser that, "The proposed transfer will not alter the purpose, operation, location, or design of the project as originally approved."

D. Joint Statement Authorizing Release of Information to Rural Development (if third-party funding is proposed). Authorization from both the seller and purchaser to each third-party funder authorizing the third-party funder to release information to Rural Development.

E. Seller Statement Concerning Project Financial Condition. The seller's statement "Certifying that the housing project's financial accounts are funded at required levels, less authorized withdrawals, and that payments due for operation and maintenance expenses, tax assessments, insurance premiums, any required tenant security deposit accounts, and other obligations incurred as a part of the housing project operations are paid in full with no overdue balances or a statement explaining the housing project's financial situation and the reasons for overdue payments or under-funded accounts." See *[7 CFR 3560.406(c)(2)]*.

F. Purchaser Statement Concerning Transfer. The purchaser's written statement, signed by the proposed transferee or buyer, "Certify that the transferee or buyer will assume the borrower responsibilities and obligations specified in Rural Development program

requirements including requirements in a promissory note, loan agreement or other documents related to Rural Development loans held by the borrower entity." See *[7 CFR 3560.406(c)(4)].*

G. **Joint Statement Concerning No Reversionary Interest.** "A certification from the borrower and the proposed transferee or buyer that the borrower does not and will not have a reversionary interest in the housing project." See *[C CFR 3560.406(c)(5)].*

H. **Purchaser Statement Concerning Tenant Certifications.** The purchaser's plan for complying with the requirement that transferee must, "Ensure that tenant certifications in compliance with subpart D of this part for all occupied rental units are on file with Rural Development." *[7 CFR 3560.406(d)(10)].*

I. **Purchaser Statement Concerning Financial Reports. "**The purchaser's agrees to submit financial reports to Rural Development as required under *7 CFR part 3560, subpart G."[7 CFR 3560.406(d)(12)].*

J. **Purchaser Statement Concerning Credit (if applying for a subsequent loan).** The purchaser's statement (accompanied by documentation acceptable to Rural Development) that, "The purchaser is unable to obtain sufficient credit elsewhere at rates that would allow for project rents within the payment ability of eligible residents." Documentation may include letters from lenders or a certification from the applicant which identifies the lenders contacted along with rates and terms quote from lenders.

K. **Seller Statement Concerning Five-Year Requirement (if applicable).** If the seller has owned the project less than five years, "The sellers acknowledges that the sellers will be ineligible for further Rural Development loans for the remainder of the 5-year period beginning on the date the seller acquired the project." Paragraph 7.5 A.

L. **Purchase Statement Regarding Appraisal.** A statement by the purchaser that that reflects, "The market value appraisal referenced in item 13 below was completed in accordance with HB-1-3560, Chapter 7, Attachment 7-C." In addition, the purchaser must acknowledge whether there are any current restrictions or prepayment prohibitions on the property and must state that, "All restrictions and prepayment prohibitions were considered by the appraiser in determining the market value."

3. **MFH Transfer & Assumption Application Supplement.** Attachment 7-B-2.
4. **Partial Release or Subordination (if applicable).** If the proposed transaction includes partial release or subordination of Rural Development's lien, include Application for Partial Release. *Form RD 3560-1.*
5. **Purchase and Sale Agreement.** Submit the applicable document, executed by purchaser and seller, in its entirety, including all attachments and amendments. Include any side agreements. The document must clearly recite all consideration to be paid to the seller, *[7 CFR 3560.406 (d)(6)].* Purchasers and sellers may use *Form RD 440-34* as the purchase and sale agreement.
6. **Current Preliminary Title Report.** *7 CFR 3560.406.(d)(13)].* May be omitted for Deceased Borrower transfers (Paragraph 7.5 D.)

7. **Legal Services Agreement.** *[7 CFR 3560.62(a)].* Provide a copy of any written contract for legal services that will be paid with Rural Development loan funds.

The Project and Proposed Repairs

8. **Capital Needs Assessment (CNA).** See Paragraph 7.22. The CNA will be reviewed by the Rural Development CNA Reviewer and may need to be revised or adjusted to conform to Rural Development program requirements. Final approval of the CNA must be provided by the Rural Development CNA Reviewer prior to final approval of the transfer. May be omitted for Deceased Borrower transfer (Paragraph 7.5 D).
9. **Current Self Evaluation/Transition Plan.** See HB-2-3560, Chapter 3, Paragraph 3.5. Submit a current (less than 3 years old) Self Evaluation/Transition Plan, if applicable and completed in accordance with 7 CFR 3560 15b.
10. **Repair Agreement** *[7 CFR 3560.406 (d)(7)].* May be omitted for Deceased Borrower transfer (Paragraph 7.8 B 6). This should be developed in light of the CNA and should address the following:

A. Must be signed by seller and purchaser.
B. Must address known compliance issues.

- Must identify all repairs known by the borrower to be necessary to bring the project into compliance with Rural Development requirements.
- Must include any repairs required to correct any compliance violations previously cited by Rural Development.
- Repairs to correct compliance issues must either be completed by the seller prior to transfer, or be subject to a workout agreement between the Rural Development and the purchaser.

C. If the CNA was prepared on the assumption that certain repairs have been completed, provide:

- Evidence of Rural Development approval of the repair agreement and cost estimate for the third-party funded repairs.
- Cost estimate for the repairs.
- Month-to-month estimate for repair expenditures.
- How the repairs are proposed to be funded.

D. Tenant relocation costs if tenant relocation is necessary to rehabilitate the property.

E. The repair agreement must identify each up-front repair or enhancement item, the timeframe for completion, estimate of costs for each item, funding source for each phase of completion, who will do the work, and any Identify of Interest between the transferee and the party doing the work or providing materials and services.
F. Division of responsibility for repairs between purchaser and seller.
G. If equity is proposed to be paid out prior to completion of repairs, a guarantee acceptable to Rural Development that any repair costs in excess of the estimate will be paid from non-project funds.

11. Cost Estimate (if applicable). Form RD 1924-13. "*Estimate and Certificate of Actual Cost".* Applicable if repairs will be funded by Rural Development.

Documentation of Market Rents and Value

Rural Development strongly recommends that purchasers consult with Rural Development before ordering appraisal products, to verify that the correct instructions are being provided to the appraiser. See HB1-3560, Chapter 7 and Attachment 7-C for Rural Development requirements regarding instructions to the appraiser. Purchasers may request that Rural Development provide Attachment 7-D of HB-1-3560 Information Sheet. Purchasers may request Rural Development assistance in assembling the information referenced in Attachment 7-F of HB-1-3560 Appraisal Data Package Checklist. In all cases, appraisals will be required when new debt is added or when the transfer will be using new rates and terms. For transfers processed on 'same rates and terms' where no new Rural Development debit is requested, the Loan Servicer may waive the appraisal requirement if the Loan Servicer determines that the security is adequate for the Rural Development indebtedness being assumed. Appraisal fees are purchaser/seller expense and may not be paid from project funds. Loan Servicers must document their review and determinations based on a review of Rural Development reports conducted in accordance with the requirements of *[7 CFR part 3560, subpart H (3560.3511 through 3560.400)].*

12. Market Value Appraisal "Prospective Market Value, Subject to Restricted Rents within 7 CFR 3560.752 (b) (1) (i)". Rural Development staff will use this appraisal in order to determine security value. See HB-1-3560, Chapter 7 and Attachment 7-C for appraisal guidance.

A. The instructions to the appraiser must include language specified by Rural Development (see HB-1-3560, Attachment 7-C).
B. This appraisal is required if the sum of the USDA loan balance at the time of transfer, plus any subsequent loan, will exceed $100,000. This may be omitted for Deceased Borrower transfer (Paragraph 7.5 D).

13. Market Value Appraisal – "Market Value, within 7 CFR 3560.752 (b)(1)(ii) with any current restrictions or prohibitions currently existing on the property taken into

consideration"; or "Market Value with 7 CFR 3560.752 (b)(1)(ii) Premised upon a Hypothetical Condition As-If Unsubsidized Conventional Housing." This appraisal establishes a value for used in analyzing the Rural Development's limitations on sale price and equity pay-out. See HB-1-3560, Chapter 7 and for appraisal guidance.

A. This appraisal is required whenever an equity pay-put is proposed to the seller.
B. The instructions to the appraiser must include language specified by Rural Development (See HB-1-2560, Chapter 7, Attachment 7-C).
C. If, at the time of the appraisal, a Restrictive-Use Provision or Restrictive-Use Covenant will be in effect, see HB-1-3560, Chapter 7, Attachment 7-C regarding Rural Development requirements that restrict (and may prohibit) the inclusion as a component of market value any value of the hypothetical future ability of the owner to convert the property to conventional housing use.

14. Rent Comparability Study (RCS) or Area Market Rents Study (ARMS). If neither of the preceding appraisal products is required for this transaction, an acceptable RCS or ARMS may be required to establish Conventional Rents for Comparable Units (CRCU).

A. See Paragraph 7.7 B regarding when an RCS may be used.
B. If an RCS is used, Rural Development's Statement of Work must be used. See Paragraph 7.7 B.

15. If No Appraisal Product is required. Submit the purchaser's best available evidence for CRCU. See Paragraph 7.8 F. May be omitted for Deceased Borrower transfers (Paragraph 7.5 D).

Financial Aspects of the Transaction

16. Application for Federal Assistance. Form SF-424. Required for all transfers other than Deceased Borrower transfers (Paragraph 7.5 D).

A. Application for Federal Assistance. *Form SF-424.*
B. Budget – Construction Programs. *Form SF-424C.*
C. Assurances – Construction Programs. *Form SF-424D.*

17. Proposed Project Budget. Required for all transfers. Purchaser's proposed project operating budgets covering the first year of operation following the transfer or sale. This budget form should set forth the project's current Rural Development – approved budget in the "Current Budget" columns and the projects' proposed budget after acquisition in the Proposed Budget columns.

A. *Form RD 3560-7.*
B. Narrative justification of changes in budget. It is important that any and all differences between the current and proposed budget be fully explained and justified.

18. Sources and Uses of Funds Statement. May be omitted for Deceased Borrower transfer (Paragraph 7.5 D). Must be accompanied by a certification that:

A. All sources of funding contemplated by the purchaser are included.
B. Itemizes each proposed use of funds to be paid to the seller, the purchaser, any affiliate of the seller, or any affiliate of the purchaser. Each such use will identify the proposed amount, identify the entity to whom it is to be paid, disclose the nature of any identify of interest or affiliation with seller and/or purchaser, and discuss why the proposed amount is reasonable. If any portion of the amount to be paid to the seller will remain unpaid after the closing of the transfer, the purchaser must certify that no project revenue or assets (other than authorized RTO earned and paid to the purchaser) may be used to pay such amounts and that the purchaser's obligation to pay such amounts will be unsecured.

Note Regarding Evidence of Insurance Coverage. See Paragraph 7.16 F and *[7 CFR 3560.406(d)(11)].* Evidence of insurance coverage is not required as part of the transfer application package. However, the transfer cannot be closed until Rural Development has approved the purchaser's insurance coverage.

Third-Party Funding (If Applicable)

19. Application for Funding. Any application submitted by the purchaser to the proposed funder.
20. Financial Pro Forma Information. Include any estimates of repair costs, any information regarding proposed sources and uses of funds, and any revenue and expense projections submitted to the proposed funder, whether or not such documents were included in the application.
21. Environmental Information. Any environmental reports or analyses submitted by the purchaser to the proposed funder.
22. Commitment Letter or Equivalent (if applicable). Commitment letters may be conditional at the time of application. For LIHTC/TCAP/TCEP funding, provide a copy of the following: the reservation letter, any subsequent correspondence from the state allocating agency, and any Letter of Intent or similar correspondence from the proposed equity investor describing terms and conditions of its proposed investment. Before the transaction may be closed, the following will be required:

A. Commitment Letter

B. Documentation that any conditions in the commitment letter have been satisfied.

23. Regulatory Requirements. Documentation for any requirements to be imposed on the project and/or the purchaser as a condition of the proposed third-party funding.

A. For Low-Income Housing Tax Credits:
- The proposed Land Use Restriction Agreement or equivalent, showing the LIHTC set-aside by income level and unit type; and
- The current LIHTC income limits and maximum rents for the county in which the project is located.

B. For a proposed loan, a copy of the proposed loan agreement, note, security instrument (if applicable) and regulatory agreement (if applicable).

C. For a proposed grant, a copy of the proposed grant agreement and regulatory agreement (if applicable).

24. Interim Financing.

A. Include a month-by-month projection of interim financing draws and interest cost. This projection should take into account:
- Applicable Rural Development requirements regarding the use of project operating funds to pay debt service. See Paragraphs 7.7 C and 7.12 A.
- Any net interest cost for permanent loan funds that are borrowed up front but not available to the project until funding conditions (such as completion of rehabilitation) have been satisfied.
- Monthly costs for rehabilitation and other costs.
- Monthly receipts from other sources of funds such as tax credit equity.

B. If a source of repayment is from tax credit equity, the schedule of equity pay-in from the syndicator.

C. If a source of repayment is from permanent financing, the funding conditions that must be satisfied before the permanent financing will be available to the project.

25. (Advisory to purchasers, no submission required) Sources and Use Comprehensive Evaluation (SAUCE) Analysis. Purchasers proposing to use a subsequent Rural Development loan should note that Rural Development must prepare a SAUCE analysis, or accept the tax credit agency's sources and uses analysis, as a pre-requisite to the closing of the transfer. A SAUCE analysis is not required for transfers not utilizing a subsequent Rural Development loan.

The Proposed Purchaser

For purposes of the following documents, the terms "principal" and "affiliate" and "participation" are defined in *Form HUD-2530 Previous Participation Certification.*

26. Purchaser's Resume. May be omitted for Deceased Borrower transfers (Paragraph 7.5 D).

A. Proposed organizational structure.

B. Resume for each principal of the purchaser who has no previous participation with Rural Development. Resumes should be in sufficient detail for Rural Development to understand the nature of the new principal's real estate experience.

C. Disclosure of any proposed role(s) in the ownership or management of the project by affiliates of the purchaser or affiliates of the seller.

27. Previous Participation Certification (Form HUD-2530). This form reflects the participation by principals of the proposed purchaser in other HUD and USDA multifamily projects over the past ten years. May be omitted for Deceased Borrower transfer (Paragraph 7.5 D).

28. Identity of Interest Certification. As applicable, either:

A. Certification of No Identity of Interest, *Form RD 3560-30; or*

B. Identity of Interest Disclosure, *Form RD 3560-31.*

29. Debarment/Suspension Certification. As applicable, either:

A. Certification Regarding Debarment, Suspension and other Responsibility Matters *Form AD 1047;* or

B. Certification Regarding Debarment Suspension: Ineligibility and Voluntary Exclusion *Form AD 1048.*

30. Purchaser's Financial Statements. May be omitted for Deceased Borrower transfers (Paragraph 7.5 D). Current financial statements for:

A. The applicant (i.e., the entity that will own the project). If the applicant is an entity that has not yet been formed, financial statements should be *pro forma* (after completing the proposed purchase).

B. Each proposed principal.

C. Non-profit applicants/principals may satisfy this requirement by submitting their current *IRS Form 990 "Return of Organization Exempt from Income Tax"* (with Schedules A & B).

D. Attachment 7-B-4, MFG Transfer & Assumption Certification for Financial Statements, must be included with all financial statements.

31. Credit Report. May be omitted for Deceased Borrower transfers (Paragraph 7.5 D), Current comprehensive credit reports, no older than six months from the date of issuance, that contain details of both current open credit accounts and closed accounts, provided by one of the three accredited major credit bureaus (Experian, Equifax, or TransUnion.), must be submitted for the following:

A. The purchaser.
B. Each general partner of a purchaser that is a partnership, and spouse.
C. Each managing member of a purchaser that is an LLC, and spouse.
D. Each other partner/member who will have a 10 percent or greater interest.
E. Existing or newly-formed entities, and existing principal(s) of to-be-formed entities.

32. Attorney Certification of Eligible U.S. Citizenship/Qualified Alien Status. The purchaser's attorney must review all applicable evidence to verify U.S. citizenship and/or qualified alien status, must certify that the Agency's U.S. citizenship and/or qualified alien status eligibility requirements are met by each proposed principal applicant, and must submit the certification for Agency review.

Proposed Management

33. Management Plan. The purchaser may satisfy this requirement by accepting the existing Rural Development-approved management plan and lease and occupancy rules of the seller. The management plan should include:

A. A narrative description of the proposed record-keeping system.
B. A copy of the proposed lease.
C. A copy of the proposed occupancy rules.

34. Attorney Opinion Regarding Proposed Lease. This is required only if the purchaser will not continue to use the Rural Development-approved lease currently used by the seller. Transferee attorney's opinion regarding legal sufficiency and compliance of lease with State/local laws, ordinances and Rural Development regulations.
35. Management Certification. *Form RD 3560-13.* Required for all transfers, each time a management agreement or management plan is executed.
36. Affirmative Fair Housing Marketing Plan. *Form HUD 935.2A.* May be omitted for Deceased Borrower transfers (Paragraph 7.5 D).

Proposed Organizational Documents of the Purchaser

37. Purchaser's Organizational Documents. May be omitted for purchasers who are individuals. If the Transferee is an entity that has not yet been formed, draft documents may be submitted. The submission must include all amendments.

A. Purchaser is a corporation: provide the charter, articles of incorporation and bylaws, or equivalent.
B. If the Transferee is a non-profit the following should also be submitted.

- Tax-exempt ruling from the IRS conferring 501(c)(3) or 501(c)(4) status.
- List of members on Board of Directors Purchaser is a partnership: provide the partnership agreement.

C. Purchaser is a partnership: provide the partnership agreement.
D. Purchaser is a trust: provide the trust agreement.
E. The documents shall show that the corporation, partnership or trust is authorized to operate the property and to execute and be bound by the Regulatory Agreement.
F. The documents (or minutes of meetings, as applicable) should establish clearly the authority of the persons executing the Regulatory Agreement and other documents for the Transferee.

38. Attorney Certification. Letter from the purchaser's attorney certifying the legal sufficiency of the organizational documents. The attorney must certify:

A. The transferee's legal capacity to successfully assume and operate the project for the life of the Rural Development loan.
B. That the organizational documents comply with the requirements of Paragraph 4.16 B of HF-1-3560 and [*7 CFR 3560.55].*
C. For partnership purchasers, that the term of the partnership extends at least through the latest maturity of all existing and proposed Rural Development debt.
D. For partnership purchasers, that the partnership agreement requires the General Partner(s) to maintain a five percent financial interest in the residual or refinancing proceeds of the partnership.
E. That the organizational documents required prior written Rural Development approval for any of the following: withdrawal of a general partner/managing member, admission of a general partner/managing member, amending the organizational documents, and selling all or substantially all of the assets of the purchaser.

Other

39. Assurance Agreement. *Form RD 400-4,* Certifying civil rights compliance.
40. Equal Opportunity Agreement. *Form RD 400-1.*
41. Lobbying Certifications (s).

A. Attachment 7-B-5, MFH Transfer & Assumption Certification for Contracts. Required.
B. Lobbying Disclosure. *Form SF-LLL.* If applicable.

42. Certification Regarding Drug-Free Workplace Requirements. Either:

A. *Form AD 1050 (*for individual purchasers); or
B. *Form AD 1049* (for other purchasers).

43. Certification Regarding Collection Policies. *Form RD 1910-11.*

Other

44. (For Projects with HUD Section 8 Housing Assistance Payments (HAP) Contracts). Applicant should submit a letter from HUD indicating HUD's approval of the Section 8 HAP funding transfer. Formal approval from HUD is a pre-requisite for the closing of the transaction. Purchasers should note that HUD Section 8 rents are adjusted in accordance with HUD procedures and that generally, no rent adjustment should be expected in conjunction with the transfer.

45. Request for Rental Assistance. *Form RD 3560-25.* If Rental Assistance is being requested.

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ATTACHMENT 7-B-2
MFH TRANSFER & ASSUMPTION APPLICATION SUPPLEMENT

Name of Project:_____

Street Address of Project (w/zip code)_____

Name of Project's Current Owner_____

The following information supplements *Form SF-424.* This information is submitted along with an application to assume the USDA debt associated with the above-mentioned security property. A complete application is or will be submitted promptly.

The undersigned is in accordance with the terms of the security instruments held by USDA Rural Development (hereinafter referred to as "USDA") on their property is applying for release or subordination of the liens of said security instruments and consent to the following transaction:

1. Transfer of the USDA security property in full as outlined below.
2. Assumption of the full balance of all USDA loans associated with the security property on new rates and terms.
3. Subordination of the USDA security instruments as outlined below.
4. Other (*explain*). _____

A. Applicant/Buyer/Transferee Information

The following information is supplied about the applicant (i.e., the legal entity to acquire title to the property, not the developer/sponsor):

Applicant Legal Name: _____

Provide exact legal name of the entity that will take title to the real property and be USDA's borrower at the conclusion of the transaction – e.g., "Happy Valley Associates, LP, a Maryland limited partnership".

Type of organization:_____

e.g. limited partnership, general partnership, non-profit, corporation, LLC, tribe, public body, cooperative, individual

Tax ID #:_____

Date of Formation:_____

Official Mailing Address:_____

Developer/Sponsor Name_____
(If there is a developer sponsoring the applicant entity).

Primary contact person for this transaction: _____

Capacity: _____

Organization: _____

Address: _____

Phone: _____ Fax: _____ Email: _____

Disclose any identity of interest relationship between borrower/seller and transferee/buyer (if none, indicate this): _____

B. Member/Owner Information *(complete one)*

If applicant is a limited partnership: **(***Please provide exact legal names***)**

Role	Exact Legal Name	Tax ID #	Non-Profit?	% Share	Mailing Address	Authorized Sign & Title

If applicant is not a limited partnership: **(***Please provide exact legal names***)**

Role	Exact Legal Name	Tax ID #	Non-Profit?	% Share	Mailing Address	Authorized Sign & Title

C. Transaction Information

USDA Rural Development's approval is requested for the following preservation transfer & assumption:

Negotiated purchase price $ _____ (*Please attach copy of purchase agreement)*

Purchase Agreement expires: _____ (*USDA typically needs 120 days to complete such transactions).*

Proposed disposition of project & project assets:

RRH project assets	Transferred to buyer? (yes/no, explain)*
Real property	
Furnishing, fixtures & equipment	
Replacement reserve account	
Tax & insurance escrow account	
General operating account	
Security deposit account	
Other	

**Note: if any project assets are not transferred in their entirety, the buyer will be responsible for funding their full replacement value from equity funds.*

Timetable

Estimate timetable for acquisition, with key deadlines for funding commitments:

_____

This Transfer must close by no later than _____ because

_____

D. Sources & Uses of Funds

Funding Uses *	Amount
Total acquisition costs	$
Total rehab costs	$
Total all other costs	$
TOTAL PROJECT FUNDING	**$**

Permanent Funding Sources	Amount	Status: Date/Committed or Pending	Anticipated rates/terms	Lien position proposed
Assumption of USDA loan	**$**	**Pending**	**1%, 50-yr amortization, 30 year term**	
Borrower contribution	**$**			**n/a**
9% Low Income Housing Tax Credit	**$**			**n/a**
4% Low Income Housing Tax Credit	**$**			**n/a**
Loan From:	**$**			
Loan From:	**$**			
Other:	**$**			
Other:	**$**			
Other	**$**			
Other	**$**			
Total Project Funding	**$**			

**See attached "Preservation Transfer Development Budget (Sources & Uses of Funds)" for details.*

E. Effect of transfer on affordability, rents and tenant subsidy

Applicant/transferee/buyer will enter into a new Restrictive-Use Agreement with USDA for:

[ ] 30 years [ ] 20 years [ ] remaining useful life of project [ ] Other

Rent information:

Bedroom Size	Units	Current Basic Rents	Post Transfer Basic Rent	Estimated Market Rent in Area
0 Bedroom				
1 Bedroom				
2 Bedroom				
3 Bedroom				
4 Bedroom				
Total Units				

Tenant Subsidy at project:

	Current	**Post-Transfer**
USDA Rental Assistance (RA)	_____	_____
HUD project-based Section 8	_____	_____
RHCP		
Other		
Other		
Total subsidized units:	_____	_____

If project currently lacks 100 percent subsidy coverage on incoming-producing units, explain plan to maintain affordability, obtain additional subsidy and avoid adverse impact on tenants.

F. Planned method of management and operation

Management services provider and identification of any IOI or other related party affiliations to the seller or buyer:

[ ] Contract Manager *(Identify:_____)* [ ] Borrower [ ] Other

General discussion of management plan: _____

7. Certifications

Have you or any member, stockholder, partner or joint operator of the entity borrower been convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance since December 23, 1985? (yes / no) _____

If this application is approved, the undersigned applicant(s) agree to comply with such terms as may be prescribed by USDA and to disposition of the proceeds as required by USDA pursuant to its regulations, including the method of applying payment to the applicant(s)' loan accounts. It is expressly understood that unless a separate written instrument of subordination is executed and delivered by USDA pursuant to this application, approval by USDA of this application will merely constitute and evidence its consent, as lienholder, to the proposed transaction without in any way subordinating its lien, releasing any of its security, modifying the payment terms of the loan, or otherwise affecting any rights of USDA.

The applicant(s) agrees that none of the funds obtained as a result of any subordination covered by this application will be used for a purpose that will contribute to excessive erosion of highly erodible land or the conversion of wetlands to produce an agricultural commodities, as explained in Exhibit M of subpart G of part 1940 of title 7 of the Code of Federal Regulations.

CERTIFICATION

I hereby certify that the information given above concerning agreements between us and the transferor/seller is correct and fully understood by us.

I/we certify the information is a true and accurate reflection of proposed transfer & assumption project. This information is given for the purpose of inducing the United States of America to make a loan or to enable the United States of America to make a determination of continued eligibility of the applicant for a loan as requested in the loan application of which this statement is a part.

Neither the applicant nor its principals are delinquent on any Federal debt nor barred from participating in Federal housing programs.

_____ Signed:_____

Date Applicant/Transferee

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MFH Transfer Development Budget (Sources & Uses of Funds)

Project: Sample Apartments preservation transfer to Preservation Associates, LP

		PERMANENT SOURCES OF FUNDS					
USE OF FUNDS	TOTAL	Tax Credits	USDA Assumption	Rural town Bank	City	Other	Other
Total Acquisition	$	$	$	$	$	$	$
Total Rehab	$	$	$	$	$	$	$
Total Relocation	$	$	$	$	$	$	$
Total New	$	$	$	$	$	$	$
Total	$	$	$	$	$	$	$
Total Survey &	$	$	$	$	$	$	$
Total	$	$	$	$	$	$	$
Total Permanent	$	$	$	$	$	$	$
Total Attorney	$	$	$	$	$	$	$
Total Reserve	$	$	$	$	$	$	$
Total Appraisal	$	$	$	$	$	$	$
Total	$	$	$	$	$	$	$
Total Other	$	$	$	$	$	$	$
Total Developer	$	$	$	$	$	$	$
TOTAL PROJECT COST							

BALANCED

Permanent Financing Detail (for all sources other than USDA & tax credits)

Funding Source	Loan Amount	Interest Rate	Amortization (yrs.)	Term (yrs.)	Monthly payment	Indicate if residual receipts, deferred, etc.
Rural town Bank	$	0.	3	3	$	
City	$	0.	3	3	$	Residual receipts
Other	$	0.	3	3	$	
Other	$	0.	3	3	$	

Interim Financing Detail (for all sources other than USDA)

Funding Source	Loan Amount	In3terest Rate	Amortization (yrs.)	Term (yrs.)	Monthly payment	Indicate if residual receipts, deferred, etc.

ATTACHMENT 7-B-3
MFH TRANSFER & ASSUMPTION
FINANCIAL STATEMENT CERTIFICATION

Financial Statement Certification

(This certification is to be attached to all financial statements submitted to the Agency).

Financial Statement of: _____
Date of Financial Statement: _____

I/we certify the attached is a true and accurate reflection of my/our financial condition as of the date stated herein. This statement is given for the purpose of inducing the United States of America to make a loan or to enable the United States of American to make a determination of continued eligibility of the applicant for a loan as requested in the loan application of which this statement is a part.

Name	Date
Signature	Title

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ATTACHMENT 7-B-4
MFH TRANSFER & ASSUMPTION CERTIFICATION FOR CONTRACTS
CERTIFICATION FOR CONTRACTS, GRANTS AND LOANS

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or Federal loan, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant or loan.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant or loan, the undersigned shall complete and submit *Standard Form – LLL,* in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including contracts, subcontracts, and sub-grants under grants and loans) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____ _____
(Signed) (Date)

_____
(Name)

_____
(Title)

_____
(Name of certifying entity)

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ATTACHMENT 7-C
TAX CREDIT RENTS IN TRANSFER TRANSACTIONS

[7 CFR 3560.202(g)]

Under applicable USDA regulations, borrowers are allowed to utilize Tax Credit Rents in Section 515 properties participating in the LIHTC program. The following discussion explains how the same unit type may have multiple Basic Rents in a Section 515 property with LIHTC. Rural Development refers to these situations as Tax Credit Rents. Note Rate Rents are not affected and continue to be set in the same manner as in non-LIHTC properties.

In most States, the competition for LIHTCs is intense. Most LIHTC allocation agencies provide priorities for proposals that provide for deeper affordability than the LIHTC minimum. Accordingly, a USDA borrower will sometimes propose transfers with multiple Tax Credit Rents in which a single unit may encompass two or more area median income levels.

Unit Type	LIHTC Allocation	# Units	Maximum LIHTC Rent	RD Basic Rent	LIHTC Credit Rent	Note Rent
1 BR	40% AMI	2 units	$283	$356	$283	$522
1 BR	50% AMI	2 units	$389	$356	$369	$522
1 BR	60% AMI	4 units	$455	$356	$435	$522
2 BR	40% AMI	8 units	$312	$420	$312	$597
2 BR	50% AMI	8 units	$410	$420	$412	$597
2 BR	60% AMI	16 units	$508	$420	$489	$597
3 BR	40% AMI	2 units	$341	$515	$341	$772
3 BR	50% AMI	2 units	$410	$515	$451	$772
3 BR	60% AMI	4 units	$562	$515	$545	$772
Total		48	$250,320	$244,896	$244,896	$353,472
For proposed transfers involving Tax Credit Rents, the Loan Servicer must determine whether the proposed rents will provide sufficient revenue to cover project costs including an adequate Transfer to Reserve. If sufficient revenue will not be available, the proposed transfer is not viable unless the borrower proposes an adequate plan for addressing the shortfall						

A property with Tax Credit Rents is more difficult for the borrower to manage and more difficult for the USDA staff to monitor. Rural Development staff members are not responsible for assuring that borrowers are satisfying LIHTC compliance requirements. The LIHTC allocating agency is responsible for LIHTC compliance monitoring. Rural Development staff is, however, responsible for:

- Ensuring that tenants are not charged rents in excess of maximums allowed under USDA requirements.
- Ensuring that borrowers pay the correct amount of overage to USDA.
- Ensuring that borrowers cover shortfalls in revenue from reduced RTO and non-project funds.

In LIHTC properties, borrowers have powerful incentives to rent units only to households with incomes in the appropriate bracket to avoid losing LIHTC for that unit during the entire period of occupancy. One practical implication is that the borrower will need to maintain multiple waiting lists for the various LIHTC allocations. Accordingly, Rural Development staff should expect that borrowers will hold units vacant if there is no one on the waiting list in the appropriate income bracket, which could lead to increased vacancy losses in these projects. Rural Development staff should consider these factors carefully in judging the viability of the proposed transfer and in approving the proposed rent, vacancy allowance, and O&M expenses.

In LIHTC properties, it would be desirable if Rural Development could require that the LIHTC allocation be assigned to a specific unit. However, this is not possible and, the units will float throughout the property as a result of tenant turnover.

At the time that the Tax Credit Rents are implemented, Rural Development will require that the affected units be assigned based on tenant incomes (for example, the lowest 2 BR rent will be assigned to units occupied by the 2 BR tenants with the lowest incomes), and without regard to whether tenants are receiving RA.

Available RA will be assigned in accordance with existing Handbook requirements, see HB-2-3560, Paragraph 8.10. This guidance does not permit borrowers to shift RA to units with the highest Tax Credit Rents

The RD HQ will provide technical assistance to State Offices on a case-by-case basis in implementing Tax Credit rents, including assistance in assigning available RA.

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ATTACHMENT 7-D: TRANSFER REQUEST CHECKLIST

The following list of required documents constitutes a complete application for Agency approval of a proposed transfer. Agency processing will begin only when a complete transfer request package has been submitted as set forth below and as described in Attachment 7-B-1. The application package and all documents must have original signatures. Transfer requests must be submitted at least 45 days prior to the proposed transfer approval date. All documents must be submitted by the application.

Proposed Transaction

Δ Yes	Δ No	Δ N/A	Executive Summary (narrative)
Δ Yes	Δ No	Δ N/A	Required written statement/certifications
Δ Yes	Δ No	Δ N/A	MFH Transfer & Assumption Application Supplement (Attachment 7-B-2)
Δ Yes	Δ No	Δ N/A	Application for Partial Release, Subordination or Consent (Form RD-3560-1)
Δ Yes	Δ No	Δ N/A	Purchase and Sales Agreement
Δ Yes	Δ No	Δ N/A	Current Preliminary Title Report
Δ Yes	Δ No	Δ N/A	Legal Services Agreement

The Project and Proposed Repairs

Δ Yes	Δ No	Δ N/A	Capital Needs Assessment
Δ Yes	Δ No	Δ N/A	Repair Agreement
Δ Yes	Δ No	Δ N/A	Cost Estimate, if applicable (Form RD 1924-13, Estimate & Certificate of Actual Cost)

Documentation of Market Rents and Value

Δ Yes	Δ No	Δ N/A	Appraisal for USDA Security Value
Δ Yes	Δ No	Δ N/A	Appraisal As-Is Unrestricted
Δ Yes	Δ No	Δ N/A	Rent Comparability Study/ARMS
Δ Yes	Δ No	Δ N/A	Purchasers best available evidence to support CRCU, if no appraisal

Financial Aspects of the Transaction

Δ Yes	Δ No	Δ N/A	Application for Federal Assistance (Form SF 424 & attachments)
Δ Yes	Δ No	Δ N/A	Proposed Project Budget (Form RD 3560-7)
Δ Yes	Δ No	Δ N/A	Sources and Uses of Funds Statement

Third-Party funding (if applicable)

Δ Yes	Δ No	Δ N/A	Application(s) for Funding
Δ Yes	Δ No	Δ N/A	Financial Pro Forma Information
Δ Yes	Δ No	Δ N/A	Environmental Information
Δ Yes	Δ No	Δ N/A	Commitment Letters or Equivalent
Δ Yes	Δ No	Δ N/A	Regulation Requirements
Δ Yes	Δ No	Δ N/A	Interim Financing

The Proposed Purchaser

Δ Yes	Δ No	Δ N/A	Purchaser's Resume
Δ Yes	Δ No	Δ N/A	Previous Participation Certification (Form HUD 2530)
Δ Yes	Δ No	Δ N/A	Identity of Interest Certification (Form RD 3560-30 or 3560-13)
Δ Yes	Δ No	Δ N/A	Debarment/Suspension Certification (Form AD 1047 or AD 1048)
Δ Yes	Δ No	Δ N/A	Purchaser's Financial Statements w/Attachments 7-B-3 MFH Transfer & Assumption Certification
Δ Yes	Δ No	Δ N/A	Credit Report(s)
Δ Yes	Δ No	Δ N/A	Attorney Certification of Eligible U.S. Citizenship/Qualified Alien Status submitted for Agency review

Proposed Management

Δ Yes	Δ No	Δ N/A	Complete Management Plan
Δ Yes	Δ No	Δ N/A	Attorney Opinion Regarding Proposed Lease & compliance with State/local laws & RD regulations
Δ Yes	Δ No	Δ N/A	Management Certification (Form RD 3560-13)
Δ Yes	Δ No	Δ N/A	Affirmative Fair Housing Marketing Plan (Form HUD 935.2A)

Proposed Organizational Documents for Purchaser

Δ Yes	Δ No	Δ N/A	Purchaser's Organizational Documents
Δ Yes	Δ No	Δ N/A	Attorney Certification certifying legal sufficiency

Other:

Δ Yes	Δ No	Δ N/A	Assurance Agreement (Form RD 400-4)
Δ Yes	Δ No	Δ N/A	Equal Opportunity Agreement (Form RE 400-1)
Δ Yes	Δ No	Δ N/A	Lobbying Certification (Att. 7-B-4, MFH Transfer Certification & Form SF-LLL, if applicable)
Δ Yes	Δ No	Δ N/A	Certification Regarding Drug-Free Workplace Requirements (Form AD 1049 or AD 1050)
Δ Yes	Δ No	Δ N/A	Certification Regarding Collection Policies (Form RD 1910-11)
Δ Yes	Δ No	Δ N/A	Letter from HUD concurring to transfer of HAP Contract & concurrence in post transfer rents
Δ Yes	Δ No	Δ N/A	Request for Rental Assistance (Form RD 3560-25)

CHAPTER 8: SECURITY RESTRUCTURING REQUESTS

8.1 INTRODUCTION

During the term of an Agency loan, borrowers may face unexpected expenses or other financial difficulties that require additional financing from other sources to adequately maintain and operate the project. In such cases, the Agency will consider restructuring the borrower's security, so long as doing so will not only help the property, but also be in the best interest of the tenants and the Government. Potential security restructuring activities that may be approved include subordinations and junior liens, disposition of security property, leasing of security property, and other liens against a property or other assets.

This chapter describes the requirements regarding such security restructuring requests and Agency procedures for reviewing and approving those requests.

SECTION 1: SUBORDINATIONS AND JUNIOR LIENS
[7 CFR 3560.409]

8.2 OVERVIEW

Borrowers may request a subordination or junior lien for any type of Agency loan. Prior Agency consent is required for all subordinations and junior liens.

Because the requirements and procedures for subordinations and junior liens are so similar, they have been combined in this section. Where necessary, specific differences between the requirements and procedures for the two are identified.

8.3 REQUIRED CONDITIONS

The Leadership Designee may grant consent to subordinations or junior liens if the borrower adequately documents that the request is consistent with the conditions listed in Exhibit 8-1.

If a junior lien is placed on any property without prior Agency consent, the Leadership Designee may pursue liquidation of the account.

Exhibit 8-1

Required Conditions for Subordinations or Junior Liens

- The action will enable the borrower to obtain credit to make needed improvements or repairs on the property in circumstances where a loan of the same type involved could be made and funds in the reserve account have been depleted. Repair costs should be reasonable and consistent with the local market;
- The action will improve the borrower's total financial condition or debt-paying ability;
- The borrower is unable to refinance the loan on terms that can reasonably be expected to be met yet still meet the intent of the program;
- The action will not result in an unauthorized rent increase for the project or result in basic rents that exceed the Conventional Rents for Comparable Units (CRCU) standard as discussed in Chapter 4 of HB-2-3560;
- The lienholder agrees in writing that foreclosure action under its lien will not be initiated before holding a discussion with the MFH Servicing official, and after giving a reasonable period of notice to the Agency, and certifies that its operating plans are consistent with Agency requirements;
- Security for the subordination or junior lien appears adequate;
- The transaction must further loan objectives and not adversely affect the Agency's security;
- The total debt against the security after the transaction does not exceed the appraised value of the property and is within the Leadership Designee's approval authority;
- There is no future advance clause that would allow the lender to advance additional money and maintain the security or mortgage position; and
- All other applicable regulatory requirements have been met.

8.4 EVALUATING BORROWER REQUESTS FOR SUBORDINATIONS AND JUNIOR LIENS

The Leadership Designee will approve subordinations and junior liens only if they generally improve a borrower's financial condition and allow for completion of improvements or repairs in cases of underfunded reserve accounts. MFH Servicing officials need to ensure that the request does not alter project operations to make it ineligible under Agency requirements. In addition, the subordination must not adversely affect the Agency's ability to service the loan according to program regulations, and must be determined to be within the bounds of good judgment considering the intent, funding limitations, and respective program authorities. When evaluating borrower requests for subordinations or junior liens, MFH Servicing officials will review the request and check that the requirements listed in Exhibit 8-2 have been met.

In most cases, the Agency will not require an appraisal of the property when a subordination or junior lien is proposed. For subordinations, the Agency needs to look more closely at the amount of non–Agency debt being assumed and to determine whether its secondary lien position is sufficient security for the remaining outstanding debt. In some cases, this determination may require an appraisal. For junior liens, appraisals are almost never

required, provided project budgets demonstrate that the project has a sufficient income to support the increased debt. Appraisals are unnecessary in such cases because the Agency retains its lien position. In either case, the Agency needs to determine whether projects are still in compliance with the conventional rents for comparable units standard following the subordination or junior lien. The Leadership Designee decides when appraisals will be required.

All requests for consent to subordinations or junior liens that do not satisfy the criteria of Exhibit 8-2 must be submitted to the Agency with complete comments and recommendations from both the MFH Servicing official and Leadership Designee, and all of the borrower's case files. The Agency will review such requests on a case-by-case basis, and appropriate authorization will be granted or withheld depending on the individual merits of the proposal and its compatibility with program requirements.

MFH Servicing officials should follow the procedures in Paragraph 8.5 when evaluating these requests.

Exhibit 8-2

Required Documentation for Subordinations or Junior Liens

MFH Servicing officials may approve borrower requests only if they adequately document that the following requirements have been satisfied:

- The account must be current;
- The debt must be adequately secured;
- The borrower must provide adequate management;
- The terms and conditions of the prior lien or junior lien must be such that the borrower can reasonably be expected to meet them as well as all other debts;
- The proposed use of funds must not adversely affect the borrower's ability to meet the objectives of the program. Indeed, it must improve the borrower's ability to repay the loan or be necessary to place the borrower's operation on a sound basis;
- Any proposed development must be planned and performed according to RD Instruction 1924-A, or in a manner directed by the other lienholder that meets the objectives of RD Instruction 1924-A;
- Funds to be used for development or enlargement of farm operations must be handled as prescribed for loan funds in RD Instruction 1902-A, except that if the lienholder will not permit the use of a supervised bank account, arrangements must be made to ensure that funds will be spent for planned purposes and must be approved by the Agency before being released;
- *Form FEMA 81-93* must be completed;
- Subordinations or junior liens need not cover the entire site;
- Subordinations or junior liens must be for a specific amount;
- Subordinations or junior liens must not adversely affect the Agency's ability to service the loan according to the requirements of this part; and
- New prior or junior lienholders must agree to provide notice of foreclosure to the Agency, as required in RD Instruction 1927-B. Any junior lienholder's consent to the foreclosure and use of proceeds will be obtained prior to approval of the foreclosure.

8.5 PROCEDURES FOR AUTHORIZATION OF SUBORDINATIONS AND JUNIOR LIENS

A. Borrower Requests

MFH Servicing officials should instruct the borrower that each request for subordinations or junior liens must be submitted on *Form RD 3560-1,* and provide a copy of the form to the Agency.

B. Processing Borrower Requests

Upon receipt of the completed form, MFH Servicing officials will make a preliminary feasibility determination regarding the request. Key areas that the Agency will analyze as part of this determination include:

- Rates and terms;
- Post-restructuring project budget;
- Current compliance status of the property; and
- Capacity (for nonprofit borrowers).

If MFH Servicing officials discover violations at the property, the request must not be approved without an Agency-approved work-out agreement.

C. Recommendations to Leadership Designee

If there are no violations at the property and all other applicable criteria are met, MFH Servicing officials forward a properly completed and executed copy of *Form RD 3560-1* to the Leadership Designee. Accompanying *Form RD 3560-1* should be a memo containing all information needed to justify approval or disapproval of the request, including an agreement from any new prior lienholder to provide the Agency advance notice of foreclosure. As appropriate, MFH Servicing officials will also obtain junior lienholder consent to any transaction and use of proceeds prior to approval of the transaction. When all required documentation has been assembled, the MFH Servicing official will forward the subordination and junior lien request to the Leadership Designee for review.

D. Final Decision

If the Leadership Designee agrees with the MFH Servicing official's determination, they will forward the subordination or junior lien request to the Office of General Counsel (OGC) for review of legal sufficiency and closing comments. After OGC review, the closing process will begin. The Leadership Designee should obtain OGC guidance in the preparation of documents necessary to effect the subordination.

All subordination and junior lien requests exceeding the Leadership Designee's approval authority limit must be submitted to the Agency for prior approval authorization.

E. Appraisal Procedures

The Leadership Designee may request an appraisal at any time deemed appropriate. As stated in Paragraph 8.4, most subordinations and junior liens will not require an appraisal. If an appraisal is deemed necessary, an Agency official authorized to make appraisals for the type of project involved will prepare an appraisal report. Alternatively, the new creditor may perform the appraisal as part of the due diligence process. If an appraisal that is less than one year old is available, it may be used in lieu of a new appraisal.

8.6 POST-APPROVAL OF JUNIOR LIENS

Sometimes a borrower will obtain additional credit (e.g., a personal loan) using the project as security for that credit, despite the Agency's requirements that prohibit such actions. In effect, that loan functions as a junior lien on the property. When a junior lien is placed on any property without the prior consent of the Agency, the MFH Servicing official will normally service the account for liquidation with the guidance of OGC.

SECTION 2: PARTIAL DISPOSITION OF SECURITY PROPERTY
[7 CFR 3560.407]

8.7 OVERVIEW

Borrowers may also request Agency approval of the sale of a portion of an interest in the security property under certain circumstances. The borrower may use the proceeds from such sale in accordance with Exhibit 8-3. Alternatively, a borrower could grant a conveyance or right of way easement, among other actions. This section addresses each of these options, and the Agency's procedures for reviewing and approving requests.

Exhibit 8-3

Allowable Uses for Proceeds from Disposition of Security Property

- To pay customary incidental closing costs such as title and recording fees appropriate to the transaction, including additional real estate tax the borrower is required to pay for the year for which alternate arrangements to pay cannot be made;
- To pay debts owed to any prior lienholders;
- To make extra payments on the loan;
- To pay costs necessary to determine the reasonableness of an offer or asking price, such as fees for appraisal of minerals, land, or timber where the necessary appraisal cannot be obtained without costs;
- To pay a real estate broker's commission if the borrower can reasonably expect to obtain proceeds at least equal to the commission in excess of what could otherwise be obtained without the broker's assistance;
- To repair, develop, or enlarge the borrower's facility for purposes for which a loan of the same type involved could be made, if the development or enlargement is necessary to improve the borrower's debt-paying ability, place the operation on a more sound basis, or otherwise further loan objectives;
- To purchase or acquire property to be used for purposes for which a loan of the same type involved is authorized, if the debt will be as well secured after the transaction as before (The Agency will obtain a lien on the acquired property, and obtain title evidence); and
- To increase reserves based on an Agency-approved capital plan.

8.8 ALLOWABLE ACTIONS INVOLVING THE PARTIAL DISPOSITION OF SECURITY PROPERTY

The Leadership Designee may grant consent to requests for the following actions involving the partial disposition of security property for a project:

- Use of proceeds from the sale of a portion of or an interest in the security;
- Exchange of all or a part of the undeveloped security for other real estate; or

- Granting or conveyance or rights-of-way subject to applicable conditions and requirements.

8.9 ALLOWABLE USES FOR PROCEEDS FROM PARTIAL DISPOSITION OF SECURITY PROPERTY

The Agency may consent to the partial disposition of security property if borrowers plan to use the proceeds for one or more of the uses listed in Exhibit 8-3.

It should be noted that while borrowers may use proceeds from disposition of security property for any of the purposes listed in Exhibit 8-3, there is a priority order for using such proceeds. The order in which the allowable uses are listed in Exhibit 8-3 roughly corresponds to the Agency's preferred priority order (although not all uses will apply to all projects).

If property to be sold or exchanged is to be used for the same or similar purposes for which the loan or grant was made, the purchaser is required to execute *Form RD 400-4*. The agreement will remain in effect for as long as the property continues to be used for the same or similar purpose for which the loan or grant was made.

8.10 REQUIRED CONDITIONS FOR AGENCY CONSENT

The Leadership Designee may grant consent to partial sales of security property, including the sale of individual units or developed portions of a multi-family housing project, so long as the conditions listed in Exhibit 8-4 are met.

8.11 PROCESSING BORROWER REQUESTS

The Agency grants consent to disposition of part of, or an interest in, security property by approving a completed *Form RD 3560-1,* or other forms approved by OGC or prescribed in State Supplements.

Exhibit 8-4

Required Conditions for Agency Consent to Partial Disposition of Security Property

- The transaction will not impair orderly payment of the Agency debt;
- The transaction will not interfere with the successful operation of the project or prevent the borrower from carrying out the purpose for which the loan was made;
- The borrower certifies compliance with fair housing laws;
- The appropriate level of environmental review under the National Environmental Policy Act (NEPA) is completed and mitigation measures to protect any important resources are established;
- The consideration is at least equal to the market value of the security property disposed of or the rights being granted, except that right-of-way easements may be granted or conveyed without consideration being offered or with only the minimal consideration being offered if the value of the security property will not be reduced, its suitability for the intended purpose will not be impaired, and the easement is granted for the borrower to develop additional lots or units that will be integrated into the project or with a public body for enhancement of streets or utilities benefiting the project;
  - To establish market value, an authorized Agency official will either make a new appraisal if the current appraisal is more than one year old, or supplement the present appraisal report by inserting information as to the market value of the security disposed; or
  - An authorized agency official may also accept a value determination for such easements that have been provided by other competent sources at no cost to the Government that is mutually acceptable to the borrower and the Agency.
- The remaining property is adequate security for the unpaid balance of the loan; and
- The proceeds from the disposition of the security are to be used for one or more approved purposes (e.g., to pay closing costs, make extra payments, pay brokers' commission).

A. Borrower Submission

When a borrower requests consent to lease a portion of the security property or the MFH Servicing official discovers that the borrower is leasing the security without consent, the MFH Servicing official will require the borrower to complete *Form RD 3560-1*. The form will show the terms of the proposed lease and will specify the use of proceeds, including any proceeds to be released to the borrower.

B. Agency Review

The MFH Servicing official will forward to the Leadership Designee:

- A properly completed and executed *Form RD 3560-1;*
- The proposed deed, easement, or other form of title conveyance;

- A memorandum from the MFH Servicing official justifying the approval or disapproval of the proposed transaction; and

- Any other information pertinent to the transaction.

The Leadership Designee will review the materials, obtain the guidance of OGC (if needed), prior to indicating approval or disapproval on *Form RD 3560-1*, and provide additional servicing instructions to the MFH Servicing official.

C. Agency Decision and Notice to Borrower

Before the Agency consents to any transaction that affects its security or lien position, MFH Servicing officials must obtain the written consent of any other lienholders. Such consent should include an agreement on the disposition of any funds resulting from the transaction and must be consistent with loan program requirements.

MFH Servicing officials should advise the borrower if the mortgage or deed of trust requires Agency consent to the sale or other transfer of real estate security. In such cases, the MFH Servicing official should explain the applicable requirements to the borrower.

8.12 AGENCY RELEASE OF SECURITY

The Agency will release security for Agency loans in accordance with applicable program regulations and as follows:

- The Agency will not release its lien until it receives from the borrower the appropriate sales proceeds for application on the Government's claim. MFH Servicing officials will hold borrowers strictly accountable to the Agency for all proceeds derived from the sale of mortgaged property that the Agency is entitled to receive under its lien.

- The Leadership Designee or his or her designee may release real estate security by using *Form RD 3560-1* or other form approved by OGC. Satisfaction or termination of real estate security instruments when the Agency debt has been paid in full or satisfied by debt settlement action will be accomplished with *Form RD 3560-58, Satisfaction.*

- Any consent that results in an Agency loan account being paid in full is subject to all applicable prepayment provisions.

SECTION 3: LEASING OF SECURITY PROPERTY *[7 CFR 3560.408]*

8.13 OVERVIEW

Borrowers must obtain Agency approval to lease security property serving as security for Agency loans and grants. The Agency may approve leases to tenants for specific program purposes or otherwise at its discretion.

8.14 LEASES TO PUBLIC HOUSING AUTHORITIES

MFH Servicing officials may only authorize multi-family housing borrowers to renew and continue leasing all or part of their housing facilities to a housing authority, although borrowers may not enter into any new leases. Such leases must be on a form provided by the housing authority, and MFH Servicing officials must determine that the lease terms will enable the borrower to continue the objectives of the loan and make payments on schedule.

8.15 LEASE OF A PORTION OF THE SECURITY PROPERTY

MFH Servicing officials may approve the leasing of related facilities such as kitchens, recreation facilities, and community buildings when the borrower will continue to operate the facilities for the purposes for which the loan or grant was made. MFH Servicing officials should not approve such leases, however, unless they can verify that all of the following conditions are met:

- The lease is in the best interest of the borrower, the tenants, and the Government;
- The amount of the consideration is adequate to pay all prorated operating and maintenance expenses, a prorated share of the annual reserve deposit, and the prorated part of the loan amortization at the note rate of interest;
- The lease provides at its termination for the restoration of the leased space to its original condition or to a condition acceptable to the owner and the Government;
- Consent to the lease does not exceed three years at a time, unless a longer lease is clearly more advantageous to the borrower, the tenants, and the Government;
- The borrower has obtained written consent from any other lienholders whose mortgages require consent to any lease; and
- The borrower will obtain leases on the most advantageous terms to the project. The borrower will secure and credit to the project all discounts, rebates, or commissions obtainable with respect to project leases.

8.16 MINERAL LEASES

The Agency handles mineral leases according to the requirements set forth in 7 CFR 3560.408(d).

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SECTION 4: OTHER LIENS AGAINST A PROPERTY OR OTHER ASSETS *[7 CFR 3560.409 (d)]*

8.17 OVERVIEW

If none of the options presented in Sections 1, 2, or 3 of this chapter are applicable to a particular borrower or property, the Agency may consent to other liens against the property or other assets. The Leadership Designee may approve other liens against a property or other assets or instruments of similar effect under which a borrower may acquire—through other credit—items that will not become part of real estate security.

If additional liens are taken against other real property, the MFH Servicing official must ensure that appropriate NEPA environmental review and due diligence requirements are satisfied.

8.18 REQUIRED CONDITIONS

The Agency's rule states that borrowers must not enter into any agreements placing a lien on the property or the equipment on it (e.g., items such as laundry equipment, air conditioning units, and basic household furnishings that will not become part of real estate security) without prior Agency approval and unless the following three conditions are met:

- The transaction will not affect the Agency's security position;
- The items covered by the transaction are needed for the successful operation of the property; and
- The financing arrangements are otherwise sound.

The rule also specifies that borrowers must complete and file with the Agency a financing statement and a security agreement.

8.19 AGENCY PROCEDURES

Requests for approval of other such liens will be made by the borrower on *Form RD 3560-1*. The MFH Servicing official will forward to the Leadership Designee a properly completed and executed *Form RD 3560-1*, the proposed arrangement, the case file, and specific recommendations regarding the request.

The Leadership Designee will indicate approval or disapproval on *Form RD 3560-1*. The Leadership Designee will request that OGC prepare or approve the arrangement and issue special instructions when necessary.

CHAPTER 9: UNAUTHORIZED ASSISTANCE AND CIVIL MONETARY PENALTIES

9.1 INTRODUCTION

During the term of a MFH loan, there may be cases when the borrower or tenants receive assistance to which they are not entitled, or a member of the borrower entity knowingly and materially participates in the violation of provisions of Title V of the Housing Act of 1949, the regulation, or agreements made in accordance with the Housing Act.

When a borrower incurs unauthorized assistance, it may be due to intentional fraud, inadvertent submittal of inaccurate information by borrowers or tenants, Agency error in calculation or assignment of benefits, or other causes. In cases where unauthorized assistance is identified, the Agency seeks to collect the entire amount of assistance determined to be unauthorized.

Civil Monetary Penalties may be imposed by the Agency due to submitting false information, submitting false certifications, failing to timely submit information, failing to maintain real property in good repair and condition, failing to provide acceptable management for a project, or failing to comply with applicable civil rights statutes and regulations.

This chapter covers Agency procedures for identifying and collecting unauthorized assistance received from tenants, members, or borrowers, and the procedures for imposing and collecting civil monetary penalties from borrower entities and related parties. The Agency's guidance on civil monetary penalties can be found in Section 8 of this chapter.

SECTION 1: TYPES OF UNAUTHORIZED ASSISTANCE

9.2 OVERVIEW

The Agency has established procedures for servicing its multi-family housing loans and grants when it determines that the borrower, grantee, or tenants were not eligible for all or part of the financial assistance received, or the project was not made subject to restrictive-use provisions required by law and/or regulation. Unauthorized assistance includes the following categories:

- The recipient was not eligible for the assistance;
- The property, as approved, does not qualify for the program (e.g., a property clearly above modest in size, design, or cost, or that was not located in an area designated as rural when the initial loan was made);
- The loan or grant was made for unauthorized purposes (e.g., purchase of an excessive amount of land);
- The recipient was granted unauthorized subsidy in the form of interest credits, rental assistance, or a subsidy benefit received through use of an incorrect interest rate; and

- The recipient was not subjected to obligations required by the assistance, such as restrictive-use provisions, at the time the assistance was provided.

9.3 ADDRESSING UNAUTHORIZED ASSISTANCE

Provisions in 7 CFR part 3560, subpart O establish the Agency's authority to seek recapture of the full amount of unauthorized assistance regardless of whether receipt of the assistance is due to errors by the Agency, the borrower, or the tenant. In determining whether to recapture unauthorized assistance, the Agency will consider the cost-effectiveness of such action given the amount of unauthorized assistance, the availability of records to support the Agency's determination, and any applicable statute of limitations.

However, there are certain circumstances where repayment of the unauthorized assistance will not be the agreed-to corrective action. The Agency may forgo collection of unauthorized assistance if the following conditions are met:

- A demand for recovery of the unauthorized assistance was made;

- The unauthorized assistance did not result from inaccurate or false information knowingly or fraudulently provided by a borrower or tenant;

- The Agency determines that the borrower or tenant is unable to comply with the unauthorized assistance repayment demand, but is otherwise willing and able to meet Agency requirements; and

- The Agency determines that it is in the best interest of the Federal Government to forgo collection of the unauthorized assistance.

At the other extreme, the Agency can also choose to initiate liquidation or enforcement proceedings against a recipient of unauthorized assistance on a case-by-case basis.

SECTION 2: IDENTIFYING UNAUTHORIZED ASSISTANCE
[7 CFR 3560.703]

9.4 OVERVIEW

Unauthorized assistance may be identified through audits conducted by the Office of the Inspector General (OIG), through reviews and federal and state database searches conducted by MFH Servicing officials, or through other means such as information provided by a private citizen that documents the receipt of unauthorized assistance by a recipient of Agency assistance. In addition, a borrower or management agent also may identify unauthorized assistance resulting from tenant error or fraud.

If the Agency has reason to believe that unauthorized assistance was received but is unable to determine whether or not the assistance was in fact unauthorized, the case will be referred to Office of General Counsel (OGC), as appropriate, for review and advice. OIG investigation should be requested in every case where the Agency knows or believes that the assistance was based on false information. If OIG conducts an investigation, the Agency's notification and collection procedures will be deferred until the investigation is completed.

9.5 REQUIREMENTS FOR IDENTIFYING UNAUTHORIZED ASSISTANCE

Identification of unauthorized assistance may be accomplished by the Agency or by borrowers in cases involving tenant fraud. The Agency may use all available means to identify unauthorized assistance, including audit reports, monitoring activities, and information provided by reliable sources including the Treasury Department's Do Not Pay (DNP) Portal. Borrowers have the primary responsibility for identifying and pursuing cases of unauthorized assistance received by tenants.

The Agency will take necessary actions to identify unauthorized assistance, provide notice of the unauthorized assistance to the borrower, and recapture that assistance. At its discretion, the Agency may choose to continue with the borrower following the receipt of unauthorized assistance if certain criteria are met. Section 7 of this chapter presents the requirements and procedures for continuation of accounts following the receipt of unauthorized assistance.

9.6 METHODS OF IDENTIFYING UNAUTHORIZED ASSISTANCE

The Agency uses a number of methods to identify unauthorized assistance, including:

- Audits conducted by OIG;
- Reviews by Agency personnel;

- Search of the Department of the Treasury's DNP Portal; or

- Other means (e.g., information provided by a private citizen that documents the unauthorized assistance).

In addition, the Agency has the authority to pay a contractor (from authorized contracting funds) to conduct an audit to identify unauthorized assistance. In such cases, the Agency and Contracting Staff would work together to identify audit needs and a contractor to perform the audit.

OIG audits can be random or targeted at projects or borrowers suspected of receiving unauthorized assistance. These audits may be either requested by MFH Servicing officials or conducted at OIG's initiative. In every case where the Agency knows or believes that the unauthorized assistance was based on false information, OIG investigation will be requested by the MFH Servicing official as provided for in RD Instruction 2012-B.

9.7 DOCUMENTATION OF UNAUTHORIZED ASSISTANCE

MFH Servicing officials must document the reasons for unauthorized assistance in the case file, specifically stating whether the cause was error or submission of false or inaccurate information. The case file will specifically state whether the unauthorized assistance was a result of:

- Submission of inaccurate information by the recipient;

- Submission of false information by the recipient;

- Submission of inaccurate or false information by another party on the recipient's behalf, such as a loan packager, developer, or real estate broker, or professional consultants (e.g., engineers, architects, management agents, and attorneys), when the recipient did not know the other party had submitted inaccurate or false information;

- Error by Agency personnel, either in making computations or failure to follow published regulations or guidance; or

- Error in preparing a debt instrument that caused a loan to be closed at an interest rate lower than the correct rate in effect when the loan was approved or which was caused by omission from the instrument of language required by applicable regulation (e.g., restrictive-use provisions).

9.8 NOTICE TO RECIPIENT

A. Agency Notice to Borrower

The Agency will provide notice to borrowers upon determining that unauthorized assistance was received. The notice will:

- Specify in detail the reason(s) that the assistance was determined to be unauthorized;
- State the amount of unauthorized assistance to be repaid;
- Establish a meeting for the borrower to discuss the basis for the claim and give the borrower an opportunity to provide facts, figures, written records, or other information that might alter the determination that the assistance was unauthorized; and
- Outline borrower's appeal rights.

Upon request, the Agency may grant additional time for the borrower to assemble the necessary documentation.

B. Borrower Notice to Tenant

The borrower will provide notice to tenants upon determining that a household received unauthorized assistance. The notice will:

- Specify in detail the reason(s) that the assistance was determined to be unauthorized;
- State the amount of unauthorized assistance to be repaid; and
- Establish a meeting for the tenant to discuss the basis for the claim and give the tenant an opportunity to provide facts, figures, written records, or other information that might alter the determination that the assistance was unauthorized.

Upon request, the borrower may grant additional time for the tenant to assemble the necessary documentation.

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SECTION 3: CORRECTING UNAUTHORIZED ASSISTANCE

9.9 OVERVIEW

After confirming and documenting receipt of unauthorized assistance, the next step is to end the flow of unauthorized assistance to the borrower or tenant receiving it. This section outlines the procedures employed to correct unauthorized assistance, including procedures for both audit and non-audit cases.

9.10 ACCOUNT ADJUSTMENTS – AUDIT CASES

Types of Unauthorized Assistance

- Unauthorized loan
- Unauthorized subsidy benefits received through use of incorrect interest rate
- Unauthorized interest credit or rental assistance
- Unauthorized grant assistance

When a final determination has been made through an OIG audit that unauthorized assistance has been granted, the MFH Servicing official will be notified of necessary account adjustments by OIG and the Leadership Designee.

Only cases of unauthorized assistance identified by OIG audits are reported to the MFH Servicing official. In such cases, the Automated Multi-Family Housing Accounting System (AMAS) will be updated with the correct information, if the unauthorized assistance affects establishment of the loan interest rate or closing information.

The chosen method of corrective action depends on the type of unauthorized assistance. The following text describes the actions that MFH Servicing officials must take to correct each type of unauthorized assistance.

A. Unauthorized Loan

For an active borrower with an unauthorized loan, if the problem causing the assistance to be unauthorized can be corrected, appropriate corrective action will be required. For example:

- Where a loan was in excess of the authorized amount, the Agency will require the recipient to refund the difference;

- Where the loan included funds for purchase of excess land, the Agency will require the recipient to sell the excess land and apply the proceeds to the account as an extra payment; and

- Where a restrictive-use provision was omitted from a loan document, the Agency will insert the provision.

B. Unauthorized Subsidy Benefits Received Through Use of Incorrect Interest Rate

When the recipient was eligible for the loan but should have been charged a higher interest rate than that shown in the debt instrument, resulting in the receipt of unauthorized subsidy benefits, the Agency must correct the interest rate to that which was in effect when the loan was approved.

- MFH Servicing officials must ensure that all payments made are reversed and reapplied at the correct interest rate and future installments will be scheduled at the correct interest rate;

- The Agency will service any delinquency thus created in accordance with applicable Agency procedures;

- After reapplication of payments, the Agency will service the loan as an authorized loan; and

- Continuation of existing terms is authorized when the recipient is a public body with loans secured by bonds on which the interest rate cannot legally be changed or payments reversed or reapplied.

C. Unauthorized Interest Credit or Rental Assistance

In cases involving rental assistance or interest credit, the subsidy benefits should be terminated as provided in *Form RD 3560-9*. The Agency will service unauthorized rental assistance as a delinquent account, see Chapter 10.

D. Unauthorized Grant Assistance

When the recipient will repay unauthorized grant assistance over a period of time, the Agency will charge interest at the rate specified in the grant agreement for default from the date received until paid.

- The Agency will schedule repayment over a period consistent with the recipient's repayment ability but not to exceed 10 years;

- The MFH Servicing official must maintain collection records, as the St. Louis Office cannot set up an account for repayment of a grant. The MFH Servicing official will attempt to collect the monies due, and all collections data will be entered into AMAS as a "Miscellaneous Collection;"

- The MFH Servicing official will report quarterly to the Leadership Designee on cases identified in OIG audits;

- If the Agency determines that the recipient cannot repay unauthorized grant assistance, the Agency may leave the assistance outstanding under the terms of the grant agreement; and

- In the case of committed funds not yet disbursed, the Agency will make no further disbursements without prior consent of the Administrator.

E. Cases Where Recipient Has Both Authorized and Unauthorized Loans Outstanding

When a recipient has both authorized and unauthorized loans outstanding, the Agency will schedule installments to be paid concurrently on all loans. The Agency will service each loan according to the loan servicing regulations in effect for an authorized loan of its type.

F. Liquidation Pending

When the Agency initiates liquidation, MFH Servicing officials enter data into AMAS and the account will be flagged accordingly. The account is overseen by Agency personnel.

G. Liquidation Not Initiated

Cases in which liquidation have not been initiated because the outstanding amount is less than $1,000 or it would not be in the Agency's best interest to do so will be adjusted, and the adjustments will be entered into AMAS. In this instance only, the Leadership Designee may make adjustments without the recipient's signature.

As requested, the Leadership Designee will report to OIG on the status of cases of unauthorized assistance identified in OIG audit reports and tracked by MFH Servicing officials. The amounts to be reported will be determined by the Field Office after servicing actions have been completed.

9.11 ACCOUNT ADJUSTMENTS – NONAUDIT CASES

Servicing procedures are essentially the same for audit and nonaudit cases. However, when the Agency identifies receipt of unauthorized assistance by a means other than an OIG audit report, the St. Louis Office will be notified only if adjustments to an active account or reinstatement of an inactive account are needed or grant funds are repaid.

Once the appropriate adjustments are made, the Agency will treat the loan(s) as an authorized loan(s). Any payment reversed will be reapplied as of the original date of credit.

The Agency will handle non-audit account adjustments as follows:

When a change in interest rate retroactive to the date of loan closing is necessary, the borrower will initial changes to *Form RD 3560-52, Promissory Note*. MFH Servicing officials will update AMAS with the correct information. AMAS will automatically reverse and reapply payments accordingly.

- When an inactive borrower agrees to repay unauthorized assistance, the MFH Servicing official will notify the St. Louis Office by memo, attaching a copy of *Form RD 3560-52*. The St. Louis Office will establish or reinstate the account according to the terms of *Form RD 3560-52*.

- If a loan is paid in full, the Agency will handle the remittance like any other final payment.

SECTION 4: RECAPTURE OF UNAUTHORIZED ASSISTANCE TO BORROWERS

9.12 OVERVIEW

To ensure that borrowers do not benefit from unauthorized assistance at the expense of others who truly need and qualify for such assistance, the Agency seeks to recover all unauthorized assistance from borrowers. The Agency has established a set of detailed procedures that MFH Servicing officials must follow in each case of unauthorized assistance.

9.13 REQUIREMENTS FOR COLLECTING UNAUTHORIZED ASSISTANCE *[7 CFR 3560.705]*

The Agency will seek repayment of all unauthorized assistance received by a borrower, plus the cost of collection, to the fullest extent permitted by law. In doing so MFH Servicing officials should be guided by the following:

- The amount due will be the amount stated in the notice letter (*Handbook Letter 304 or Handbook Letter 305, or 305-A (3560*);

- No interest will be charged against the debt if the borrower agrees to repay the money in a lump sum or by payment plan within 90 days from the date of debt on Form RD 3560-65, "MFH Miscellaneous Receivable Notification/Repayment Agreement." Otherwise, a repayment plan longer than 90 days will charge a fixed interest rate of 1%.

- When the borrower cannot repay the money in a lump sum, but will repay over a period of time, the MFH Servicing official may allow no more than 60 monthly payments beginning with the date of the first payment due. However, the debt will be submitted to Treasury for Cross Servicing if the borrower: (a) does not agree or respond to a repayment agreement, or (b) agrees to a lump sum repayment and the debt is not fully paid within 90 days, or (c) agrees to a repayment agreement and the remaining debt balance becomes 30 days delinquent at anytime during the agreed upon repayment period.

In determining how to recapture unauthorized assistance, the Agency will consider:

- The cost effectiveness of recapture efforts relative to the amount of unauthorized assistance to be repaid;

- The availability of records to support the Agency's unauthorized assistance determination;

- Any applicable Federal, state, or local statute of limitations;

- Whether the unauthorized assistance resulted from the provision of inaccurate or false information knowingly or fraudulently provided by the borrower or tenant; and

- The ability of the borrower or tenant to repay.

9.14 AGENCY RECAPTURE OF UNAUTHORIZED ASSISTANCE

A. Overview

To collect unauthorized assistance, MFH Servicing officials must follow the following steps described in subparagraph 9.14 A.1 through A.5:

1. Coordination with OGC

MFH Servicing officials may need to work with OGC to determine the appropriate statute of limitations before making a decision to collect.

2. Notification to Recipient

Steps for Recapturing Unauthorized Assistance from Borrowers

- Coordination with OGC (needed to determine appropriate statute of limitations)
- Notification to recipient (*HB Letter 304(3560)*)
- Recipient response and Agency follow-up
- Collection
- Restriction on MFH Servicing Official's actions

The Agency will seek to collect unauthorized assistance from borrowers, up to the applicable statute of limitations for any particular amount of unauthorized assistance.

Coordination with OGC (if needed to determine the appropriate statute of limitations) and the Agency via e-mail must occur before proceeding with the initial notification to the recipient when: (a) the debt extends beyond one year, and (b) the amount of unauthorized assistance for that year is greater than or equal to $1,000. The period of review for cases meeting the criteria of (a) and (b) will extend to 3 years.

The MFH Servicing official will initiate collection efforts in the notice described in the Section 3 of this chapter. Handbook Letter 304 (3560) will be used for this notice. The MFH Servicing official mails the notice to the recipient by certified mail, with a copy to the Leadership Designee and, for a case identified in an OIG audit report, a copy to the OIG office that conducted the audit and a copy to the Financial Management Division. The MFH Servicing official will send the notice to all recipients who received unauthorized assistance, regardless of the amount. If the recipient responds to the initial notification within 15 days and agrees to repay, the Form RD 3560-65, is submitted to the Servicing Office - Multi-Family Housing Branch (SO-MFHB), Project Loan Servicing Section (PLSS) in St. Louis.

3. Recipient Response and Agency Follow-Up

If the recipient does not agree with the Agency's determination, or if the recipient fails to respond to the initial letter within 15 days, the MFH Servicing official will notify the recipient of the following in a second certified letter, using Handbook Letter 305 or 305-A (3560):

- The amount of unauthorized assistance to be repaid and the basis for the unauthorized assistance determination;
- A statement of further actions to be taken by the Agency if repayment is not made by a certain date; and
- The recipient's appeal rights.

As with the first notice, the MFH Servicing official sends copies of the second letter to the Leadership Designee and will additionally send copies to OIG and the Financial Management Division if the unauthorized assistance was the result of any audit findings. If the borrower does not respond to the second certified letter after 30 days and no appeal was received, the MFH Servicing official will continue servicing with Handbook Letters 301, 302, and 303 (3560), Servicing Letters #1, #2, and #3 as appropriate. When all attempts to obtain a repayment agreement fail or if a repayment agreement is reached, the Form RD 3560-65, is completed and submitted to SO-MFHB in St. Louis.

4. Collection

If the recipient does not prevail in an appeal, or when an appeal is not requested during the time allowed, the MFH Servicing official will proceed with either liquidation or legal action to enforce collection. The Agency allows for repayment of all unauthorized assistance either in a lump sum or from a monthly repayment schedule without the charging of interest if the recipient pays the debt in full within 90 days from the date of debt on Form RD 3560-65. Interest is charged on repayment agreements where the final due date is greater than 90 days. Otherwise, the debt will be submitted by SO-MFHB to Treasury Cross Servicing if the debtor has been afforded due process notifications resulting in no repayment agreement or a debt with a repayment agreement and a full payment is missed or is delinquent more than 30 days from the due date.

5. Restriction on MFH Servicing Official's Actions

When the MFH Servicing official is the same person who approved the unauthorized assistance, the Leadership Designee must review the case before further actions are taken by the MFH Servicing official.

B. Procedures for Collection of Unauthorized Assistance

Following the final Agency determination of unauthorized assistance, MFH Servicing officials must take the following steps:

- Notify the SO-Multi-Family Housing Branch, Project Loan Servicing Section (PLSS) of the debt to be established via the MFH Transactions Queue by attaching the Form RD 3560-65. PLSS may also receive a signed memo for any correction adjustments to the debt (initialed by Debtor and Agency) via the MFH Transactions Queue. Payments are to be mailed to the Unauthorized Assistance lockbox address: Rural Development, P.O. Box 970005, St. Louis, MO 63197-0005. In all communications, precaution must be taken to prevent the distribution of any Personally Identifiable Information (PII).

- Restructure accounts so that all money owed is collected and no borrowers are receiving assistance to which they are not entitled. This is normally accomplished on a case-by-case basis, with appropriate involvement of the management agent and tenant in cases where the tenant receives unauthorized assistance. Otherwise, it is accomplished on a case-by-case basis for repayment by the borrower in 3 months or less. Upon demand, borrowers must repay any unauthorized rental assistance and/or return on investment; sometimes this may be achieved through a workout agreement with the Agency. If 3 months is not a feasible timeframe for complete repayment, the Leadership Designee can make an exception where justified.

- After submitting the agreement, Form RD 3560-65, to PLSS via the MFH Transactions Queue, the MFH Servicing officials may view the Account in CLSS and MFIS.

The specific procedures to be followed in each case will depend on the reason for the unauthorized assistance (i.e., borrower error or Agency error). The procedures associated with each cause of unauthorized assistance are discussed below.

1. Borrower Error

- Borrower actions that require borrower repayment of unauthorized assistance received by tenants include, but are not limited to:

  a) Incorrect determination of tenant income or household status by the borrower, resulting in rental assistance or interest credit that is not allowable under the provisions of subparts D, E, or F of 7 CFR part 3560, as applicable; or

  b) Assignment of rental assistance to a household that is ineligible under the requirements of subpart F of 7 CFR part 3560. If the borrower assigned rental assistance incorrectly even though the tenant correctly reported income and household size, the borrower will first notify the MFH Servicing official. If the MFH Servicing official verifies that the error was made based on information that was available at the time the unit was assigned, the borrower or management

agent will give the tenant a 30-day written notice that the unit was assigned in error and that the rental assistance benefit will be canceled effective on the next monthly rental payment due after the end of the 30-day notice period. In such cases, MFH Servicing officials must ensure that borrowers grant tenants the chance to cancel their lease without penalty at the time the rental assistance is canceled or appeal the decision. The written notice will provide that: the rental assistance will be assigned 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 rental assistance will not be retroactive unless the reassignment was based on an appeal by the tenant. Retroactive rental assistance may not exceed the project's remaining rental assistance obligation balance.

- Borrowers should not charge tenants amounts due to the Agency as a result of unauthorized assistance to tenants through borrower error. (See 7 CFR section 3560.708(d)).

- Restitution for unauthorized rental assistance that is the borrower's fault will be handled as a refund.

Exhibit 9-1 lists the specific actions that MFH Servicing officials must take to attempt to recapture unauthorized assistance to borrowers.

Exhibit 9-1

MFH Servicing Official Actions to Recapture Unauthorized Assistance to Borrowers

Specific Agency actions to be taken in order to recapture unauthorized assistance in cases of borrower error include the following:

- Notify the borrower of the Agency's finding in Handbook Letter 304 (3560), Preliminary Determination Notice. Include in the letter a specific dollar amount and timeframe for response on or before 15 days from receipt of the letter. Schedule a meeting time. This letter is the initial notification to the recipient and considered the first demand letter.

- If the borrower responds to the first demand letter within 15 days and agrees to repay the unauthorized amount, complete Form RD 3560-65, with borrower signature as debtor, Agency signature, and mail the payment to: Rural Development, P.O. Box 970005, St. Louis, MO 63197-0005. Submit Form RD 3560-65 via the MFH Transactions Queue. PLSS will send out a billing notice. A lump sum or monthly payment may be made to repay the debt within 90 days of the date of the first demand letter without interest. Failure of the recipient to fully pay the debt by 90 days will result in the debt being submitted to Treasury for Cross-Servicing.

- If the borrower does not respond within 15 days to the first demand letter or disagrees with the findings, send Handbook Letter 305 or 305-A (3560), Final Determination/Demand Letter. This second letter should include a final demand and a description of the collection and enforcement action(s) the Agency plans to take if there is no response. Appeal Rights will be provided.

- If the borrower does not respond or appeal within 30 days from the date of the Final Determination/Demand Letter, continue servicing with Handbook Letters 301, 302, & 303 (3560), Servicing Letter #1, #2, & #3 as appropriate. Each successive letter requests a response time from the recipient within 15 days. Borrowers have 30 days from the date of the Final Determination/Demand letter to appeal the Agency's decision.

- If the borrower does not respond or appeal after 90 days when all demand letters have been sent, complete Form RD 3560-65 without signature from the recipient, include Agency signature and mail or fax to the MFHSB. The debt will be submitted to Treasury for Cross-Servicing, as well as referred to OGC for collection as appropriate.

- If the borrower agrees to a repayment agreement as a result of the Final Determination/Demand letter or any servicing letter, complete and submit Form RD 3560-65 with borrower signature as debtor, and Agency signature to the SO/MFH/PLSS. If repayment is more than 90 days, the debt will accrue interest, calculated at 1%, from the date of debt established on Form RD 3560-65. No repayment period may have a final due date longer than 60 months from the date of the first due date.

- Any repayment agreement with the borrower will have the date of first payment due on the 15th of the month and at least 21 days from the ~~fax~~ submission date of Form RD 3560-65. The repayment period may be no longer than 60 months from the date of the first payment due and interest will be charged on repayment periods more than 90 days. Equal installments rounded up to the nearest dollar will be used to repay by the final due date. The PLSS will mail a monthly billing invoice directly to the borrower for all repayment agreements. SO/Debt Management Branch will begin Treasury Referral, including mailing the 60-day due process letter to the debtor, on all unpaid debt balances that are delinquent more than 30 days from the due date. If the debt has been referred to Treasury, borrowers should send the payments to Treasury. Instructions will be provided on the billing invoice for payment to be mailed by the borrower to the Treasury's Collections Branch Lockbox. Any payment received by the servicing office, will be mailed to the Unauthorized Assistance lockbox: Rural Development, P.O. Box 970005, St. Louis, MO 63197-0005, along with the completed MFH Payment Transmittal Cover Sheet, Form RD 3560-63.

- Unauthorized assistance should not be repaid from project funds due to borrower fraud, but only if the project received a monetary benefit from the unauthorized assistance. See 7 CFR section 3560.705(g).

2. Agency Error

There are several types of Agency error that may result in unauthorized assistance.

The most common include:

- Use of incorrect interest rate;
- Assignment of unauthorized rental assistance;
- Improper issuance of interest credit;
- Non-application of recoverable cost changes;
- Approving a loan for ineligible purposes; and
- Other errors (e.g., failure to apply use restrictions).

Exhibit 9-2 describes the actions that MFH Servicing officials must take to attempt to recapture unauthorized assistance in the event of Agency error.

Exhibit 9-2

Actions to Recapture Unauthorized Assistance due to Agency Error

Specific Agency actions to be taken in order to correct cases of Agency error include the following:

- Identify the mistake and the amount of assistance involved;
- Provide notice to the borrower of the Agency's intent to correct its mistake and collect the unauthorized amount. This notice will include a description of where corrections to documents are required, if applicable;
- Contact OGC for advice if needed;
- Request repayment based on OGC advice regarding the feasibility of collection and any applicable collection threshold. The Leadership Designee retains the authority to decide not to pursue any unauthorized amounts below the applicable collection threshold. If the unauthorized amount is above the applicable collection threshold, no OGC review is required;
- Take all appropriate actions to correct the original error that led to the unauthorized assistance, and negotiate terms of repayment (if applicable) with the borrower; and
- If there is no response from the borrower, follow the procedures outlined in Exhibit 9-1.

9.15 REPAYMENT METHODS

Repayment of unauthorized assistance may be accomplished by voluntary repayment from the borrower, full prepayment governed by the prepayment regulations at 7 C.F.R. part 3560, Subpart N, or methods allowed by the Debt Collection Improvement Act of 1996 (DCIA). The best approach will depend largely on case-specific circumstances.

9.16 FULL PREPAYMENT

If full prepayment is determined to be the optimal servicing solution, the Agency will accept the prepayment in accordance with applicable requirements under 7 CFR part 3560, subpart N. Prepayment would be an acceptable solution if there is an adequate supply of decent, safe, and sanitary rental housing affordable to program eligible tenants in the area, and if there would be no adverse impact to low- or moderate-income housing or minority segments of the community. Appropriate restrictive-use provisions, if applicable, must remain in the deeds of release following prepayment.

SECTION 5: RECAPTURE OF UNAUTHORIZED ASSISTANCE TO TENANTS

9.17 OVERVIEW

Section 4 of this chapter addressed the requirements and procedures for recapturing unauthorized assistance from borrowers. The Agency also established requirements that borrowers identify unauthorized assistance to tenant households. This section addresses those requirements and procedures.

9.18 REQUIREMENTS FOR COLLECTION OF UNAUTHORIZED ASSISTANCE TO TENANTS [7 CFR 3560.708]

Any assistance resulting from misrepresentation of tenant income or status that varies from the allowable amounts set forth under the occupancy requirements is unauthorized and must be repaid. Tenant's failure to pay monthly rent according to their lease is not a part of unauthorized assistance and should be properly serviced by the management company. The borrower will inform the Agency of any identified unauthorized assistance and should assist the Agency in establishing a repayment agreement with the tenant. Borrowers and MFH Servicing officials will be guided by the following:

- The amount due will be the amount stated in the notice letter (Handbook Letter 304 or Handbook Letter 305 or 305-A (3560));
- No interest will be charged against the debt if the tenant agrees to repay the money in a lump sum or by payment plan within 90 days from the date of debt on Form RD 3560-65, "MFH Miscellaneous Receivable Notification/Repayment Agreement". Otherwise, a repayment plan longer than 90 days will charge a fixed interest rate of 1%.
- When the tenant cannot repay the money in a lump sum, but will repay over a period of time, the MFH Servicing official may allow no more than 60 monthly payments beginning with the date of the first payment due. However, the debt will be submitted to Treasury for Cross Servicing, by SO-MFHB if the tenant: (a) does not agree or respond to a repayment agreement, or (b) agrees to a lump sum repayment and the debt is not fully paid within 90 days, or (c) agrees to a repayment agreement and is delinquent more than 30 days from the due date.
- If an agreement is made between the Tenant and Agency and the Tenant later requests a change to the agreement, the MFH Servicing official will review the request and if approved, revise the original agreement, initialed by debtor and Agency, and submit via the MFH Transactions Queue SharePoint Site.
- When a tenant moves out of a property, the borrower will submit copies of all documents demonstrating attempts to establish a repayment agreement at the Agency's request. At that

point, the Agency will assume all collection actions in accordance with the DCIA, and 7 CFR section 3560.705(e).

- With all debts identified, the borrower will submit copies of all documentation supporting the debt amount to the Agency for their files. (e.g.: documentation of phone calls, correspondence, signed tenant certification and lease, how unauthorized assistance was discovered and calculated.)

- Tenants who are delinquent on their Unauthorized Assistance Repayment Agreement will remain ineligible to receive RA until such time as the delinquency is cured.

9.19 PROCEDURES FOR COLLECTION OF UNAUTHORIZED ASSISTANCE TO TENANTS

When unauthorized assistance was determined as received by the tenant, and the determination was made by:

A. The borrower

The borrower will notify the tenant in writing the unauthorized assistance was received by the tenant. Per 7 CFR Section 3560.704(b), the borrower will complete and send Handbook Letter 304-A, Borrower Preliminary Determination Notice to the tenant, and simultaneously send a copy of this letter to the Agency.

When the tenant's unauthorized assistance is determined to have exceeded $100 for at least one month, the borrower must review at least the previous three tenant certifications for possible unauthorized assistance, when applicable.

If the tenant agrees to repay the unauthorized assistance, the borrower will inform the Agency of the unauthorized assistance and of the agreement made by the tenant to repay with a signed Form RD 3560-65, MFH Miscellaneous Receivable Notification/Repayment Agreement. If lump sum payment is not feasible, a repayment schedule may be allowed, which will require Agency approval prior to implementation. The debt and repayment schedule will be reported, and will not exceed 60 months from the date of the first payment due which will be the 15th of the month and at least 21 days from the fax date of Form RD 3560-65. Any repayment schedule that may exceed 60 months will require approval the Leadership Designee. The borrower and tenant must complete a new tenant recertification for as of the first of the month after the unauthorized assistance was discovered. No modifications to tenant certifications will be made in Management Interactive Network Connection (MINC).

When the tenant disagrees, fails to respond to notice, or fails to agree to a repayment schedule, the borrower will send Handbook Letter 305-A, Borrower Sent Final Determination/Demand Letter, and should issue a notice of lease violation to the tenant (according to lease requirements in 7 CFR Section 156). The notice informs the tenant of 1) the amount of unauthorized assistance and the basis for the unauthorized assistance determination; 2) the actions to be taken if repayment is not made by a specific date, and tenant grievance procedures pursuant to 7 CFR section

3560.160. If no agreement is made and the debt becomes delinquent, Form RD 3560-65 must be completed, without tenant signature, and sent to the Agency for approval/signature and transmission to SO-MFHB for transfer to Treasury debt cross-servicing.

B. The Agency

If the Agency (MFH Servicing official) determines the unauthorized assistance, they will notify Borrower requesting response to either confirm or dispute Agency finding. If the borrower agrees, the Agency will send the tenant Handbook Letter 304, Preliminary Determination Notice.

If the tenant agrees to repay the unauthorized assistance, Form RD 3560-65 must be completed, with tenant signature, signed by the Agency, and submitted via the SO-MFHB SharePoint Site MFH Transactions Queue.

If the tenant does not agree to repay, or no agreement is made, Form RD 3560-65 must be completed without tenant signature, signed by the Agency, and submitted to the MFH Transactions Queue for submission to Treasury for debt collection, as allowed by DCIA. The servicing office will take actions to pursue the debt from the tenant when the tenant moves out of the unit, using information provided by the borrower.

Immediately after submitting the agreement, Form RD 3560-65, SO-MFHB will create a Tenant Tracked Account in CLSS. As payments are made, SO-MFHB will update the tracked account. If the account is turned over to Treasury for Cross Servicing, SO-Debt Management Branch will update the tracked account to indicate referral.

Any adjustments to an incorrectly calculated debt or debt repayment by the Agency (with any applicable approval from Headquarters) will be made by amending Form RD 3560-65, adding "CORRECTED" across the top of the form, and sending for notification via MFH Transactions Queue.

Exhibit 9-3 summarizes the steps that must be taken by MFH Servicing officials and borrowers to recapture unauthorized assistance from tenants.

Exhibit 9-3
Actions to Recapture Unauthorized Assistance from Tenants

The following steps should be taken by the borrower to correct cases of unauthorized assistance due to tenant error:

- If the Agency/borrower determines that a tenant misrepresented income or the number of occupants in the unit and has received unauthorized assistance, the borrower will determine the reason for the unauthorized assistance and issue a notice of intent to recapture unauthorized assistance (Handbook Letter 304, Preliminary Notice) which provides an opportunity for repayment by the tenant, with a copy to the Agency. If the tenant agrees to the income calculation, a tenant recertification will be completed as of the first of the month after the unauthorized assistance was discovered. No modifications to tenant certifications will be made in MINC.
- If either the borrower or the tenant disputes the Agency's findings, they may provide evidence for consideration by the Agency. An OGC opinion and/or concurrence for pursuit or dismissal of the unauthorized assistance may be submitted to support the decision for any subsequent audit.
- If the borrower and the tenant agree to the unauthorized assistance as a result of any notice or demand letter, the borrower and Agency will negotiate the repayment terms with the tenant, complete Form RD 3560-65 with tenant signature as debtor and submit via the MFH Transactions Queue. The original will be retained by the servicing office and a copy given to the tenant.
- Any repayment agreement with the tenant will have the date of first payment due on the 15th of the month and at least 21 days from the fax date of Form RD 3560-65. The repayment period may be no longer than 60 months from the date of the first payment due and interest, calculated at 1%, will be charged on repayment periods more than 90 days. Equal installments rounded up to the nearest dollar will be used to repay by the final due date. The PLSS will mail a monthly billing invoice directly to the tenant for all repayment agreements. SO/DCIB will begin Treasury Referral, including mailing the 60-day due process letter to the tenant, on all unpaid debt balances that are delinquent more than 30 days from the due date.
- Instructions will be provided on the billing invoice for payment to be mailed by the tenant to the Collections Branch Lockbox. If any payment is received by the servicing office, a MFH Payment Transmittal Cover Sheet, Form RD 3560-63, will be completed and mailed with payment to the Unauthorized Assistance lockbox: Rural Development, P.O. Box 970005, St. Louis, MO 63197-0005.
- If the borrower agrees to the unauthorized assistance and the tenant fails to respond to the notice or fails to agree to a repayment schedule, the borrower will send the tenant Handbook Letter 305, or 305-A, Final Determination/Demand letter. Appeal rights will be provided pursuant to 7 CFR 3560.160. If there is no response or appeal from the tenant after 30 days from the date of the Final Determination/Demand Letter, the borrower will again initiate eviction proceedings and complete Form RD 3560-65 without tenant signature as debtor, without interest (indicated by a "0" in the interest field) or installment amount, include Agency signature, and submit via the MFH Transactions Queue. The original will be retained at the servicing office. The SO/DCIB will follow procedures for submission of the debt to Treasury Cross Servicing.
- If tenant has moved out of the unit, the borrower must turn over copies of relevant tenant records upon request (e.g., signed tenant certification and lease, how much unauthorized assistance was discovered, calculation of unauthorized assistance, eviction notice, and tenant move-out form) to the Agency. The servicing office will, if necessary, send the Final Determination/Demand Letter to the tenant, process any appeal, and complete Form RD 3560-65 for faxing to the SO-MFHB. The SO-MFHB will refer the debt to Treasury for collection as allowed by DCIA.
- For all debts identified, the borrower will submit documentation supporting the debt amount to the Agency (e.g. documentation of phone calls, correspondence, signed tenant certification and lease, how unauthorized assistance was discovered and calculated.)

SECTION 6: REFERRAL OF DEBT TO THE UNITED STATES DEPARTMENT OF TREASURY (TREASURY)

9.20 GENERAL TREASURY REFERRAL REQUIREMENTS

Treasury referral is a process by which delinquent debts can be collected from borrowers, grantees, or tenants through means other than a direct payment. Agencies are required by law to transfer debts that are 180 days delinquent, nontax, legally enforceable to Treasury for collection.

Exhibit 9-4 lists the general procedures that MFH Servicing officials must follow when implementing Treasury Referral.

9.21 GENERAL TREASURY REFERRAL PROCESS

The Agency does not perform Administrative Offsets, Salary Offsets, or IRS Offsets. These tools are used by the U.S. Treasury once a debt has been determined eligible and subsequently referred to Treasury. In addition to the various types of offsets, the U.S. Treasury may also use wage garnishment and private collection agencies, to attempt collection of a debt. A brief process is as follows:

- The Debt Collection Improvement Act of 1996 (DCIA) provides additional collection remedies to Treasury for collecting delinquent debts Government wide.

- Prior to submitting the debt to Treasury, SO-Debt Management Branch issues the debtor a 60-Day Due Process Letter. This letter explains the debt and rights of the debtor as required by law. DCIA requires debts to be referred for Cross Servicing at 180 days delinquent. Debts that are referred to the Treasury Offset Program are referred at 120 days delinquent. See 7 CFR section 3.30. If the debtor begins making full payments as agreed upon by the repayment plan as a result of the 60-day notice, the debt will not be referred.

- Once the debt is referred for Cross Servicing, Treasury begins collecting the debt. Cross-Servicing is the process whereby federal agencies refer delinquent debts to Treasury for collection. Treasury will use various tools in an attempt to collect these debts. Some of these tools are such things as offsetting any government payments (tax refunds, federal salary payroll, all vendor payments, etc.), wage garnishment and the use of private collection agencies, to attempt collection of a debt.

- SO-Debt Management Branch is responsible for maintaining communications with Treasury on all aspects of the debts referred, including but not limited to full collection of the debt.

- Once a debt goes to Treasury, it can only be recalled if it was referred in error or under other extenuating circumstances. If the debtor starts to make payments again, if paid to Treasury, part of the collection goes back to Treasury. Payments made to the Agency will

be processed and notification of the payment will be sent to Treasury. Resuming payments requires that a revised form RD 3560-65 be sent to SO-MFHB.

Exhibit 9-4
General Procedures for Implementing Treasury Referral

Notify debtors of intent to use Treasury referral. Notify debtors of the Agency's intent to use Treasury referral. If the debtor requests a meeting to discuss the matter, schedule the meeting and advise the debtor of the date, time, and place. This does not replace the 60-day due process letter sent by SO/Debt Management Branch.

- **Inform debtor of their rights.** Inform debtor that they have 15 days after receipt of notification to inspect/copy records, and 30 days to either make a written submission, request a meeting, or appeal. Inform debtors of when and where records may be inspected and/or copied.
- **Respect debtors' rights.** Ensure that debtors' rights are respected (e.g., the right to inspect and copy records, the right to avoid Treasury referral by paying debts in full within 30 days, the right to present reasons why Treasury referral should not be used, the right to request meetings with the decision-making official, and the right to appeal the decision).
- **Communicate effectively with debtors.** Make decisions promptly, within 15 days, after a meeting with the debtor and communicate them in writing to the debtor. If a request from a debtor not to use Treasury referral is denied, the letter communicating that decision should advise the debtor of their rights to appeal to the National Appeals Division.
- **Follow appropriate hearing procedures.** Inform debtors that they may request a hearing if they dispute any Agency finding. Hearings can include consideration of any issues concerning the debt that the debtor wishes to raise. Respond promptly to all written or oral requests or presentations made by debtors;
- **Complete Form RD 3560-65.** If it is determined that the debt is valid, complete Form RD 3560-65, following the guidelines defined in the FMI.
- **Notify PLSS of course of actions.** Provide the completed Form RD 3560-65 to SO/MFH/PLSS who will establish the debt as a receivable. The information on the Form RD 3560-65 will be the determining factor when and whether or not to begin Treasury Referral, including mailing the 60-Day Due Process Letter to the debtor(s). The PLSS group e-mailbox for MFH is RD.SO.MFH@usda.gov. However, RD Form 3560-65 and inquiries regarding Unauthorized Assistance shall be submitted via the MFH Transactions Queue SharePoint Site.
- If the debtor begins full payments as agreed upon by the repayment plan after the 60-day due process letter, then the debt will not be referred. However, if the debtor becomes delinquent again, a second 60-day notice will not be provided and the debt will go directly to Treasury.
- **Credit collections to debtor's account.** SO will receive and process transactions to the debtor's receivable record that are received from Treasury or through repayment agreements with the Agency.
- Request Debt Recall from Treasury. Once it is referred, debt may only be called once and only under extenuating circumstances. If the debtor requests to begin making payments and the Agency decides that the debt should be recalled from Treasury, a new agreement, Form RD 3560-65 must be signed and submitted to PLSS via the MFH Transactions Queue with a note across the top of the form requesting to recall the debt from Treasury. Debts will not be recalled more than once unless extenuating circumstances exist.

SECTION 7: CONTINUATION OF LOAN ACCOUNTS

9.22 OVERVIEW

The Agency realizes that it would be counterproductive to liquidate the account of each borrower that receives unauthorized assistance. Thus, a much more common scenario is to continue the loan account with a stipulation that some or all of the unauthorized assistance will be collected, either immediately or over time. This way, the Agency can continue to meet the needs of low-income tenants while still responsibly protecting the taxpayers' interest in the RHS portfolio.

9.23 REQUIREMENTS FOR CONTINUATION OF LOAN ACCOUNTS *[7 CFR 3560.707]*

If a recipient of unauthorized assistance is willing to pay the amount in question but cannot repay within a reasonable period of time, the Agency may continue to service the account if the recipient has the legal and financial capabilities to continue.

When the borrower is responsible for the circumstances causing the assistance to be unauthorized, the borrower must take appropriate action to correct the problem. When unauthorized assistance is due to Agency actions, the Agency will correct the problem. When circumstances resulting in a determination of unauthorized assistance cannot be corrected, the Agency may, at its discretion, decide that continuation on existing terms is appropriate.

9.24 AGENCY DECISION TO CONTINUE SERVICING ACCOUNT

If a recipient is willing to pay the amount in question but cannot repay within a reasonable period of time, the Agency can continue to service the account. The Agency can take appropriate servicing actions to continue the account if:

- The recipient did not provide false information;
- Requiring prompt repayment of the unauthorized assistance would be highly inequitable; and
- Failure to collect the unauthorized assistance in full will not adversely affect the Agency's financial interest.

9.25 SERVICING OPTIONS IN LIEU OF LIQUIDATION OR LEGAL ACTION TO COLLECT

When the conditions for continuation of the account are met, the MFH Servicing official will service an unauthorized loan or grant, provided the recipient has the legal and financial capabilities to continue. Agency actions will depend on whether the case involves an active or inactive borrower or grantee and the type of unauthorized assistance received.

A. Agency Actions

Generally, borrower accounts need to be restructured so that the Agency collects all money due it and so that no borrower is receiving assistance to which they are not entitled. The MFH Servicing official accomplishes this result through the account adjustments described below. In most cases requiring such corrective actions, the MFH Servicing official reports to the Leadership Designee, who often consults with OGC on further actions.

B. Notice of Determination When Agreement is Not Reached

If the recipient does not agree with the Agency determination of unauthorized assistance or does not respond to the initial letter within 30 days, the MFH Servicing official must send a second certified letter (to the same recipients) specifying the final amount determined by the Agency to be unauthorized, further actions to be taken by the Agency, and the recipient's appeal rights.

C. Reporting to OIG

At prescribed intervals, the St. Louis Office will report to OIG on the status of cases involving unauthorized assistance which were identified by OIG in audit reports. The St. Louis Office will determine the amounts to be reported to OIG after account servicing actions have been completed. For reporting purposes, the procedures outlined below apply.

1. Unauthorized Loan

When a borrower repays an unauthorized loan account in full (if allowed under the prepayment regulations found at 7 CFR 3560, Subpart N.) MFH Servicing officials should include that payment in the next scheduled report only. When the Agency approves continuation with the loan on existing terms, MFH Servicing officials will report the case as resolved on the next scheduled report. No further reporting is required.

2. Unauthorized Subsidy

For unauthorized subsidy cases, after the borrower has repaid the unauthorized amount or payments have been reversed and reapplied at the correct interest rate, MFH Servicing officials should include the unauthorized subsidy as resolved in the next scheduled report. No further reporting is required.

3. Liquidation Pending

When the Agency establishes an account with liquidation action pending, MFH Servicing officials will include the status in each scheduled report until the liquidation is completed or the account is otherwise paid in full.

4. Liquidation Not Initiated

When liquidation is not initiated, MFH Servicing officials should report so in the next scheduled report, along with collections (if any). No further reporting is required.

5. Unauthorized Grant

When unauthorized grant assistance is scheduled to be repaid, the collections and status reported by the Agency to the St. Louis Office by memorandum are included in the OIG report until the account is paid in full.

6. Inactive Borrower

When an inactive borrower has agreed to repay unauthorized assistance, MFH Servicing officials will report the account initially, and include collections and status in each scheduled report until the account is paid in full.

D. Quarterly Reporting to the Agency

The MFH Servicing official will report to the Leadership Designee by the first day of March, June, September, and December of each year the repayment of unauthorized rental assistance by account name, case number, account code, audit report number, finding number, date of claim, amount of claim, amount collected during period, and balance owed at the end of the reporting period. The Agency will forward a consolidated report to the St. Louis Office no later than the fifteenth day of March, June, September, and December of each year for inclusion in the OIG report.

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SECTION 8: ENFORCEMENT

9.26 OVERVIEW

If all of the Agency actions described in this chapter fail to result in an acceptable resolution to the unauthorized assistance or borrower violations, enforcement actions may be considered. Most enforcement actions will require close coordination with OGC, which will develop the Agency's enforcement approach based on information supplied by MFH Servicing officials. It is the Agency's goal to resolve all cases, when possible, before they reach this stage.

9.27 AGENCY ACTIONS FOR ENFORCEMENT AGAINST RECIPIENTS OF UNAUTHORIZED ASSISTANCE AND FOR IMPOSING CIVIL MONETARY PENALTIES AGAINST BORROWER ENTITIES AND RELATED PARTIES

If a recipient of unauthorized assistance is unwilling or unable to arrange for repayment, or continuation is not feasible, or after working with a borrower or any individual or entity, including its officers, general partners, limited partners, or employees, who knowingly and materially violate, or participate in committing programmatic violations, the Agency may take one of the following actions, as appropriate.

A. Liquidation *(7 CFR 3560.456)*

In the case of an active borrower with a secured loan, the MFH Servicing official will attempt to have the recipient liquidate voluntarily subject to compliance with prepayment requirements. If the recipient agrees, the MFH Servicing official will document the agreement with an entry in the running record of the case file.

Where real property is involved, the MFH Servicing official will prepare a letter to be signed by the recipient agreeing to voluntary liquidation. If the recipient does not agree to voluntary liquidation, or agrees but is unable to accomplish it within a reasonable period of time (usually not more than 90 days), the Agency will initiate forced liquidation action, unless the amount of unauthorized assistance outstanding totals less than $1,000 or it can be clearly documented that it would not be in the best financial interest of the Government to force liquidation. If a borrower meets either of the two criteria to forego forced liquidation, the Agency will make all necessary account adjustments without the recipient's signature and notify the recipient by letter of the actions taken.

B. Legal Action to Enforce Collection

In the case of a grantee, inactive borrower, or active borrower with an unsecured loan (e.g., collection-only or unsatisfied balance after liquidation), the MFH Servicing official will document the facts in the case file and submit it to the Leadership Designee, who will request the advice of OGC on pursuing legal action to effect collection. The Leadership Designee will tell OGC what assets, if any, are available from which to collect. The Leadership Designee will forward the case file, recommendation of the Leadership Designee, and OGC comments to the Agency for review and authorization to implement recommended servicing actions.

C. Double Damages *(7 CFR 3560.460)*

1. Action to Recover Assets or Income

The Agency may request to the Attorney General to bring an action in a U.S. District Court to recover any assets or income used by any person in violation of the provisions of a loan made by the Agency under this section or in violation of any applicable statute or regulation.

For the purposes of this section, use of assets or income in violation of the applicable loan, statute, or regulation includes any use for which the documentation in the books and accounts does not establish that the use was made for a reasonable operating expense or necessary repair of the project or for which the documentation has not been maintained in accordance with the requirements of the Agency and in reasonable condition for proper audit.

For the purposes of this section, the term "person" means:

- Any individual or entity that borrows funds in accordance with programs authorized by this section;

- Any individual or entity holding 25 percent or more interest in any entity that the Agency funds in accordance with programs authorized by section *3560.1*; and

- Any officer, director, or partner of an entity that borrows funds in accordance with programs authorized section *3560.1*.

2. Amount Recoverable

In any judgment favorable to the United States entered under this subsection, the Attorney General may recover double the value of the assets and income of the project that the court determines to have been used in violation of the provisions of a loan made by the Agency under this section or any applicable statute or regulation, plus all costs related to the actions, including reasonable attorney and auditing fees.

Notwithstanding any other provisions of law, the Agency may use amounts recovered under this section for activities authorized under section *3560.1*, and such funds must remain available for such use until expended.

3. Time Limitation

Notwithstanding any other provisions of law, an action under section *3560.460* may be commenced at any time during the six-year period beginning on the date that the Agency discovered or should have discovered the violation of the provisions of this section or any related statutes or regulations.

4. Continued Availability of Other Remedies

The remedy provided in section *3560.460* is in addition to—not in substitution of—any other remedies available to the Agency or the United States Government.

D. Equity Skimming *(7 CFR 3560.461(a))*

1. Criminal penalty

Whoever, as an owner, agent, employee, or manager, or is otherwise in custody, control, or possession of property that is security for a loan made under Title V of the Housing Act of 1949, as amended (Housing Act), willfully uses, or authorizes the use, of any part of the rents, assets, proceeds, income, or other funds derived from such property, for any purpose other than to meet actual, reasonable, and necessary expenses of the property, or for any other purpose not authorized by this title or the regulations adopted pursuant to this title, must be fined under title 18, United States Code (USC), or imprisoned not more than five years, or both.

2. Civil sanctions

An entity or individual who as an owner, operator, employee, or manager, or who acts as an agency for a property that is security for a loan made under this title where any part of the rents, assets, proceeds, income, or other funds derived from such property are used for any purpose other than to meet actual, reasonable, and necessary expenses of the property, or for any other purpose not authorized by the Housing Act and the regulations adopted pursuant to the Housing Act, must be subject to a fine of not more than $25,000 per violation. The sanctions provided in this paragraph may be imposed in addition to any other civil sanctions or civil monetary penalties authorized by law.

E. Civil Monetary Penalties *(7 CFR 3560.461(b))*

1. Overview

Civil Monetary Penalties is authorized under section 543(b) of the Housing Act of 1949, as amended (42 U.S.C. 1490s(b)), and provides a remedy for non-monetary compliance violations without imposing more severe actions such as acceleration, foreclosure and liquidation that may not be in the best interest of the Federal Government. It also allows the Agency to elicit compliance by the borrower when all other efforts for reestablishing program compliance have been exhausted. In order to avoid pursuing civil monetary penalties, Agency staff would prefer to work alongside borrowers to resolve outstanding violations of the Housing Act, the regulation issued by

the Agency pursuant to the Housing Act, or agreements made in accordance to the Housing Act where there is an imminent or real threat of loss of financial integrity to the property or to the value of the Agency's security. However, the decision to impose penalties should only be made after the Agency has made several unsuccessful attempts to work with a borrower, such as entering into a workout agreement, new property management, or utilizing other available servicing options outlined in Chapter 10.13 Selecting Servicing Options. This section provides guidance in support of Chapter 10.15 Enforcement Actions.

After following proper loan servicing procedures outlined in Chapter 10 and an opportunity for a hearing, the Department's Office of Administrative Law Judges may impose a civil monetary penalty in accordance with section 3560.461(b) against any individual or entity, including its owners, officers, general partners, limited partners, or employees, who knowingly and materially violate, or participate in the violation of the provisions of the Housing Act, the regulation issued by the Agency pursuant to the Housing Act, or agreements made in accordance to the Housing Act by:

- Submitting information to the Agency that is false;
- Providing the Agency with false certifications;
- Failing to submit information requested by the Agency in a timely manner;
- Failing to maintain the property subject to loans made under the Housing Act in good repair and condition, as determined by the Agency;
- Failing to provide management for a project that received a loan made under the Housing Act that is acceptable to the Agency. Acceptable management can include providing sound fiscal management, maintaining the required project accounts, maintaining the required occupancy, and handling rent collection, in accordance with Agency regulation 7 CFR 3560, Subpart C - Borrower Management and Operations Responsibilities.
- Failing to comply with the provisions of 7 CFR 3560.2 Civil Rights and applicable statutes and regulations therein.

2. Amount

Civil penalties shall be assessed and adjusted in accordance with 7 CFR part 3, subpart I, Adjusted Civil Monetary Penalties (7 CFR 3.91(b)(8)(iii)) or its successor regulation, and 543 (b)(3)(A) of the Housing Act of 1949, which states that a civil penalty imposed under this subsection shall not exceed the greater of twice the damages the Agency, the lender, or the project that is secured for the loan under this section suffered or would have suffered under the violation.

In determining the amount of a civil monetary penalty under section *3560.461*, the Agency must take into consideration:

- The gravity of the offense;
- Any history of prior offenses by the violator (including offenses occurring prior to the enactment of this section);
- Any injury to tenants;
- Any injury to the public;
- Any benefits received by the violator as a result of the violation;
- Deterrence of future violations; and
- Such other factors as the Agency may establish by regulation.

To aid MFH Servicing officials in evaluating the decision to pursue CMP, review Attachment 9-A, "Guide for Civil Monetary Penalty Recommendation and Assessment."

3. Agency Actions and Responsibilities

a. The MFH Servicing official will verify that the steps outlined in Chapter 10.9 "Key Steps in Addressing Compliance Violations and Defaults," and Chapter 10.10 "Notification to Borrower of Servicing Problems" have been completed before conducting the necessary investigation and referral.

b. Due to potentially serious consequences for a borrower resulting from a civil monetary penalty action, and the possibility of a challenge to the Agency action, it is important that all recommendations for these actions be fully supported with current documentation. If the recommendation is more than three years old after the alleged wrongdoing, explanatory documentation must be provided indicating the reason(s) for the delay. If the Leadership Designee and the Office of General Counsel have access to all relevant information supporting the recommendation, the Agency will be more likely to withstand challenges to impose civil monetary penalty at the hearing.

c. The materials submitted to the Leadership Designee and the Office of General Counsel will comprise the Agency record. The quality and accuracy of the narrative record can ultimately determine the success or failure of a case appealed to federal district court.

d. The Agency must include all documents relating to the relationship between the

agreements, and documentation listed in paragraph 5.e. Care should be exercised in identifying the correct person(s) or entity for civil monetary penalty to prevent losing a case on procedural error for failure to provide proper and timely notice.

e. When a civil monetary penalty extends to partners or affiliates, including its owners, officers, directors, general partners, limited partners, or employees, any partnership agreements or articles of incorporation must be included to establish the relationship between parties. These documents are necessary to assist in correctly identifying the person(s) or entity to be penalized**,** and in making determinations about imputing actions to other individuals and affiliates. OGC can advise about whether and how such penalties may be enforced against entity members with limited liability.

f. In addition to the causes outlined in to 7 CFR 3560.461 (b) and 7 CFR 3.91 (b) (8), it is imperative to compile civil monetary penalty file(s) in accordance with the standards outlined in paragraph 5 Format for Submission of Civil Monetary Penalties Case.

g. Once the investigation and the assembly of documentation is completed, the MFH Servicing official shall send the package of information to the Leadership Designee. The Leadership Designee will decide if the civil monetary penalty is appropriate. If so, the case will be forwarded to the appropriate local OGC office for a legal sufficiency review.

4. Notification of Intent to Pursue Civil Monetary Penalty Action (HB Letter 303-A)

a. The MFH Servicing official should follow the procedures for issuing Servicing Letters #1, #2, and #3, in accordance with HB-3-3560, Exhibit 10-2, Sequence of Servicing Letters. Handbook Letter 303-A (3560), "Notification Of Intent To Pursue Civil Monetary Penalty Action," should be sent at least 60 days after the date of first letter and at least 15 days after Letter #2 notifying borrowers that they are in default and warning of enforcement action if problem is not corrected within 15 days. Handbook Letter 303-A must be sent via Certified Mail. The Agency shall preserve all related documents and data upon the issuance of Handbook Letter 303-A.

b. During the 15-day response period, the MFH Servicing official should begin assembling the documentary evidence supporting the case. The complete package of documentary evidence is needed by the Leadership Designee to submit to the RHS Administrator, the Regional OGC, and the Office of Administrative Law Judges for review and concurrence.

c. Upon the expiration of the 15-day period in which the respondent is to contact the Agency, the MFH Servicing official will develop a problem case report using Form RD 3560-56, *Report on Real Estate Problem Case,* for the Leadership Designee's approval. The problem case report contains the details of the case, and is used by MFH Servicing officials to recommend and obtain the Leadership Designee's approval for an enforcement action. MFH Servicing officials will forward the problem case report describing the violations of Agency requirements by the borrower along with recommended enforcement actions within 120 days of concluding that efforts to achieve compliance have been unsuccessful.

d. The Leadership Designee will review the problem case report and respond to the MFH Servicing official within 30 days of receipt of the problem case report, indicating the action to be taken. Such determination shall be based upon a review of Handbook Letter 303-A, the borrower's response, if any, and the documents listed in paragraph 5, below.

e. Upon the Leadership Designee's consent to the civil monetary penalty action, indicated by marking the "Litigation For Performance" box on the problem case report, and absent any active settlement negotiations, the package of documentary evidence and the problem case report shall be submitted to the RHS Administrator for review and concurrence. Upon receiving concurrence from the RHS Administrator, the Leadership Designee shall forward the recommendation and the package of documentary evidence to the local OGC office for legal sufficiency review and consent. Upon review by OGC, OGC shall draft a complaint, then forward it back to the Leadership Designee. The Leadership Designee shall review the complaint and forward it to the RHS Administrator for signature and filing with the Office of Administrative Law Judges, accompanied by a transmittal memorandum signed by the RHS Administrator recommending a civil monetary penalty. A copy of the signed transmittal memorandum should be sent to the local OGC office to serve as a notification that the case is moving forward and legal representation will be needed.

5. Format for Submission of a Civil Monetary Penalties Case

The documentary evidence package from the Leadership Designee to the RHS Administrator should be secured and tabbed, and in chronological order starting with the most recent documents, as follows:

a. Form RD 3560-56, "Report on Real Estate Problem Case," which is the Leadership Designee's recommendation and justification for a civil monetary penalty. A clear,

cogent, and concise narrative setting out each person or entity in relation to the civil monetary penalty, the specific causes for civil monetary penalty, the specific actions which give rise to each specific cause for civil monetary penalty, an explanation as to why and how the specific action is a cause for civil monetary penalty. Include any weak points or extenuating circumstances which may be involved. Specific citations of each regulation at issue must also be included.

b. Transmittal memorandums from the Servicing Office.

c. Executive Summary, consisting of a brief history of events, and discussion of each factor going into fee determination.

d. Include the following documents that are applicable to the civil monetary penalty plus any additional information that will support the Agency's recommendation and assist the Administrator in the decision making process:

- Agency letters to the respondents and their responses;
- Borrower complaint letters to respondents and their responses;
- Copies of any articles of incorporation, loan agreements, by- laws or partnership agreements (including, but not limited to, documentation to establish relationships between the proposed civil penalty and the government and/or the transfer of federal funds);
- Record of other Agency contacts with respondents (including printouts of emails/ notes from parties, if applicable);
- Record of visits and copies of running record entries concerning aggrieved parties;
- Inspection/Certifications;
- Documentation concerning criminal indictments/convictions, Judgments, Settlements and Plea Bargain Agreements; recommendations of OIG investigations;
- Documentation to justify lapses in timeliness in the referral or processing of a case.

- If Construction Matters are an issue include:
  - Contract and all written Agreements
  - Subcontracts

- Amendments and Change Orders
- Plans and Specifications
- Warranty Documents
- Payment Information Release of Claims,
- Lien Waivers
- Mechanics or Suppliers Liens and Judgments

- If Application Matters are at issue also include:
  - Application
  - Verification of Employment
  - Interest Credit or
  - Subsidy Repayment Agreements
  - Conditional Commitment

- OIG and Other Investigation Reports

6. Complaint

After allowing the violator the opportunity to offer a settlement, a complaint shall be served upon the respondent. The Agency, through the Regional OGC office, will follow the instructions provided by the Administrative Law Judges, in accordance with 7 C.F.R., part 1, subpart H of the Departmental Administrative Regulation.

7. Response to the Complaint

If the respondent does not respond to the Agency's complaint as prescribed, then the Agency Official may file a motion for default judgment, in accordance with 7 C.F.R., Subtitle A, part 1, subpart H.

8. Hearings

Hearings under this part shall be conducted according to the procedures applicable to hearings, in accordance with 7 C.F.R., part 1, subpart H. A field office attorney will serve as the Agency representative for the hearing.

9. Collection of Penalties

No payment of a penalty assessed under section 3560.461(b) may be made from funds provided under the Housing Act or from funds of a project that serve as security for a loan made under the Housing Act.

If the hearing results in a civil penalty assessed against the defendant, after such time as allowed in accordance with the administrative procedure in 7 C.F.R., part 1, subpart H, the Agency will proceed with seeking repayment of all penalties assessed, as a miscellaneous receivable through the SO-MFHB. The collection of funds from the defendant may be either in a lump sum or from a monthly repayment schedule without the charging of interest if the defendant pays the debt in full within 90 days from the date of debt on Form RD 3560-65, "MFH Miscellaneous Receivable Notification/Repayment Agreement." Otherwise, the debt will be submitted by the SO-MFHB using Form RD 3560-65, to Treasury for Cross Servicing.

10. Settlement of a Civil Money Penalty Action

The Leadership Designee is authorized to enter into settlement agreements resolving civil money penalty actions that may be brought under this section.

11. Remedies for Noncompliance

If a person or entity fails to comply with a final determination by the Agency imposing a civil monetary penalty, the Agency may request the Attorney General of the United States to bring an action in an appropriate district court to obtain a monetary judgment against such an individual or entity and such other relief as may be available. The monetary judgment may, at the court's discretion, include attorney's fees and other expenses incurred by the United States in connection with the action.

12. Conditions for Renewal Extension

The Agency may require as part of the settlement process that expiring loan or assistance agreements entered into under the Housing Act must not be renewed or extended unless the owner executes an agreement to comply with additional conditions prescribed by the Agency or executes a new loan or assistance agreement in the form prescribed by the Agency.

13. Appeal Rights

In an action under this paragraph, the validity and appropriateness of a determination by the Agency imposing the penalty will not be subject to administrative review before the National Appeals Division.

F. Money Laundering (7 CFR 3560.462)

The Agency has the authority to pursue money laundering cases, when appropriate, per 11 U.S.C. section 1956(c)(7)(D).

G. Obstruction of Federal Audits *(7 CFR 3560.463)*

So long as the requirements of 18 U.S.C. section 1516(a) are met, the Agency will pursue a criminal action against a person who, with the intent to deceive or defraud the United States, endeavors to influence, obstruct, or impede a Federal Auditor.

CHAPTER 10: COMPLIANCE VIOLATIONS, DEFAULTS, AND WORK-OUT AGREEMENTS
[7 CFR 3560.453]

10.1 INTRODUCTION

When routine monitoring of projects reveals noncompliance with program requirements, the MFH Servicing Office must take immediate steps to notify the borrower and state of the need for timely corrective actions. To protect the security value of a property, it is in the Agency's best interest to work with the borrower to resolve any compliance violations. Resolving situations of noncompliance is the main subject of this chapter.

MFH Servicing officials should be firm in dealing with the borrower or the borrower's representative in matters of compliance violations. Because the management agent is not the party ultimately responsible for the loan, it is imperative that the borrower be directly apprised of and fully understands the consequences of default. Therefore, whenever any written servicing notice is sent to a management agent who is not the borrower, the borrower must also receive a copy of the notice. MFH Servicing officials need to employ courtesy, cooperation, and sound judgment when interacting with borrowers and management agents in any servicing situation.

A noncompliance situation is often resolved or deterred through a work-out agreement. This is a plan for resolving or deterring noncompliance that is developed and presented by a borrower to the Agency for approval. The Agency may or may not approve the proposed work-out agreement. This chapter discusses the Agency requirements for work-out agreements.

10.2 ADDRESSING COMPLIANCE VIOLATIONS AND DEFAULTS

Borrowers are in default of their loan or grant agreements whenever they are not in compliance with the terms of the loan or grant agreement. Such defaults may be of a monetary nature, such as when borrowers do not make their loan payments, or of a nonmonetary nature, such as when borrowers have not maintained projects properly. Default may be triggered by events that are beyond the borrower's control, such as changing markets that lead to prolonged vacancies. Nevertheless, being in default is a serious situation for a borrower and requires that every effort be made to resolve it.

Defaults may lead to foreclosure, loan liquidation, or the assessment of civil penalties. One significant step that can be taken toward resolving the default is for the Agency and the borrower to agree to a work-out agreement. A work-out agreement may also be used in certain cases to avert a default situation. The Agency will not pursue enforcement against a borrower in default (monetary or nonmonetary) if an approved work-out agreement is in place and on schedule. Thus, it is in the borrower's best interest to work with the Agency to resolve compliance issues through a work-out agreement.

A work-out agreement is a proposal that is submitted by the borrower to the Agency for approval of changes in project operations, for additional time to restore compliance, or for servicing actions to assist in correcting identified deficiencies. There are several servicing options available under a work-out agreement, and the borrower and MFH Servicing official

should consider all of them and evaluate which are the most appropriate for a specific problem project.

This chapter explains how borrowers may enter into default of their loan or grant agreement and the different types of defaults that may occur. It describes the process by which the MFH Servicing official notifies the borrower of compliance violations and the options available to remedy the noncompliance. The chapter then discusses work-out agreements and includes a separate section on Special Note Rents (SNRs), which enable borrowers to reduce rents to attract tenants. By reading this chapter, the MFH Servicing official will understand how to systematically work with the borrower to resolve noncompliance, when it is appropriate and feasible for a borrower to enter into a work-out agreement, what are the required terms of the agreement, and how to monitor borrower compliance with the work-out agreement.

SECTION 1: TYPES OF DEFAULTS *[7 CFR 3560.452]*

10.3 OVERVIEW

Borrowers in violation of the terms of the loan or grant documents for the project or applicable Federal regulations, including a work-out agreement, who fail to fully correct a deficiency by a date specified by the Agency in a written notice are in default of their loan or grant documents.

Defaults can be of a monetary or nonmonetary nature. The Agency will initiate appropriate enforcement actions against any borrower in default.

10.4 MONETARY DEFAULT

A project that is in monetary default is defined as one that is delinquent for more than 60 days. Projects with monetary violations include those for which the loans have been accelerated and of which the borrowers are in bankruptcy. A project is delinquent when a loan payment is more than 10 days past due. Project payments are due on the date specified on *Form RD 3560-52, Promissory Note*.

Monetary default may warrant the development of a work-out agreement or initiation of enforcement actions by the Agency that include termination of a management agreement, receivership, suing for performance, collection of unauthorized assistance, or denial of a rent increase.

10.5 NONMONETARY DEFAULT

Nonmonetary defaults include, but are not limited to, failing to maintain project reserves, failing to adequately maintain the physical condition of the property, failing to comply with environmental mitigation measures, occupying units with ineligible tenants without prior Agency approval, charging incorrect rents, failing to meet fair housing requirements, and failing to properly report to the Agency. A borrower will be considered in nonmonetary default if the identified deficiencies are not cured within 60 days of notification.

Attempts to resolve nonmonetary defaults should be handled whenever possible at the Servicing Office level with appropriate guidance and assistance from the Leadership Designee. Environmental concerns, such as failure to comply with mitigation measures, should be reviewed with the Headquarters Environmental Staff for further guidance. The Leadership Designee should counsel with the Office of General Counsel (OGC) for advice, if needed, in servicing those cases where nonmonetary defaults cannot be resolved at the Servicing Office level. These actions may include liquidation of the account, see Chapter 12.

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SECTION 2: CONDITIONS OF CONCERN, COMPLIANCE VIOLATIONS, AND DEFAULTS

10.6 AGENCY CLASSIFICATION SYSTEM

The Agency has developed a classification system that describes the servicing status of each operational multi-family housing project. This classification system provides a picture of the status of the housing portfolio and flags those projects that need special servicing and/or monitoring. Exhibit 10-1 shows how projects are classified.

The Agency's classification system is to be used to focus servicing efforts. Projects classified as a D or a C should receive first priority when allocating resources to address portfolio concerns. Internal supervisory reviews should primarily examine how MFH Servicing officials are working to address projects with servicing concerns.

The classification system will be maintained on the Multi-Family Integrated System (MFIS). Servicing officials are responsible for making sure that MFIS is current and accurately reflects a project's servicing status. The supervisory visit and engagement review are key events for updating a project's servicing status. Chapter 9 of HB-2-3560 describes the Agency review process in more detail.

Exhibit 10-1

Classification System of Operational Projects

Class D includes:

- Projects in nonmonetary default having an unresolved violation for more than 60 days from the date of *Handbook Letter 301 (3560), Servicing Letter #1*; and
- Projects in monetary default that are delinquent for more than 60 days

Class C includes:

- Projects with an unresolved finding or violation not associated to a Workout Plan and/or Transition Plan; and
- Projects with an unresolved violation for less than 60 days from the date of *Handbook Letter 301 (3560)*.

Class B includes:

- Projects with findings or violations associated to an approved work-out plan and/or transition plan that is on schedule.

Class A includes:

- Projects with no unresolved finding or violation.

10.7 FINDINGS

A finding is determined when the Agency "finds" that a borrower is not operating in accordance with the loan or grant agreement, with Agency regulations, or with applicable local, state, or Federal laws. When the Agency discovers a deficiency in a project that requires correction but is not the equivalent of a violation or an unacceptable summary level finding during an inspection or review report, the Agency must notify the borrower of this finding. Depending on the severity of the finding, the servicing official may advise the borrower of the finding either orally, or in writing through a monitoring letter. Should the finding not be corrected after at least one written notice has been sent to the borrower with a specified date by which the finding must be corrected, the MFH Servicing official must determine whether the issue should be elevated to a violation status. When the MFH Servicing official concludes that the finding should be viewed as a violation that could lead to a default, the MFH Servicing official must begin the process of issuing the servicing letters described in Paragraph 10.10.

10.8 VIOLATIONS

A violation is a finding that the Servicing Office escalates because of its severity or because of the type of servicing effort that will be needed to obtain compliance. When the Agency designates a finding as a violation, it indicates a willingness to pursue the finding to the point of acceleration to have it corrected. Compliance violations include, but are not limited to, any unacceptable summary level finding on the physical inspection report, project management and occupancy review, or engagement review that could be updated at any time. Examples include failing to make required contributions to project reserves, failing to adequately maintain the exterior physical condition of the property under Agency standards, failing to comply with environmental mitigation measures, occupying units with ineligible tenants without prior Agency approval, charging incorrect rents, and failing to properly report to the Agency.

10.9 KEY STEPS IN ADDRESSING COMPLIANCE VIOLATIONS AND DEFAULTS

The Agency must respond quickly and systematically whenever a project is identified as being in noncompliance with program requirements. In responding to a noncompliance situation, the MFH Servicing official will take some or all of the following steps and update the servicing status on MFIS:

- Notify the borrower of the violation and request corrective action;
- Meet with the borrower to discuss the problem and possible servicing actions to remedy the problem;
- Review any proposed work-out agreement developed by the borrower and suggest acceptable servicing actions if appropriate;
- Issue a problem case report; and
- Initiate enforcement actions to motivate the borrower to restore compliance.

These steps are discussed in detail in the following sections.

10.10 NOTIFICATION TO BORROWER OF SERVICING PROBLEMS

The Agency must notify the borrower using formal servicing letters that state the need for corrective action to be taken. It is not the Agency's responsibility to come up with solutions to the problems. Rather, it is the borrower who must identify what corrective actions will take place immediately or over time through a work-out agreement.

The Servicing Office will use a series of servicing letters to communicate with the borrower until the problem is resolved. Copies of the letters must be sent to the management agent of the property that is the subject of the letters if the owner is not the management agent. Exhibit 10-2 shows the sequencing of these servicing letters.

Handbook Letter 301 (3560) serves to trigger the start of a 60-day period for nonmonetary violations and a 45-day period for monetary violations, at the end of which the borrowers are in default of their loan agreement if the situation has not been resolved. Resolution may take the form of action proposed by the borrower and approved by the Agency, or it may take the form of enforcement actions instituted by the Agency when the borrower fails to respond or responds inadequately.

A. Preliminary Notification

When a borrower becomes delinquent on a payment, an automatically generated Delinquency Billing Statement is mailed to the borrower. The borrower will be in default if the loan payment is not made in full within 60 days of this notice. If the borrower does not submit the loan payment before the payment is 30 days past due, the borrower receives *Handbook Letter 301 (3560)*. If the borrower submits the full payment, including any applicable late fees (see Chapter 4, paragraph 4.4 on late fees) the MFH Servicing official does not take any further servicing action.

During an on-site monitoring visit the monitors should meet with the borrower to review the initial results of the visit, including a discussion of compliance violations. See Chapter 9, paragraph 9.6 B of HB-2-3560 for more information about on-site monitoring visits.

Example: Borrower B's project has several crumbling steps in the stairwell. Since this represents an unacceptable condition of exterior maintenance, which is a compliance violation, the MFH Servicing official notifies the borrower during the on-site visit on this violation.

Exhibit 10-2

Sequence of Servicing Letters

Letter	Nonmonetary	Monetary
Preliminary Notification	The MFH Servicing official informs the borrower of violations during a wrap-up meeting of a monitoring visit.	A Delinquency Billing Statement is automatically sent to borrower when the borrower becomes delinquent (10 days past due).
Letter #1	Sent upon evidence of violation and no later than 30 days after the monitoring visit. Date of letter signifies beginning of 60-day period to default.	Sent no later than when payment is 35 days past due.
Letter #2	Sent sometime after 15 days if borrower fails to respond or responds inadequately to Letter #1. Notifies borrower of date by which they will be considered delinquent if violation not corrected (60 days after date of Letter #1).	Sent after payment is 45 days past due. Notifies borrowers of date by which they will be classified a D project (60 days after payment due date).
Letter #3	Sent at least 60 days after date of first letter and at least 15 days after Letter #2 notifying borrowers that they are in default and warning of enforcement action if problem is not corrected within 15 days.	Sent 60 days after payment due date notifying borrower that the Agency will take legal action to cure the default and warning of enforcement action if payment is not made within 15 days.

B. Borrowers with Multiple Servicing Issues

If a borrower is in violation in several different areas, the *Handbook Letter 301 (3560)* should identify all the violations. If sent, *Handbook Letter 302 (3560)* would reference "ongoing compliance violations" to cover multiple servicing issues. The series of letters continues until each violation has been resolved.

A servicing letter may cite conditions of concern (see Paragraph 10.7) along with compliance violations. However, only the cited compliance violations could lead to a default status if left unresolved. If the borrower resolves all violations within 60 days, they will not default even if the conditions of concern have not been resolved.

If at any time the Agency discovers that a borrower who has received a servicing letter has another problem that warrants a servicing letter, the letter will be sent, triggering a second series of letters. These letters can run separately from and independent of the first series of letters or they may be combined at some point. However, it is important that the MFH Servicing official track the separate violations cited by the date of each *Handbook Letter 301 (3560)* so that *Handbook Letter 303 (3560* correctly identifies the violation that has resulted in the default by a certain date.

10.11 EVALUATING THE PROJECT

When the MFH Servicing official has sent two servicing letters to notify a borrower of problems with a project, the MFH Servicing official must evaluate the project to establish whether it is in the Agency's best interests to attempt to work with the borrower to preserve the subject project. The MFH Servicing official will use the procedures outlined in Chapter 6. Such an evaluation should come before any meeting with the borrower so that the MFH Servicing Official is familiar with the project and its status.

10.12 MEETING WITH THE BORROWER

When the borrower proposes a work-out agreement in response to *Handbook Letter 301 (3560),* or when *Handbook Letter 302 (3560)* must be sent, the MFH Servicing official must request a meeting with the borrower. The purpose of the meeting is to identify and agree upon the servicing problem, establish the underlying causes of the problem, and begin to develop the parameters of a work-out agreement. The MFH Servicing official will discuss possible Agency servicing actions.

It is the responsibility of the borrower, not the Agency, to propose and develop an acceptable work-out agreement. However, borrowers may delegate authority to their management agent to develop a work-out agreement. A borrower may do this by signing a statement in the management plan or certifying in a letter to the Agency that the management agent has the authority to act on their behalf.

Once the work-out agreement is proposed, the MFH Servicing official may propose servicing actions that are appropriate and acceptable to the Agency. Section 4 of this chapter describes the special servicing actions available to MFH Servicing officials.

10.13 SELECTING SERVICING OPTIONS

The Agency may agree to various servicing options to resolve the compliance problems depending upon the circumstances of the noncompliance. The deciding factor will often be the quality of management.

A. Poor Management and Noncompliance with Program Requirements

Where management is poor and/or there is noncompliance with program requirements, the Agency may agree to:

- **Borrower training**. Training of resident managers may be charged as a project expense if directly related to improving project operations;
- **New management**. Hiring or changing resident managers or management agents;
- **Improving maintenance**. Change to normal, preventive, and long-term maintenance and repair programs to make the project more marketable;
- **Improving budget and record keeping and using monthly reports**. Major expenditures should be reviewed for appropriateness; and

- **Improving outreach and marketing**. Project marketing plans, including the Affirmative Fair Housing Marketing Plan, should be reviewed and updated as appropriate.

B. Acceptable Management, but Marketability and Cash Flow Problems

Where management is acceptable, marketability and cash flow problems may be resolved through one or more of the following actions.

- Upgrading project desirability by:
  - ◊ Performing necessary and preventive maintenance;
  - ◊ Improving curb appeal at the project;
  - ◊ Improving security for tenants, such as installing deadbolts and more lighting; and
  - ◊ Improving communication between management, residents, and the community.
- Reducing expenditures by reviewing the appropriateness of operating and expense levels in relation to services rendered. It is not intended that management fees be adjusted as a condition for consideration of servicing options. Operation and expense levels may be reduced by:
  - ◊ Containing operation and maintenance costs that will not disrupt project operations;
  - ◊ Renegotiating contracts with suppliers of material and services; and
  - ◊ Temporarily deferring noncritical maintenance, provided tenant safety and project marketability are preserved.
- Temporarily reducing or deferring reserve contribution levels.
- Increasing revenues by:
  - ◊ Injecting non-project revenues;
  - ◊ Requesting rental assistance; or
  - ◊ Permitting temporary incentives to improve occupancy.
- Permitting a release of the rental assistance payments that would ordinarily go for debt service to be used for project operation and maintenance.

C. Acceptable Management, but Lack of Project Demand

Where management is acceptable, but there is a lack of project demand or a problem of obtaining and/or retaining eligible tenants, the problems may be resolved by:

- Granting occupancy waivers;
- Changing the project designation; and
- Implementing a SNR, see Section 6 of this chapter.

10.14 THE PROBLEM CASE REPORT

The MFH Servicing official must develop a problem case report using *Form RD 3560-56 Report on Real Estate Problem Case* for the Leadership Designee if the MFH Servicing official has sent a borrower three letters requesting corrective action to a compliance violation and the borrower has failed to provide an adequate response.

The MFH Servicing officials will forward the problem case report describing the violations of Agency requirements by the borrower to the Leadership Designee along with recommended enforcement actions. The time frame for this action should be within 120 days of concluding that efforts to achieve compliance have been unsuccessful.

The Leadership Designee will review the problem case report and respond to the Servicing Office within 30 days of receipt of the problem case report indicating the action to be taken. The Leadership Designee's response will be either:

- An agreement with the MFH Servicing official's proposal for enforcement; or
- A directive for alternative servicing.

10.15 ENFORCEMENT ACTIONS

If a borrower fails to provide an acceptable work-out agreement or fails to comply with the work-out agreement, the Agency will initiate enforcement actions when liquidation is not in the Government's or the tenants' best interests. This might occur in the case of defaults that do not affect the health and safety of tenants and where the cost of liquidation is significant relative to the violation, or where the costs of liquidation and providing adequate tenant protections is high. Available enforcement actions that the Agency can take include:

- **Termination of the management agreement**. The Agency may terminate the management agreement and require the borrower to hire new management;
- **Receivership**. The Agency may appoint a third party to manage the project. When this becomes necessary, the Leadership Designee must contact OGC for assistance and provide them with alternative management agents;
- **Suing for performance under the loan document**. The procedures for Civil Monetary Penalties are provided in Chapter 9.27. In such cases, the Office of General Counsel will provide assistance; and

- **Collection of unauthorized assistance**. The procedures outlined in Chapter 9 will be followed.

A. Liquidation

When it is in the Government's or the tenants' best interest to liquidate, or if enforcement actions have been unsuccessful, the Agency will initiate liquidation through either:

- Voluntary liquidation; or

- Foreclosure.

The Agency may proceed directly to liquidation if doing so will not adversely affect tenants. Normally this is reserved for cases where the borrower has abandoned the project, or a partnership has been dissolved, leaving no legal entity in place to oversee the property. Properties where serious health and safety concerns exist are the most likely to go straight to enforcement or liquidation. Chapter 12 provides details on liquidation.

B. Debt Settlement

If the property is worth less than the outstanding Agency debt, it may be in the government's best interest to settle the debt using its debt settlement procedures. Compromise offers to settle outstanding debts may be part of a work-out agreement accompanying a transfer. Chapter 12 provides further details on debt settlement.

SECTION 3: DEVELOPING A WORK-OUT AGREEMENT
[7 CFR 3560.453]

10.16 OVERVIEW OF WORK-OUT AGREEMENTS

A work-out agreement is a proposal submitted by a borrower to the Agency for approval of changes in project operations, additional time to restore compliance, or other special servicing actions to assist in correcting identified deficiencies. A borrower may submit a work-out agreement at any time in response to Agency notification of compliance problems or prior to that if the borrower feels that noncompliance is imminent.

The work-out agreement may be a very simple one-page plan for resolving a single problem, or it may be a more complex document of several pages that describes several plans of action to resolve a more complicated problem. If a borrower does not develop a work-out plan, the MFH Servicing official must develop a problem case report, in accordance with Paragraph 10.14.

Acceptable and successful work-out agreements depend upon some flexibility on the part of the MFH Servicing official and the borrower, thoughtful and project-specific servicing, and thorough and consistent monitoring that serves to track the progress of the agreement.

10.17 CONDITIONS WARRANTING A WORK-OUT AGREEMENT

Serious compliance deficiencies that cannot be resolved promptly may warrant the development of a work-out agreement. Such conditions may reflect a financial, physical, fair housing, or occupancy deficiency.

A. Financial Deficiencies

Financial deficiencies that may require a work-out agreement include:

- Inadequate cash flow to meet project needs. Cash flow should be adequate to pay Agency debt, meet reserve requirements, pay taxes, pay insurance, pay other project expenses, and pay any authorized return on owner investment when earned;
- Projects that are 60 days past due;
- Seriously underfunded reserve accounts that cannot be brought up to required levels within a normal budget cycle or where unauthorized withdrawals have been made; and
- Borrowers who have not adhered to program requirements such as paying taxes, maintaining insurance, or submitting required financial information.

B. Physical Deficiencies

Physical deficiencies that may require a work-out agreement include failure to maintain decent, safe, and sanitary housing opportunities for residents and maintenance that has been deferred for so long that it has become a financial burden to the project.

C. Fair Housing Deficiencies

Fair housing or Section 504 violations and problems with tenant certification and project occupancy requirements may warrant the development of a work-out agreement.

D. Occupancy Deficiencies

Serious vacancies that threaten property viability where management can furnish evidence that they have made efforts to increase occupancy may warrant a work-out agreement.

10.18 ELIGIBILITY FOR WORK-OUT AGREEMENTS

The Agency will consider work-out agreements only for properties:

- That are deemed to be program property; or
- Whose owners demonstrate a commitment to correcting property deficiencies.

A. Program Property

The MFH Servicing official must establish whether the project is suitable for the program using the guidance provided in Chapter 6. If the project is deemed to be non-program property, a work-out agreement must not be considered.

B. Owner Evaluation

An owner who has not maintained compliance with prior work-out agreements and has historically ignored Agency requests for corrective actions must not be considered eligible for a work-out agreement.

10.19 CONTENT OF A WORK-OUT AGREEMENT

All work-out agreements must be in writing and executed by the borrower, or the borrower's designated representative, the management agent who manages the project (if different from the borrower), and the Agency before they take effect. The work-out agreement must correct all deficiencies that have been identified in a project.

Exhibit 10-3 lists the information that must be included in a work-out agreement.

10.20 CONDITIONS PLACED ON THE BORROWER

Borrowers must forgo and cannot recoup the annual return to owner for the budget year in which a work-out agreement is in effect.

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Exhibit 10-3

Recommended Format for Servicing Work-out Plan (SWP)

Background information. Provide history and describe past goals and accomplishments.

Description of the problem(s) to be solved. Identify project weaknesses and needs making sure to cover:

- Compliance deficiencies (e.g., delinquent amounts, underfunded reserves, nonpayment of taxes, deferred maintenance, unacceptable tenant file records, noncompliance with accessibility and fair housing issues, etc.); and
- Serious financial concerns (e.g., high vacancies, inadequate cash flow, high Operations & Maintenance (O&M) expenses.).

Underlying causes of problem. Attempt to identify the cause of the problem. Attempt to recognize when problems identified are symptoms or the results of the same underlying causes.

Overview of plan to correct problem. Provide a summary of the plan and identification of key assumptions used in projections.

How the plan will work. Provide details on how the plan will work with attached supporting documentation (i.e., budget), when appropriate. A timetable for completing the work-out plan and key components of the plan (i.e., plan calling for capital improvements should identify the improvement proposed, cost with supporting estimates, source of funds, and completion dates).

Anticipated results. Clearly identify the goals to be reached. Have periodic, measurable interim goals to determine that full implementation is on track.

Written work-out plans. All work-out plans must be in writing and must be executed by the borrower or the borrower's designated representative, and Rural Development. A copy of the executed work-out plan will be placed in the case file; copies will be given to the borrower, management agent, and the Leadership Designee.

Time frames for implementing and completing the plan. Prior to approval, all plans must be evaluated on whether the plan realistically achieves the objectives of the loan. All plans must be reevaluated at the end of the two-year period. If the plan includes a time frame for completion of more than two years, the plan must be revised and reexecuted at the end of each year to determine if satisfactory progress has been made.

Monitoring working plans. The following statements must be a part of the plan immediately above the signatory line:

> "The management agent is responsible for making quarterly progress reports with regard to plan compliance to Rural Development and the borrower. The first report will be due no later than 100 days from the date of Rural Development approval and every 100 days thereafter."

Check appropriate box:

- ☐ Initial SWP
- ☐ Renewal of SWP
- ☐ Renegotiated SWP. There have been _____ previous SWPs on this account.

10.21 PRIORITIES IN MEETING EXPENDITURES

In developing work-out budgets for projects experiencing cash-flow difficulties, the following priorities will be used:

- First priority is to meet obligations to the prior lienholder, if any;
- Second priority is for critical project operating and maintenance expenses, including taxes and insurance;
- Third priority is for Agency debt payments;

- Fourth priority is for reserves; and
- Fifth priority is for other project needs.

10.22 LENGTH OF TERM AND AUTHORITIES

A. Term of Work-Out Agreement

The maximum term of a work-out agreement is two years. All agreements must be reevaluated annually as well as at the end of the two-year period. The evaluation is based on whether the plan realistically achieves financial viability and otherwise meets the objectives for which the loan was made. If an approved work-out agreement calls for actions that extend beyond a two-year period, borrowers must submit an updated and if necessary, revised work-out agreement to the Agency for approval. The updated work-out agreement must be submitted to the Agency 30 days prior to the expiration of the work-out agreement in effect. The Agency may reexecute the agreement if satisfactory progress has been made.

Reserve Account Deficiencies

When seriously underfunded reserve levels are involved in an extended work-out time period, the MFH Servicing Official should reassess the reserve level for the project and establish a new reserve level, if appropriate. A capital needs assessment can be useful to make this determination. If re-funding the reserve to its new level will require more than two years, the borrower and MFH Servicing official may want to consider additional work-out terms so that the project is not in continual need of requiring a work-out agreement.

Normally, work-out agreements should not exceed two years, especially if a plan calls for less than full payment on an Agency loan, or less than full contribution to the reserve account. Plans not meeting these criteria are normally not considered as viable and feasible.

B. Authority to Approve Work-Out Agreements

1. Servicing Offices

Delegated MFH Servicing officials can approve work-out agreements that correct deficiencies within 12 months, except when the agreement includes a special servicing action per Section 4.

2. Leadership Designees

The Leadership Designee approves any work-out agreements that:

- Are for longer than 12 months;
- Require contributions to reserves of less than that which is required plus 10 percent of the delinquent amount; or
- Include loan adjustments or write-downs.

3. Asset Management Division

MFH Servicing officials must submit the work-out plan to the Asset Management Division for concurrence when borrowers are requesting any type of deferred loan payments (partial or full deferral). The following documents must be submitted to the Asset Management Division:

- Copy of the proposed Work-Out Agreement;
- Proposed Budget as part of the Work-Out Agreement;
- Pro Forma Budget once the Work-Out Agreement is completed; and
- Recommendation justification from the Leadership Designee.

10.23 AGENCY REVIEW AND APPROVAL *[7 CFR 3560.453(b)]*

Work-out agreements are a tool that the Agency can use to work with the borrower to effectively resolve defaults if the borrower is acting in good faith to actively propose realistic corrective actions. Approval of a work-out agreement is not guaranteed to a borrower. Failure to approve a work-out agreement is not an adverse action by the Agency because the Agency is not required to grant approval of modifications to the terms of the loan for borrowers in default; thus, the Agency is not taking away any borrower rights by not approving the work-out agreement. Therefore, failure to approve a work-out agreement is not appealable by a borrower, although the Agency's decision may be reviewed.

A. Evaluation of Work-Out Agreement

The Agency is under no obligation to offer or agree to any special servicing actions contained within a proposed work-out agreement. In evaluating the borrower's proposal, the Agency will accept work-out agreements that meet the following criteria:

- The proposed actions effectively correct the deficiency;
- The proposed time frame for correction is reasonable and realistic for correcting the deficiency;
- There is evidence of adequate borrower commitment of resources, considering the cause of the problem, (e.g., a lesser commitment may be appropriate if the problem was caused by circumstances beyond the borrower's control);
- The proposed special servicing actions for the Agency (e.g., reamortization, writedown) is in the interest of the Government and the tenants, and the costs of
- continuation are not more than the costs of liquidation and providing tenant protection; and
- The proposed actions are consistent with the borrower's management plan. If the proposed actions are not consistent, the management plan must be updated.

B. Procedures Following Approval of Agreement

The approved work-out agreement will be signed and dated by the MFH Servicing official, the borrower, and the management agent, if different from the borrower, and will be attached as an addendum to the management plan for the project.

10.24 CANCELING A WORK-OUT AGREEMENT

A work-out agreement may be canceled by whoever approved it 10 days after discovering a borrower's noncompliance with its terms. If the official who originally approved the work-out agreement is not available, then the official who has assumed that individual's responsibilities will be responsible for canceling the agreement and notifying the borrower.

SECTION 4: SPECIAL SERVICING ACTIONS

10.25 SPECIAL SERVICING ACTIONS THAT MAY BE A PART OF A WORK-OUT AGREEMENT

A number of special servicing actions may be proposed and approved as part of a work-out agreement. As shown in Exhibit 10-4, these servicing actions may be divided into two broad categories: changes in project operations and changes to the loan account. This section describes other servicing actions, most of which are less extreme.

A. Servicing Actions to Change Project Operations

The borrower may propose one or more servicing actions that will produce a change in project operations. Some of these actions are discussed in detail in other sections.

Exhibit 10-4

Special Servicing Actions That May Be Part of an Approved Work-out Agreement

Changes in Project Operations	Changes to the Loan Account
• Rent changes and/or preparation of a new budget • Occupancy waivers • Temporary incentives to improve occupancy • Special note rents (SNRs) • Changing management agent or management plan • Changing project designation • Transfer of ownership • Substitution of partners	• Loan reamortizations • Loan adjustments (writedowns) • Loan consolidation • Deferral of payments • Prepayment/compromise offer • Providing rental assistance (if available) • Recasting the entire loan (i.e., "starting fresh")

1. Rent Changes or Preparation of a New Budget

To achieve financial stability, the borrower may propose a new budget that shows a change in rents or operation costs. In evaluating the request, it may be appropriate for the Agency to analyze the current market in which the project is located to see whether the project rents compare favorably with rents for similar properties in the market. Rent incentives will be allowed as described in paragraph 10.25 A.3 of this section, but the change and accompanying budget will be conditionally approved by the Agency subject to meeting the requirements in Agency regulations, see Chapter 7 of HB-2-3560. If the

Agency receives comments from tenants that warrant a different decision from the one made when the work-out agreement was conditionally approved, the Agency must inform the borrower of these discoveries and make any needed adjustments to the conditionally approved budget.

In reviewing these changes, the MFH Servicing official must evaluate both short- and long-term budget projections so as to establish whether the project is likely to achieve its financial goals during the work-out period, and whether the project is likely to achieve and maintain financial viability in the long term. The MFH Servicing official must evaluate whether projections show repayment ability after the work-out agreement objectives are met based on realistic vacancy, rent rate, and/or reamortization assumption.

Any projected capital improvements shown in the budget must be accompanied by statements that describe the work to be done, the estimated costs with supporting material, the projected time frame for completing the work, and the source of funds to be used for the improvements.

2. Occupancy Waivers

When a project is experiencing high vacancies and eligible tenants are not available, the borrower may request to temporarily solve the problem by renting to ineligible tenants. Ineligible tenants might be individuals whose incomes or family sizes are above the maximum limits or who do not meet an occupancy requirement, such as an age limit.

A request to rent to ineligible tenants may be approved by the MFH Servicing official based on the following determinations:

- There are no eligible persons on the waiting list;
- The borrower has made a diligent but unsuccessful effort to rent any vacant units to an eligible tenant; and
- The borrower will continue to seek eligible tenants and will submit the following to the MFH Servicing official;
  - ◊ *Form RD 3560-29; and*
  - ◊ A report of efforts made to locate eligible tenants.

The borrower must agree to the following conditions:

- The units may be rented to ineligible tenants for no more than one year, following which the lease must convert to a monthly lease. A statement to this effect must be included in the lease;
- Tenants who are ineligible because their household income exceeds the maximum for the project will be charged the Agency-approved SNR, if applicable; and
- Without Agency approval, management may assign a larger or smaller unit than the household needs if the household is otherwise eligible. Tenants must agree to transfer

to a correctly sized unit when one becomes available and must pay all costs associated with moving. A statement to this effect must be included in the lease.

3. Temporary Incentives to Improve Occupancy

The borrower may request temporary incentives to improve project occupancy. These incentives may not exceed the life of the work-out agreement. The Agency may grant such incentives when project management has been acceptable and under the following conditions:

- The project is encountering unacceptable vacancy levels.
- The incentives are short-term, modest, and consistent with program objectives.
- Recipients are given a clear understanding of the extents and limits of the incentives.
- The use of incentives is fully accounted for on project budgets and annual reports.
- Occupancy incentives will be paid from the following sources:
  - ◊ Non-project sources;
  - ◊ Forgone return to owner; and
  - ◊ Project funds when it can be shown to be cost-effective, which means that the revenues derived will outweigh the costs of providing the incentives.

Temporary Incentives to Improve Occupancy

1. Security deposit reductions or waivers and extended security deposit payment period.
2. Reduced rents in the form of rebates, coupons, or a temporary agreement.
3. Free rent.
4. Reduced or free utilities.
5. Referral fee payments.
6. Rent-up gift to tenant, such as a savings bond or gift certificate.

4. Special Note Rents

The borrower may request a SNR to reduce the note rate rent to attract tenants who can afford to pay more than 30 percent of their incomes in rent and utilities but who will not pay the existing note rate rent. This servicing action is discussed in detail in Section 6 of this chapter.

5. Changing the Management Agent or Management Plan

Where poor management is evidenced by a record of failing to comply with Agency requirements, the borrower may elect to change management. Where the Agency has notified the borrower of the need to change management, financial incentives under work-out agreement provisions may not be approved until the borrower changes management or agrees to change management within a reasonable time frame.

6. Changing the Project Designation

When a market has changed such that the type of tenant who would qualify for the project is no longer available and vacancies are resulting, the borrower may request a change in project designation. The Leadership Designee will consider such a change when the following information has been provided:

- The complete borrower case files will be submitted together with the MFH Servicing official's specific recommendations and analysis of the present and long-term situation;

- Market feasibility documentation, which may include inquiry lists from the project or waiting lists at other nearby and similar properties, which shows that other tenants are available to occupy the project. Market feasibility documentation must also clearly indicate that the present long-term marketability of the project is significantly changed from the original market and must include the appropriate demographic information that reflects the population trends in the area. The market feasibility documentation must also show if the demand is for the bedroom-sized units in the project or if different sized units would be more desirable;

- A summary of all servicing actions taken by the Agency to aid the borrower in maintaining the present designation;

- A summary of all actions taken by the borrower to effectively market the units to potential eligible tenants;

- A summary of the impact the change will have on any existing tenants, rent subsidy needs, and the community as a whole; and

- A summary of any needed or required physical modifications and analysis of cost feasibility to complete the modifications, including modification to unit sizes in terms of number of bedrooms.

7. Transfer of Ownership

In some cases, the only means of addressing project concerns is through replacement of the borrower. Some reasons that may require a transfer of ownership include:

- Illness or death of a borrower;

- Financial difficulties that cause a borrower to terminate his or her business operation; and

- Fraudulent activity, as determined by the Office of the Inspector General (OIG).

Where work-out agreements call for a change in the borrower, the Agency may temporarily approve financial concessions contingent upon the borrower agreeing to seek a transfer of ownership. The borrower must agree to provide evidence that ownership

replacement is being actively pursued. Should ownership replacement not be achieved within an agreed-upon time frame, liquidation of the account may be appropriate.

When a transfer occurs as a result of noncompliance, the transferee (new borrower) must provide a plan for bringing the project into compliance as part of the application package. For example, the loan payments and reserve account may be behind schedule. The transferee provides a plan that identifies the source of funds to meet these conditions.

Chapter 7 provides the details on approving and processing transfers of ownership.

8. Substitution of Partners

The borrower may request a substitution of general partners as a way to inject new resources into the borrower entity. Chapter 5 provides the details on approving and processing substitution of partners.

B. Changes to the Loan Account

Proposed servicing actions may require changes to the loan account such as those that are described in Chapter 11.

1. Deferral of Payments

Deferring any debt payment to the Agency is an extreme measure that should be used as a last resort. Deferring a portion of the Agency debt and using this deferred amount to build up reserve funds may only be approved when the funds are being used to pay identified critical project needs. For example, when a roof must be replaced within the next two years, the work-out agreement may call for deferring payments in an amount equal to the cost of replacing the roof and this amount will be deposited into the reserve account. The critical need must be identified and closely monitored to ensure compliance.

Deferral of payment by the Agency should usually be accompanied by a borrower contribution of financial resources to the project.

Deferring debt payments should not exceed two years. National Office concurrence must be obtained when borrowers are requesting reduced or zero loan payments.

2. Change of Payments

Scheduling loan payment in accordance with the borrower's repayment ability. The provisions must be documented. The issuance of *Form RD 3560-29A, Multiple Family Housing Statement of Payment Due*, will normally be suppressed during the period in which a work-out agreement calling for less than the normal full scheduled installment is effective. To suppress issuance of *Form RD 3560-29A,* process by using the appropriate screen on the Automated Multi-Family Housing Accounting System (AMAS); see the AMAS manual for specific instructions on how this is done. Upon expiration of the work-out agreement, a review will be conducted to determine any further servicing actions that may be appropriate (e.g., reamortizing, rescheduling, executing a new servicing plan and/or supplementary payment agreement that may call for higher than normal payments, preparing a problem case report, etc.). As long as a borrower is

meeting the provisions of an approved work-out agreement calling for less than full installments, late fees will be waived.

3. Prepayment

A borrower may offer to pay their loan in full, ahead of the scheduled loan repayment date and exit the program. In such an event, the project will no longer be a part of the Multi-Family Housing program, will no longer be subsidized by the Agency, and will no longer be subject to Agency regulations and procedures. Chapter 15 provides the details on approving and processing prepayment requests.

4. Voluntary Conveyance

Voluntary conveyance is a method of liquidation by which title to security is transferred to the Federal Government. The Leadership Designee is authorized to approve voluntary conveyance of property if the total indebtedness, including prior and junior liens, does not exceed their approval authority. Chapter 12 provides the details on approving and processing an offer of voluntary conveyance.

5. Provision of Rental Assistance

Where there is servicing rental assistance available, the Leadership Designee may agree to provide rental assistance to a project as part of a work-out agreement in order to enable tenants who could otherwise not afford the rents to move into a project and improve vacancy.

SECTION 5: MONITORING THE WORK-OUT AGREEMENT AND SUBSEQUENT SERVICING

10.26 MONITORING WORK-OUT AGREEMENTS

Once a work-out agreement has been developed and approved, the MFH Servicing official must monitor the borrower's progress and provide guidance as needed. This is an important and necessary component of ensuring the success of the work-out agreement. The monitoring serves to make sure not only that the terms of the agreement are being upheld, but that they are having the desired effect of moving the project back into compliance. If not, the MFH Servicing official must work with the borrower to amend the agreement to incorporate servicing techniques that will achieve the desired goals or cancel the work-out agreement and move to implement enforcement measures.

The MFH Servicing official will conduct the monitoring in the following ways:

- Reviewing the financial reports submitted by the borrower. These include *Form RD 3560-7*, which must be submitted on a quarterly basis and bank statements, if appropriate;

- Holding quarterly meetings at the project site with the borrower to track the progress of the work-out agreement; and

- Conducting supervisory visits to monitor progress with an agreement. Such visits are mandatory to determine if the work is being done when the work-out agreement includes correcting deferred maintenance or when reserve funds are being used for repairs. These supervisory visits should be held in conjunction with the quarterly meetings with the borrower.

10.27 SUBSEQUENT SERVICING AND IMPACT ON FUTURE LOANS

Any member of a borrower entity with a controlling interest in a property in which there are serious noncompliance issues and no work-out agreement is in place, or where the entity is in noncompliance with its work-out agreement, will not be eligible for further Agency loans. In a case such as this, the borrowers must make arrangements to restore compliance with Agency requirements and restore their financial viability.

In cases where the borrower and the Agency work together to make an acceptable work-out agreement, the borrower may be eligible to receive additional assistance after they have been in compliance with the work-out agreement for six consecutive months. In cases where work-out arrangements cannot be made, the primary basis for denying such assistance would be based on the borrowers' inability to meet eligibility requirements, shown by their track record of failing to meet existing requirements and responsibilities for other projects.

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SECTION 6: SPECIAL NOTE RENTS (SNR)

10.28 OVERVIEW OF SPECIAL NOTE RENTS *[7 CFR 3560.210]*

When a project is experiencing severe vacancies due to market conditions, the Leadership Designee may allow a borrower to charge a SNR rent to attract and keep tenants who have the financial ability to pay more than basic rent but who will not pay the current note rate rent. An SNR addresses the situation where some existing and prospective tenants are not willing to pay 30 percent of adjusted income or note rate rent because the rental rates would exceed those of other rental properties in the community. This action may only be taken after supervisory efforts by the Agency and management efforts by the borrower have not produced an acceptable level of occupancy.

10.29 SNR ELIGIBILITY REQUIREMENTS

A. Required Project Conditions

The borrower must document that the following conditions exist in the project for the MFH Servicing official to consider allowing an SNR to be implemented:

- The project has been operational for at least 24 months (the borrower may request a waiver to this provision);
- No more than 10 percent of budgeted expenses are reflected as unrestricted cash on hand, and reserve account balances do not exceed the required accumulation-to-date minus authorized withdrawals;
- Over the most recent six-month period vacancy rates have averaged at least 15 percent or the project shows revenue losses of at least 15 percent;
- The loss of rents available is not a result of management's failure to effectively market the units; and
- Comparable rents in the area are lower than the previously approved note rate rents.

B. Borrower Requirements

To be eligible for the SNR, the borrower must:

- Be in compliance with Agency regulations and encourage occupancy through good maintenance and positive relations with tenants;
- Sign a statement agreeing to forgo return to owner for the duration of the SNR;
- Submit a budget with only the minimal sufficient operation and maintenance expenses;

- Have engaged in aggressive marketing efforts, including:

  ◊ Significant outreach efforts in the community, including, but not limited to, contacts listed in the AFHMP; or

  ◊ Obtaining approval from the Agency for a servicing work-out plan, exclusive of SNR features, at least three months earlier.

10.30 SUBMITTING AND PROCESSING SNR REQUESTS

In making the request for an SNR, the borrower submits the same information as they would when requesting a rent change. See Chapter 7of HB-2-3560 and *7 CFR 3560.203*.

The MFH Servicing official reviews the documentation from the borrower and forwards the information with a recommendation to the Leadership Designee, who makes the final decision. If the decision is to approve the SNR, the following steps will be taken:

- Adjust the note rate column in the proposed changes to rent section of *Form RD 3560-7* to reflect rents needed for payment to the Agency amortized at an interest rate that is less than the full note rate on the borrower's *Form RD 3560-52*. The interest rate chosen may never be less than two percent.

- Set the interest rate of the SNR budget at a level that will make project SNR rates comparable with community rental rates.

- When an SNR is implemented in a Plan II Section 8/515 project, use lines 23 through 29 of *Form RD 3560-29* to report any additional payments to the reserve account required when HUD contract rents exceed SNR rates.

When the Agency determines a request for an SNR is not justified on the basis of the information submitted, the MFH Servicing official will notify the borrower in writing of the reason(s) why the SNR is not approved. The borrowers will be advised of their appeal rights in accordance with 7 CFR Part 11.

10.31 CHANGES TO AND TERMINATION OF SNRS

Borrowers must request changes to SNRs at the time of budget review. If the local market conditions have not changed since the SNR was implemented, then no change is made to the SNR. If the conditions have changed, then the SNR is changed accordingly.

The borrower must notify tenants of the project in which the SNR is proposed to be changed just as would be done for tenants where a regular rent change request is made.

An increase in an SNR will be handled in accordance with regular program requirements for a rent change. See Chapter 7 of HB-2-3560.

An SNR is terminated when the note rate rent is regained.

10.32 RESTRICTION ON NEW UNITS

While an SNR is pending or in effect, the Agency must not review or approve any other projects, of any type, in the same market area. Leadership Designees may seek National Office approval for a waiver from this provision when an SNR has been in effect for 24 months.

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SECTION 7: ENFORCEMENT

10.33 MULTI-FAMILY HOUSING ENFORCEMENT TEAM

The Agency has established a Multi-Family Housing Enforcement Team to improve the Agency's efforts to detect and eradicate fraud, waste, and abuse in the Multi-Family Housing program. The mission of the Enforcement Team is to protect the interests of residents; ensure quality housing; restore public trust in Government investments; and eliminate program fraud, waste, and abuse. Within the scope of its mission, the Enforcement Team provides the following services:

- Performs problem property reviews including data reviews, site visits, interviews, reports on findings, recommendations for remedial actions, and follow-up actions to ensure problem resolution;
- Coordinates multi–state reviews of problem borrowers and management agents;
- Recommends enforcement actions to ensure borrower/agent compliance with regulatory and statutory program requirements;
- Analyzes problem property data collected by MFH Servicing officials and provides feedback concerning administrative actions for Field Office Staff to pursue in relation to problem properties;
- Coordinates enforcement efforts with the OIG, OGC, Department of Justice, Department of Housing and Urban Development, Federal Bureau of Investigation, and the Internal Revenue Service, as appropriate;
- Provides technical assistance and advice to MFH Servicing officials;
- Develops training materials and conduct training related to problem property analysis and enforcement techniques;
- Develops a standardized process to deal with problem properties and ensure comparable actions are applied in similar cases; and
- Guides field staff with appropriate actions to ensure resolutions of recommendations from OIG audits.

10.34 REQUESTING ENFORCEMENT TEAM SERVICES

Activities of the Enforcement Team may be initiated by the Deputy Administrator for Multi-Family Housing or by a request from a Leadership Designee.

CHAPTER 11: LOAN RESTRUCTURING

11.1 INTRODUCTION

During the term of an Agency loan, borrowers may request Agency consent to restructure the loan for their project that will simplify the operation of the project or help address financial distress due to factors beyond the borrower's control. One example is when a borrower requests that loans be restructured to reduce administrative burden, improve cost-effectiveness and efficiency, or more effectively use the physical facilities common to projects. Another example is a project experiencing negative cash flow due to increases in local taxes and utilities that are rising faster than area rents. The methods used by the Agency to help accomplish the objectives stated above include loan agreement or loan resolution consolidation, loan consolidation, reamortization, and loan adjustments (writedowns). In addition to 7 CFR 3560 and the instructions provided below, the requirements of Attachment A to Chapter 7, "Transfer of Project Ownership" should also be used.

This chapter describes the requirements for loan restructuring techniques and Agency procedures for reviewing, approving and implementing such requests.

This chapter describes the requirements for each of these loan restructuring techniques, and Agency procedures for reviewing, approving, and implementing such requests.

SECTION 1: ALLOWABLE TYPES OF RESTRUCTURING

11.2 OVERVIEW

As mentioned above, the loan restructuring activities that the Agency may approve include the following:

- **Loan agreement or loan resolution consolidation,** which is an administrative action whereby the loan agreements, or loan resolutions, for multiple projects held by the same borrower are consolidated and assigned a single new project number. The borrower still has separate loan notes and the Agency still tracks each loan individually, but all projects are administered by the Agency as if they were a single project;

- **Loan consolidation,** which is the consolidation of multiple loans for a single property into a single loan, with one note and one payment;

- **Reamortization,** which is a rescheduling of a borrower's debt; and

- **Loan adjustments (writedowns),** which are reductions of the amount of the borrower's debt, allowing an otherwise sound project experiencing financial difficulties beyond its control to continue operating as a program property.

11.3 LOAN AGREEMENT OR LOAN RESOLUTION CONSOLIDATION REQUIREMENTS *[7 CFR 3560.410]*

The Agency may approve the consolidation of loan agreements or resolutions regardless of the total amount of debt being consolidated as long as the loan agreements being consolidated represent loans made for the same purpose, to the same borrower, with the same plan of operation (e.g., nonprofit, limited profit, full profit). The terms and the due date of the loans involved must not be altered, and other security instruments must remain unchanged and must not be released.

Under no circumstances will loan agreements or loan resolutions be consolidated if the Agency's security position will be adversely affected. Any applicable restrictive-use provisions of the existing notes will continue to apply following consolidation.

11.4 LOAN CONSOLIDATION REQUIREMENTS *[7 CFR 3560.410]*

The Agency may approve loan consolidations under two circumstances:

- The loans are being transferred on new terms; or
- An initial and subsequent loan under one project number were closed on the same date at the same rates and terms.

The Agency may approve loan consolidations if, in addition to the above requirements, the following conditions are met:

- *Form RD 3560-52, Promissory Note* and the loan agreements or resolutions will be consolidated;
- Consolidation occurs on the Amortization Effective Date (AED) or as soon as possible after the AED is established;
- All project accounts being consolidated will be current after the consolidation process, unless otherwise authorized by the Administrator; and
- The Agency's security position will not be adversely affected.

11.5 REAMORTIZATION REQUIREMENTS *[7 CFR 3560.455 (b)]*

The Agency may approve the reamortization of any Agency multi-family housing loan account, although it will not reamortize accounts solely to remove a delinquency.

The Agency may reamortize accounts when doing so is in the best interest of the Government and when needed to improve the financial viability of the property and project operations. The Agency will not approve a loan reamortization if the reamortization will adversely affect the Government lien priority.

11.6 LOAN ADJUSTMENT (WRITEDOWN) REQUIREMENTS *[7 CFR 3560.455(c)]*

Borrower requests for loan writedowns must be part of an approved workout agreement with the Agency and be in the best interest of the Government. Writedowns are permitted with existing borrowers or transferees where:

- The causes are beyond the borrower's control—such as market weaknesses, unforeseen site problems, or natural disasters; and

- Sound management is evident or unsound management practices can be resolved by the removal of the responsible individuals in accordance with an approved work-out agreement with the Agency.

SECTION 2: LOAN AGREEMENT OR LOAN RESOLUTION/LOAN CONSOLIDATION

11.7 OVERVIEW

Loan agreement or loan resolution consolidation offers several advantages. For instance, following loan agreement or loan resolution consolidation, all reporting, accounting, and project management requirements for the various projects being consolidated are fulfilled as a single project. In other words, borrowers need to maintain only one set of books and one operating budget, and can track all rents as a single project. In addition, because rental assistance agreements are not consolidated, borrowers can apply rental assistance across projects following consolidation. That is, waiting lists for the projects being consolidated will be combined and rental assistance can be assigned to eligible tenants in the newly formed "project" per assignment priorities.

Loan consolidation also offers several advantages. For instance, when consolidating a loan under new rates and terms in conjunction with a transfer, borrowers can combine notes and cost items. In addition, different portions of the property that may have been financed with separate loans can still be set up as distinct projects, but the borrower need track only one loan and one note.

Leadership Designees may approve project or loan consolidations with the advice of the Office of General Counsel (OGC) and when all required conditions outlined in this chapter are met.

11.8 BORROWER SUBMISSIONS

A. Loan Agreement or Loan Resolution Consolidation

A borrower requests a loan agreement or loan resolution consolidation by submitting the following forms to the appropriate MFH Servicing official:

- *Form RD 3560-33A*, *Consolidated Loan Agreement;*

- *Form RD 3560-34A, Consolidated RRH Loan Agreement;*

- *Form RD 3560-35A, Consolidated Loan Resolution;*
- *Form RD 3560-7* as well as a project budget;
- Updated loan agreements/resolutions; and
- Management plans.

B. Loan Consolidation

For loan consolidations, borrowers must execute a new *Form RD 3560-9* for the new consolidated *Form RD 3560-52*, and submit it to the MFH Servicing official. The interest credit plan originally established for the project applies to the consolidated note. If the interest credit plan is changed by submitting a new *Form RD 3560-9*, MFH Servicing officials will enter the new plan for the project.

11.9 AGENCY PROCESSING OF BORROWER SUBMISSIONS

A. Loan Agreement or Loan Resolution Consolidation

1. Complete Form RD 3560-17A, Multi-Family Housing Consolidation of Projects/Loan Agreements/Resolutions

The MFH Servicing official completes *Form RD 3560-17A* to show all notes for the projects being consolidated.

2. Send Form to the Leadership Designee and St. Louis Office

The MFH Servicing official sends *Form RD 3560-17A* and a letter recommending the consolidation to the Leadership Designee for approval. The Leadership designee then forwards the materials to the St. Louis Office for processing.

3. Obtain OGC Guidance

OGC guidance is required to accomplish loan agreement or loan resolution consolidations. Under no circumstances will the Agency consolidate projects if the security position of the Agency will be adversely affected. If required by OGC, all of the loan agreements or loan resolutions being consolidated may be secured by one deed of trust or mortgage describing all of the loans for the projects.

4. Maintain Loan Terms and Due Date

The Agency alters neither the terms nor the due date of the loan(s) involved. Other security instruments also remain unchanged, and are not released following the consolidation.

B. Loan Consolidation

MFH Servicing officials should note that there are some potential obstacles to consolidating certain loans. For instance, the St. Louis Office is unable to consolidate loans unless the loans are on the same plan of operation. In addition, direct loans cannot be consolidated with interest credit loans, and loans with HUD Section 8 subsidy cannot be consolidated with insured loans. In all other cases, however, the procedures outlined in this chapter will apply to loan consolidations.

1. Prepare Form RD 3560-52

MFH Servicing officials prepare *Form RD 3560-52* for the notes or assumption agreements being consolidated. If the MFH Servicing official does not have possession of the original note or assumption agreement, the MFH Servicing official calls the St. Louis Office to request the return of the original form so it is in the possession of the MFH Servicing official before the *Form RD 3560-52* is processed, or as soon as possible thereafter. *Form RD 3560-52* should be prepared on a monthly payment basis, as appropriate.

2. Prepare a Consolidated Loan Agreement or Resolution

MFH Servicing officials prepare a consolidated loan agreement or resolution using *Forms RD 3560-33A*, *3560-34A,* or *3560-35A*, as appropriate, to reflect current reporting requirements and the authorized initial investment attributable to the owner after the consolidation has occurred.

3. Obtain OGC Guidance

Consolidation of notes may only occur with OGC guidance. Under no circumstances will the Agency approve consolidation of *Form RD 3560-52* if the security position of the Agency will be adversely affected.

4. Complete Form RD 3560-17, Multi-Family Housing Note Consolidation, and Send a Copy to the Finance Office

MFH Servicing Officials complete *Form RD 3560-17* to show all of the notes that are consolidated on *Form RD 3560-52.* MFH Servicing Officials send a copy of *Form RD 3560-17* to the Leadership Designee for approval. The MFH Servicing official then forwards *Form RD 3560-17* to the St. Louis Office for processing.

5. Stamp Notes or Assumption Agreements "Consolidated"

The original and copies of all notes or assumption agreements that are consolidated will be stamped "consolidated" by the MFH Servicing official. The original instruments being consolidated will be attached to the "consolidated" note and filed in the official essential documents file. When the consolidated note has been paid in full or otherwise satisfied, MFH Servicing officials will handle it and all other instruments according to

RD Instruction
1951-A.

6. File New Security Instruments

MFH Servicing officials file new security instruments that describe the consolidated note to perfect the Agency lien position. If the new lien position taken is junior only to the previous lien position, the previous security instruments may be released with the guidance and assistance of OGC.

SECTION 3: LOAN REAMORTIZATION

11.10 OVERVIEW

Reamortization is the process of revising an existing loan payment plan or schedule established for repayment of a loan. The new schedule is usually developed to enable the borrower to continue the objectives of the loan.

Leadership Designees may approve the reamortization of Agency loans within their approval authority for the type of loan involved. Reamortization will not subject the borrower to any additional restrictive-use provisions beyond those associated with the original loan. For example, if there were 10 years of restrictive use remaining on a loan prior to a reamortization, there would still be 10 years remaining following the action. If the original loan contained no restrictive-use provisions, the reamortization would not add new use restrictions.

11.11 ACCEPTABLE USES OF REAMORTIZATIONS

A. Allowable Conditions for Reamortizations

The Agency may consider approving a reamortization if any of the following four conditions are met:

1. Preventive Measure for a Borrower Likely to Experience Delinquency

The Leadership Designee determines that the borrower and tenants cannot reasonably be expected to continue to meet their obligations unless the account is reamortized to reduce substantially the installments and rental rates.

2. Corrective Measure to Help Delinquent Borrower Attain Successful Operation

The borrower has a substantial delinquency that cannot be cured within one year. In addition, the borrower must have acted in good faith and maintained compliance with all applicable Agency policies and procedures.

3. Incentive to a Borrower Requesting Prepayment

The borrower has received an equity loan as an incentive to avert prepayment, or a subsequent loan has been made to a nonprofit corporation or public agency to purchase a project to avert prepayment.

4. Measure to Improve Project Operations

The borrower is not delinquent or likely to become delinquent, but proposes the reamortization to improve project operations. The Leadership Designee's approval is required for such reamortization requests.

B. Requirements for Obtaining a Reamortization

In addition, borrowers must demonstrate that the following criteria are satisfied before the Agency will approve a reamortization:

- The reamortization must be in the best interest of the Government;
- The reamortization will enable the borrower to operate successfully and carry out the purpose of the loan;
- The Agency's lien position remains unchanged; and
- The action is not proposed solely to remove a delinquency.

11.12 BORROWER SUBMISSIONS

To request a reamortization, the borrower must complete and submit *Form RD 3560-15, Reamortization Request* to the MFH Servicing official. MFH Servicing officials review the form and determine whether the required conditions for a reamortization exist.

11.13 AGENCY REVIEW AND APPROVAL

A. MFH Servicing Official Actions

When the MFH Servicing official receives a request to reamortize, MFH Servicing officials will take several actions, as follows:

- Determine whether the conditions for a reamortization exist;
- Document the request in the official case file and on *Form RD 3560-15*; and
- Submit the request, the case file, and other pertinent information to the Leadership Designee for review.

B. Evaluating Borrower Requests

To receive Agency approval, MFH Servicing officials must review the borrower's submission and Agency records to ensure that the reamortization meets all of the following requirements, and adequately document in the case file and on *Form RD 3560-15* that the requirements are met. The analyses described below are used to evaluate all reamortization requests. Additional evaluation is required for requests involving projects with delinquencies or compliance violations (see Paragraph 11.14).

1. Budget is Adequate

The borrower's budget or plan of operations must provide reasonable assurance of the following:

- The newly scheduled payments will be made according to the terms of the proposed reamortization;

- The charges for the use of the facility or service are within the payment ability of those it is intended to serve and are comparable to similar units in the area; and

- Applicable rent increase procedures will be followed if any rent change is required.

2. Management is Adequate

The borrower must demonstrate the following:

- The Board of Directors and memberships will obtain membership and community support, and will provide competent management for the continued operation of the borrower entity and the facility financed with the loan; and

- The borrower can provide acceptable management for the project and has corrected any management deficiencies identified by the Agency. Acceptable corrective actions may include revision of the management plan or employment of professional management services.

3. Security is Adequate

The borrower must demonstrate that the security will be adequate to protect the Agency's interests over the term of the reamortization.

C. Approval Recommendation and Leadership Designee Review

If the MFH Servicing official determines that a borrower's request meets the requirements described in subparagraph B of this section, they must forward the case file with a recommendation for approval to the Leadership Designee for review. If the Leadership Designee concurs with the recommendation to reamortize, they will submit the request and any other pertinent information to OGC for legal advice and closing instructions, as needed.

When the indebtedness to be reamortized exceeds the Leadership Designee's approval authority but the Leadership Designee determines that the required conditions for approval can be met, the request for reamortization, the official case file, and all other pertinent information, along with complete comments and recommendations by both the MFH Servicing official and Leadership Designee, is sent to the National Office.

D. National Office Exception

If the Leadership Designee concludes that the conditions for a reamortization cannot be met but a reamortization would be in the best interest of the Government, the file, along with recommendations from the MFH Servicing official, will be sent to the National Office for an exception. The Leadership Designee will submit all subsequent reamortization requests for the same project to the National Office for prior authorization.

E. OGC Guidance

When OGC determines that the reamortization request is legally sufficient, the Servicing official will execute the reamortization request.

F. Agency Denial of Request

If the Agency denies a request for a reamortization, it must send a formal letter to the applicant indicating the reasons for the Agency's decision and informing the applicant of appeal rights. A copy of this letter should be placed in the case file.

11.14 ADDITIONAL EVALUATION FOR REQUESTS INVOLVING DELINQUENCIES OR COMPLIANCE VIOLATIONS

Reamortization requests to address a delinquency or compliance violations will be approved only as part of a work-out agreement acceptable to the Agency. Reamortization may be used to address reserve accounts that are not at the authorized levels, as long as the deficiency is not due to improper or unauthorized use of reserve funds.

To obtain a reamortization to address a delinquency or compliance violations, the borrower must correct or be able to effectively address the cause of the deficiency, demonstrate that the objectives of the loan can be met following the reamortization, and meet the requirements described below. To show that the objectives of the loan can be met, borrowers must demonstrate the following:

A. Project Feasibility

Borrowers must demonstrate that they are operating on a financially sound basis and have adequate operating income to:

- Repay the loan at the reamortized rate;
- Fund reserve accounts adequately;
- Fund tax and insurance accounts adequately;
- Pay operation and maintenance expenses as they become due; and
- Maintain an acceptable level of occupancy.

B. Property is Adequately Maintained

Borrowers must ensure that they provide modest, decent, safe, and sanitary housing by properly maintaining the property.

C. Housing Remains Affordable

Borrowers must provide affordable housing opportunities/services to eligible residents.

D. Compliance with Agency Regulations is Maintained

Borrowers must be in compliance with all applicable Agency regulations, including:

- Providing financial information to the Agency in a timely manner; and
- Maintaining required records needed to ensure the eligibility of residents (e.g., tenant certifications).

If the borrower cannot demonstrate the ability to meet the above-listed objectives, the MFH Servicing official must reject the borrower's request for reamortization of the Agency loan and provide the borrower all applicable appeal rights.

11.15 PROCESSING REAMORTIZATIONS

In general, to reamortize an account, MFH Servicing officials must ensure that they obtain, complete, and sign all relevant forms, and obtain OGC review of documents for legal sufficiency, if needed. Prior to processing a reamortization, if the property has a maturing mortgage, the MFH Servicing official must request Asset Management Division approval. To process a reamortization, MFH Servicing officials must take the following steps, as applicable.

A. Complete Reamortization Agreement

MFH Servicing officials will complete *Form RD 3560-16* according to the FMI. The effective date and the due date for all payments will be the first of the month, except for labor housing loans, whose due date will be established in accordance with the FMI. *Note*: Appraisals will not be required in the case of reamortizations as long as there is adequate documentation that the Agency's security interest is protected.

B. Obtain *Form RD 3560-52* and Assumption Agreement

If the note or assumption agreement being reamortized is not in the possession of the MFH Servicing official, the MFH Servicing official will obtain the *Form RD 3560-52* and any assumption agreement from the St. Louis Office before processing the reamortization.

On the back of the original note or assumption agreement, below all signatures and endorsements, the MFH Servicing official will insert the following: "A reamortization agreement dated _____, 20__, in the principal sum of $_____, has been given to modify the payment schedule of the note."

C. Establish End of the Reamortization Period

The reamortization period will end on the final due date of the note being reamortized, unless the term is extended with the advice and guidance of OGC and the Agency's lien position is not altered. Any extension of the final due date should not exceed the lesser of the remaining useful life of the security property or the maximum term granted by the respective loan program authorizations.

The Agency may amortize the loan over a period not to exceed the remaining economic life of the project or 50 years, whichever is less. The Agency may extend the term of the loan to a period not to exceed 30 years or the remaining economic life of the project, whichever is less.

D. Establish Interest Rate

The interest rate charged by the Agency will be either the existing note rate, or the current rate at the time the reamortization request *Form RD 3560-15* is approved or closed, whichever is less.

E. Address Delinquent Reserve Accounts

The Agency may use reamortizations to address reserve accounts that are not at authorized levels, as long as the shortfall is not due to the borrower's improper or unauthorized use of reserve funds. MFH Servicing officials should take the following steps to address delinquent reserve accounts:

1. Modify the Loan Agreement or Resolution

The MFH Servicing official should modify the loan agreement or resolution, or execute a new agreement or resolution, that bases the new fully funded amount (i.e., 10 percent of the indebtedness) and annual reserve requirement (i.e., one-tenth of the fully funded amount) on the amount of the reamortization, rather than on the original amount of indebtedness.

2. Establish Reserve Requirements

The MFH Servicing official may establish reserve requirements at a higher level than the amount required for the reamortization to allow for capital expenditures that have been identified and quantified, as long as the budget will support a higher level.

3. Begin the Reserve Account with a New Base

Since the fully funded amount and annual requirement are reestablished based on the amount of the reamortization, the reserve account will begin with a new base. That is,

any underfunded reserves existing prior to the reamortization will no longer be considered underfunded. In essence, the reamortization allows the borrower to begin with a "clean slate."

4. Allow the Borrower to Receive a Return on Investment

When a newly established fully funded amount and annual requirement are based on the reamortization amount, the MFH Servicing official may allow the borrower to receive a return on investment if all other applicable conditions for receiving a return have been met.

F. Obtain OGC Guidance As Needed

MFH Servicing officials may obtain OGC guidance in the review of documents for legal sufficiency. OGC also may offer further guidance to properly perfect the reamortization.

G. Execute New Interest Credit Agreement

If the borrower is to receive interest credit benefits following the reamortization of the account, MFH Servicing officials will cancel the current interest credit agreement and prepare a new *Form RD 3560-9*.

H. Close the Reamortization

The Agency always closes reamortizations on the first day of the month. Unpaid interest to the date of closing may be capitalized.

I. Meet Other Procedural Requirements

In addition, MFH Servicing officials need to ensure that the following procedural requirements are met:

- All reamortized loans must be closed on Predetermined Amortization Schedule System (PASS). All initial and subsequent loans must convert to PASS in connection with the reamortization;

- When recoverable cost items are involved, they are first capitalized by adding them to the principal loan balance outstanding on the oldest loan and then the entire indebtedness (principal plus outstanding interest, overage, and late fees) is reamortized;

- Include deferred principal and deferred interest (AMAS M1XI screen) in the reamortization; and

- Audit receivables and late fees may be reamortized.

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SECTION 4: LOAN WRITEDOWNS

11.16 OVERVIEW

In cases of severe financial distress, the Agency may agree to a writedown of the debt, whereby the Agency agrees to reduce the outstanding loan amount. Writedowns should occur only when the value of the property is less than the outstanding Agency debt.

Generally, writedowns will occur simultaneously with a transfer and assumption for less than the total amount of outstanding debt. However, the Agency may write down debts and continue the account with the same borrower if doing so is in the best interest of the Agency, the property, and tenants.

In all cases, writedowns must be part of an approved work-out plan with the Agency, in the Government's best interest, and designed to correct circumstances beyond the borrower's control. Writedowns require approval by the Leadership Designee. The Agency should consider the project's suitability in accordance with Chapter 6 before approving a writedown.

Borrower equity in the project following the writedown will be no less than five percent of the amended loan balance for limited for-profit owners. The borrower may realize the eight percent return on investment on a maximum of five percent equity, if applicable. A reduced return may be authorized on amounts of equity contributed greater than five percent. Nonprofit and public agency borrowers may enter into workouts that propose loan-to-value ratios of 100 percent.

11.17 ALLOWABLE USES

Writedowns may only be approved when the conditions leading to a default were beyond the borrower's control and management is generally sound. Writedowns are used to address severe financial difficulties with a project and the Agency will consider all available servicing options before approving a writedown. Some examples of circumstances where a writedown might be an acceptable servicing solution include:

- Sustained market weaknesses in the property's community or region;
- Unforeseen site problems; or
- A natural disaster results in significant damage to the property.

11.18 BORROWER SUBMISSIONS

Borrowers requesting writedowns must submit the following documents to the MFH Servicing official:

- *Form RD 3560-15*; and

- A work-out plan, which includes:
  - ◊ A revised budget; and
  - ◊ A narrative description of project difficulties and proposed corrective actions.

11.19 AGENCY REVIEW AND APPROVAL

A. Appraisal

For a borrower to receive Agency approval for a writedown, the borrower is responsible for obtaining an "as-is" market value, subject to restricted rents. The Agency generally will not approve a writedown to an amount that is lower than the "as-is" unsubsidized value of the property. The Agency may require the general partner or primary person controlling the borrower to exit or waive equity, or both, to qualify for the writedown.

B. OGC Advice

OGC advice is required for all writedowns. The OGC review will primarily focus on the legal sufficiency of the transferee's organizational documents in cases where the writedown is occurring concurrently with a transfer.

C. Approval

As part of the writedown approval process, the Leadership Designee will review the following items:

- MFH Servicing official recommendation;
- Eligibility review; and
- An appraisal of the property.

The Leadership Designee is the approving official. The Leadership Designee may determine whether a writedown that does not include a change in the management structure of the project is acceptable.

11.20 PROCESSING WRITEDOWNS

To process a writedown, borrowers must execute documents per guidance from OGC.

CHAPTER 12: ACCOUNT LIQUIDATION *[7 CFR 3560.456]*

12.1 INTRODUCTION

This chapter covers Agency procedures regarding account acceleration, foreclosure, and liquidation for projects in default.

MFH Servicing officials should offer all appropriate special servicing tools to help borrowers with financial problems bring the account current. However, if it is clear that a borrower cannot continue with the loan, the MFH Servicing official should analyze the feasibility of liquidation options and recommend the option that is in the Government's best interest, defined as the option that will result in the greatest net recovery.

Section 1 of this chapter describes how the Agency determines whether or not to liquidate, and if so, which of the available options would be least costly for the Government. This section provides a brief catalogue of liquidation options, a discussion of net recovery value and basic security loss, and an outline of how decisions to liquidate are ultimately made.

Section 2 of the chapter contains information on liquidation procedures for voluntary liquidation and foreclosure. A discussion about the acquisition of chattel property is also included. Section 3 discusses debt settlement.

SECTION 1: MAKING THE DECISION TO LIQUIDATE

12.2 AN OVERVIEW OF LIQUIDATION OPTIONS

When the Agency determines that liquidation is appropriate, it may accelerate the loan. The borrower must pay the full account balance and meet the other terms of the loan within the prescribed time frame, or the Agency may initiate foreclosure proceedings. Once the loan has been accelerated, the Agency will not accept partial payment unless required to do so by State law.

A. Voluntary Liquidation

1. Voluntary Sale

Sale of the security property is generally the most desirable option for both the Agency and a borrower who is unable to continue the loan. For the Agency, a sale to another party avoids the costs of foreclosure, as well as the costs related to owning and disposing of a property. For the borrower, it offers the best opportunity for being released from the debt without a major credit history blemish. A borrower may sell the property to a third party even after the account is accelerated.

If the borrower sells or transfers title of a security property on which the loan has been accelerated, the Agency requires payment in full to release any Agency liens or to

stop foreclosure action. However, to facilitate a sale after acceleration, the Agency may agree to release Agency liens in return for payment of the estimated net recovery value.

2. Deed in Lieu of Foreclosure

After the account has been accelerated, the borrower can offer to convey the security property to the Agency. The Agency will accept the deed in lieu of foreclosure only if the Agency will realize a greater net recovery value than would be obtained if foreclosure proceedings continued.

3. Assignment to Junior Lien Holder

The Agency may assign the note and mortgage to a junior lien holder, if such a lien holder makes an offer for the property in the amount of at least the net recovery value, and all appeal rights have expired.

B. Foreclosure

1. Agency Foreclosure

When all reasonable efforts have failed to encourage the borrower to voluntarily liquidate the loan through sale of the property, deed in lieu of foreclosure, or by entering into an accelerated repayment agreement, the Agency may initiate foreclosure proceedings.

2. Foreclosure by a Another Lien Holder

If there is a prior lien holder, the Agency must determine if the prior lien holder should have the opportunity to foreclose. Foreclosure by a prior lien holder may be a less costly alternative to Agency foreclosure. If the Agency intends to foreclose in cases in which there is a prior lien, the Agency must decide either to settle the lien or foreclose subject to the lien.

C. Acquisition of Chattel Property

The Agency will make determinations regarding disposition of chattel property that are in the best interest of the government. The Agency will make every effort to avoid acquiring chattel property by having the borrower or MFH Servicing official liquidate the property.

12.3 NET RECOVERY VALUE

Estimated net recovery value represents the amount that the Agency could expect to recover from a property if it was liquidated after considering all costs associated with liquidating, holding, and selling the property. **Attachment 12-A** contains a net recovery value worksheet to aid in this calculation. Actual net recovery value is the amount the Agency does in fact recover from the sale of a property, after accounting for all costs.

The following sections provide guidance in estimating net recovery value.

A. Establishing Market Value

The market value of the property is the fundamental basis for establishing the estimated net recovery value. All calculations undertaken on the net recovery value worksheet provide additions or deductions from market value.

Depending upon the likely method of liquidation and at what point in the process the calculation is being made, market value may be based on an estimated value, on an appraisal or on the actual sale price. Early in the process of determining which liquidation method should be followed, the MFH Servicing official may need to make a rough estimate of the market value based on any available information.

B. Environmental Considerations

The MFH Servicing official's estimate of market value must take into consideration potential environmental hazards that may pose a liability issue for the Agency, and the presence of environmental resources for which the Agency will have an affirmative responsibility to take protective measures once it owns the property. Exhibit 12-1 provides a partial list of environmental factors for consideration.

To minimize Agency liability, the Agency must ensure, prior to acquiring property through foreclosure, that the property has been examined for potential contamination from hazardous substances, hazardous wastes, and petroleum products, including underground storage tanks. This should be accomplished by requesting that MFH Servicing official complete the *ASTM Standard E-1528 Transaction Screen Questionnaire, (TSQ)*. If the completed form raises any concerns it should be submitted to the Environmental Staff for further evaluation and guidance.

The Agency also should examine the property prior to acquisition and consider any costs associated with environmental resources the Agency might be required to protect.

For additional information, see RD Instruction 1940-G.

Exhibit 12-1

Environmental Considerations

Environmental Factors

- Traffic or noise;
- Hazardous materials or waste;
- Radon, asbestos, or urea formaldehyde; and
- Lead-based paint or other lead contaminants.

Environmental Resources

- Aquifer recharge areas;
- Coastal barrier resources;
- Coastal zone management areas;
- Endangered/threatened species or critical habitat;
- Floodplains, wetlands, or flood hazard areas;
- Historical or archaeological sites;
- Important farmland, prime forestland, or prime rangeland;
- National landmarks;
- Wild and scenic rivers; and
- Wilderness areas.

C. Ordering an Appraisal

Guidance about ordering appraisals is presented in Chapter 4 of HB-1-3560. The point at which a formal appraisal is actually conducted will vary.

1. Valueless Lien

If the MFH Servicing official's estimate suggests that the lien may be valueless, an appraisal should be obtained immediately. If the appraisal indicates that the lien is in fact valueless, it should be released without incurring servicing costs.

2. Deed in Lieu of Foreclosure

If, after acceleration, the borrower offers a deed in lieu of foreclosure, an appraisal should be obtained immediately so the MFH Servicing official can determine whether it is in the government's interest to accept the deed.

3. Foreclosure

If the property will be going to foreclosure, no appraisal should be obtained until shortly before the sale is scheduled to take place. In areas where the foreclosure process can be lengthy, the value of the property could change before the sale if the appraisal is conducted too far in advance.

D. Holding Period

Nearly all costs and income used in the net recovery value calculation are affected by the holding period. For estimated net recovery value, the length of the holding period is estimated differently, depending on the likely method of disposition. The holding period should be estimated as the time between the date the net recovery worksheet is being filled out and the anticipated date for:

- Filing of the deed and the expiration of redemption rights (foreclosure);
- Filing the warranty deed (deed in lieu of foreclosure);
- Filing the release (release of valueless lien); or
- Payoff and release (debt settlement offer subsequent to acceleration).

The time for marketing and disposition, if the property is acquired, should also be considered when estimating the holding period.

E. Deductions from Market Value

Numerous costs associated with liquidation must be considered when determining the net recovery value, including the following costs.

- **Prior liens to be paid by the Agency**. In a case where a prior lien is involved, the amount required to repay the prior lien holder must be included in the calculation;
- **Junior liens to be paid by the Agency**. If the Agency pursues foreclosure, junior liens are not paid. However, in the case of a deed in lieu of foreclosure, it may be to the Agency's advantage to pay off a junior lien holder. The agency should conduct a title search to identify the position and the amount of each lien against the property;
- **Selling expenses to be paid by the Agency**. All transaction costs involved in selling the property, including advertising, commissions for selling agents, required seller certifications, surveys, points, and closing costs paid by the Agency, whether on behalf of the borrower in a voluntary liquidation, or as an Agency expense for a real estate owned (REO) sale;
- **Holding costs**. During the time that the Agency owns the property, the monthly interest accrued is multiplied by the number of months in the holding period;
- **Depreciation during the holding period**. The property may depreciate in value while it is being held by the Agency;
- **Administrative costs**. The administrative burden associated with holding a property includes the cost of liquidation, such as attorney fees, filing, recordation, advertising, and document service fees, that are customarily incurred in a foreclosure action; and

- **Management costs**. During the period the Agency holds the property it will accrue costs related to cleaning, securing, and maintaining the property such as utilities and real estate taxes.

F. Additions to Market Value

Although most of the adjustments to market value involve deductions to reduce the recovery amount, there are a few factors that can increase the market value.

- **Appreciation during the holding period**. In markets that are strong, the property may appreciate while it is being held by the Agency; and

- **Income during the holding period**. In general, the Agency does not lease properties. However, REO properties may be leased in limited circumstances, such as a property located in an area where keeping the property occupied could greatly reduce vandalism, or if there are tenants living in the property whom the Agency does not wish to displace.

12.4 BASIC SECURITY LOSS

The basic security loss is the difference between the property's market value and the outstanding Agency debt on the property, including principal, and other recoverable costs.

It is important for the MFH Servicing official to consider the basic security loss in determining how to work with the borrower. For example, the debt settlement arrangements the Agency agrees to might be more lenient in the case of a borrower with a property that lost value through no fault of the borrower. This information can be used for portfolio analysis to help the Agency originate loans more effectively in the future.

12.5 ACCOUNT LIQUIDATION

A. Making the Decision to Liquidate

In all liquidation cases, the Leadership Designee will be responsible for the final decision to liquidate the borrower's account based on advice and counsel from the Office of General Counsel (OGC) and the following information supplied by the MFH Servicing official:

- An opinion by the MFH Servicing official about whether the borrower is forcing an acceleration to circumvent the prepayment process;

- The specific recommendations of the MFH Servicing official on the method of carrying out the liquidation;

- The case file and any other pertinent information developed in support of the accusations;

- A summary of Agency efforts to work out an acceptable solution short of liquidation;

- A current appraisal of the security property will be completed by an Agency official authorized to make that particular type of appraisal and an estimate of the net amount that may be realized from the sale of the assets;

- The most recent balance sheet or financial statement from the borrower;

- A current statement of account from the St. Louis Office; and

- A problem case report.

- The Agency will handle liquidation, whether by voluntary liquidation or foreclosure, in accordance with the requirements at 7 CFR 3560.456(c) and (d).

In all liquidation cases, the Leadership Designee is responsible for the final decision to liquidate the account based on an opinion from OGC and relevant information supplied by the MFH Servicing official (e.g., case files, summary of efforts to work out an acceptable solution, appraisals of the property, borrower's financial statements and balance sheets, specific recommendations). If the Agency determines that the borrower has taken action to bring about the acceleration in an effort to avoid the prepayment process, the Agency will consider alternatives to acceleration, such as suing for specific performance under the loan and management documents.

B. Possible Outcomes of Agency's Decision to Liquidate

If the Agency decides to liquidate, there are several possible outcomes, which are as follows:

- The borrower may cure the default by developing and submit to the Agency for approval a workout agreement that proposes actions to be taken over a period of time to prevent or correct a default;

- The borrower can voluntarily convey the property to the Agency;

- Transfer (sale or transfer and assumption of mortgage);

- Foreclosure;

- Payoff with use restriction; or

- Debt settlement (cash only) for minimum bid or greater.

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SECTION 2: LIQUIDATION PROCEDURES

12.6 OVERVIEW

After the MFH Servicing official exercises special servicing options and the borrower is still unable to continue with the loan, the MFH Servicing official must determine the feasibility of liquidating the borrower's account. Any recommendation should result in the greatest net recovery to the Government.

The borrower may liquidate voluntarily, either through sale of the property or deed in lieu of foreclosure. If it determined that the borrower's account must be liquidated, the Agency may recommend foreclosure and accelerate the loan.

12.7 VOLUNTARY CONVEYANCE

After acceleration, borrowers may voluntarily liquidate through deed in lieu of foreclosure or an offer by a junior lien holder. In the case of voluntary liquidation, the borrower is responsible for all expenses associated with liquidation and acquisition. The Agency will only consider acceptance of an offer of voluntary conveyance if it is likely to receive a recovery on its investment. The Agency will not accept a voluntary conveyance offer if it is not in the Government's best interest to do so. The Agency should refuse the voluntary conveyance if the Agency lien has neither present nor prospective value or recovery of the value would be unlikely or uneconomical.

Voluntary sale of the security property may be the least onerous option for the borrower and the least costly option for the Government. If there is an interested buyer, procedures for property transfer that should be followed are described in Chapter 7 of this handbook.

A. Payment of Liens

If the Agency accepts a deed in lieu of foreclosure, it will pay prior liens if the Government's investment and payment of the lien may be recovered. The Agency will accept conveyance subject to prior liens if the lien holder does not object. In this case, the Agency will make installment payments on the lien.

Junior liens must be paid by the borrower. If the borrower does not agree to pay these obligations, the Government will do so if it is in its best interest in the long run. The Leadership Designee determines whether the Agency will settle junior liens.

B. Required Components of an Offer of Voluntary Conveyance

An offer of voluntary conveyance will consist of the following documentation:

- Form RD 3560-22, Offer to Convey Security;
- Warranty Deed, which will be recorded only when the voluntary conveyance is accepted;
- Updated title policy and environmental reviews including ASTM Standard E-1528 Transaction Screen Questionnaire, (TSQ);

- A current financial statement, balance sheet, and information on present income and potential earning ability;
- For organization borrowers, a resolution by the Board of Directors that authorizes conveyance of the property; and
- Assignment of Housing Assistance Payments (HAP).

C. Appraisals

Prior to the Agency's acceptance of an offer of a deed in lieu of foreclosure, the current market value of the property must be obtained through an appraisal by a qualified appraiser.

D. Decisions

The MFH Servicing official will submit the case file of the borrower to the Leadership Designee. The Leadership Designee will review the file and make a decision, after having obtained advice from the OGC. When the market value of the property is less than the Agency debt, the Agency must consider the borrower's current situation and future prospects for paying this debt.

Items to be included in the borrower's case file are shown in Exhibit 12-2.

Exhibit 12-2

Liquidation Option - Borrower's Case File

- Report on Multi-family Housing Problem Case;
- Liquidation and management plan;
- *Form RD 3560-22*;
- Resolution authorizing conveyance, if applicable;
- Current title search;
- Environmental review;
- *Form RD 3560-7;*
- *Form RD 3560-10;*
- Current appraisal prepared by a qualified appraiser;
- Due diligence report;
- Balance of Rural Development account and other liens, if any;
- Assignment of HAP contracts, if applicable;
- Current statement of account from the St. Louis Office;
- Development plan with breakdown of costs, if applicable; and
- *Form RD 402-2*, *Statement of Deposits and Withdrawals,* if applicable.

E. Closing of Conveyance

Closing of conveyance will be complete when the recorded deed has been returned to the Agency with no outstanding encumbrances other than Agency liens and/or previously approved prior liens. Costs incurred prior to the completion of the transaction will be charged to the borrower as recoverable costs.

Upon closing of the transaction, if applicable, the MFH Servicing official will release liens and inform the borrower of the release from liability. Borrowers must be notified whether or not they have been released from liability.

The Leadership Designee will cancel any interest credit and suspend any rental assistance. Tenants must be informed of the possible consequences of liquidation. If the property will no longer participate in the Section 515, 514/516, or 521 programs, the tenants must be given a minimum of 180 days' written notice.

12.8 FORECLOSURE

State laws pertaining to acceleration and foreclosure will affect the procedures the Agency is required to follow. OGC should be consulted to ensure that appropriate procedures are followed.

A. Making the Acceleration Decision

The Agency must decide whether to accelerate the account and begin the foreclosure process. The decision to accelerate involves numerous considerations, many of which will vary case by case. The following issues should always be considered.

1. OGC Concurrence

Advice and counsel should be obtained from OGC before beginning the foreclosure process if:

- The foreclosure is based on a nonmonetary default; or
- The property also serves as security for a loan under another USDA program, such as the FSA, since this may trigger liquidation of the other loan.

2. Tribal Land

If the security property is on tribal-allotted or trust land, the acceleration may be approved only after the Agency has offered, in writing, to transfer the account to an eligible tribal member, the tribe, and the Indian Housing Authority serving the tribe or tribes.

3. Role of Other Lien Holders

Depending upon the status of other liens on the security property, the Agency may invite other lien holders to join in the foreclosure action, or join in a foreclosure action initiated by another lien holder.

B. Acceleration

1. Acceleration Notice

If the Agency determines that the appropriate approach to liquidation is foreclosure, the process begins with an acceleration notice (*Guide Letter 1955-A-1, Notice of Acceleration to MFH Borrowers Liable for the Debt (Excludes Borrowers Who Were Discharged in Bankruptcy*) or *Guide Letter 1955-A-2, Notice of Acceleration to MFH Borrowers Discharged in Bankruptcy Who Have Not Reaffirmed the Debt*). The acceleration notice demands full payment of the account, including unpaid principal and interest, advances, and subsidy subject to recapture. It notifies the borrower of: (1) the reason for the acceleration, (2) the amount due, (3) the method of payment, (4) the opportunity for an informal review with the decision maker to seek mediation or alternative dispute resolution or to request an administrative appeal hearing, (5) and prepayment restrictions. The notice gives the borrower 30 days to pay in full or request a hearing.

The acceleration notice must also include language regarding prepayment restrictions. If a borrower prepays an Agency loan made before December 21, 1979, the tenants must be given 180 days' notice that the project can be removed from the program. For information on these loans, see Chapter 15.

The notice must be sent to the borrower and any cosigners simultaneously by both regular mail and certified mail, return receipt requested. If the property address is different from the address of the borrower, the notice should be sent to the property address as well.

2. Payment Subsidy

If a borrower is receiving payment subsidy, the payment subsidy agreement will not be canceled when the debt is accelerated, but it will not be renewed unless the account is reinstated.

3. Offers to Pay

The decision to accelerate the account must not be made until the MFH Servicing official has made all reasonable efforts to help the borrower become successful. Therefore, once the account has been accelerated, borrower efforts to cure the default will not be accepted unless required by state law. If state law requires that foreclosure actions be halted if an account is brought current, partial payment of the accelerated amount must be accepted. Otherwise, any payment for less than the full amount required to close the account should be returned to the borrower.

The borrower's account may be paid off by cash, transfer and assumption, sale of the property, or voluntary conveyance. The Agency may grant the borrower additional time to voluntarily liquidate. If an offer is deemed unacceptable, the Agency's denial is not appealable.

C. Review of the Acceleration Decision

Several remedies are available to borrowers who believe their accounts should not have been accelerated. These include an informal review, mediation or dispute resolution, and a formal appeal with the National Appeals Division (NAD) of the Department of Agriculture. Foreclosure actions will be held in abeyance while an appeal is pending.

D. Transfers and Subsequent Loans During Foreclosure

Properties can be transferred during the foreclosure process. However, the foreclosure process should not be stopped until the applicant is determined eligible and the transfer is determined to be feasible and in the best interest of the government. For a discussion of how the value of a property is determined, see Chapter 7, Section 7.26.

E. Foreclosure Notice

A foreclosure notice that includes the following must be published:

- Projected sale date and location;
- Fair market value of the property;

When a property is liquidated through foreclosure action or other debt settlement actions, the property may be released without restrictive-use provisions. The appraiser will be given instructions to value the property as conventional nonsubsidized property without restrictive-use provisions. The encumbering restrictive-use provisions in the loan documents will be nullified by the foreclosure sale or debt settlement unless ownership is continued by the current borrower, and that borrower is currently subject to restrictive-use as part of the original loan obligation or a subsequent servicing action.

- The amount to be bid by the Agency;
- The amount of Agency debt against the property; and
- Use restriction provisions.

For judicial foreclosure states, notices are to comply with State laws.

MFH Servicing officials should take an aggressive approach to advertising foreclosure sales and marketing inventory properties. A list of potential buyers who would be interested in purchasing projects at foreclosure sale or inventory properties should be developed. Notices of scheduled foreclosure sales can then be sent to those

interested parties in addition to advertising in newspapers, notifying local real estate agents, and posting advertisements on the Agency's Multi-Family Housing REO website at https://mfhreo.sc.egov.usda.gov.

F. Determining the Government's Bid at Foreclosure Sale

The Government's bid should equal the amount of the Agency's net recovery value or the market value of the security, whichever is less.

The Leadership Designee will designate an individual to bid at foreclosure, unless prohibited by State law. If the Agency is the senior lien holder, it can only submit one bid. If the Agency is not the senior lien holder, the designated bidder may make incremental bids in competition with other bidders.

If a project that is subject to restrictive-use provisions is sold outside the program at the foreclosure sale, the Agency has no means to continue to enforce the restrictive-use provisions after the purchase.

G. After Foreclosure

1. Agency Reporting

After the property has been acquired, the MFH Servicing official must furnish the Leadership Designee with a report on the sale. Two forms must be filed: *MFH Advice of Mortgaged Real Estate Acquired form*, and, if applicable, *Form RD 3560-55*.

2. The Property

Upon acquisition, any existing leases must be transferred, and management agreements must either be extended or canceled.

3. The Borrower

If the property is acquired by the Agency, the Agency must credit the borrower's account with the Government's maximum bid. If the property is not acquired by the Agency, the borrower's account must be handled in accordance with State law.

The Agency must make attempts to collect any unsatisfied balances. When deficiency judgments are sought, the Leadership Designee must prepare *Form RD 1962-20, Notice of Judgment*, which establishes how the account is to be handled by the MFH Servicing official.

12.9 ACQUISITION OF CHATTEL PROPERTY

The Agency will make every effort to avoid acquiring chattel property by having the borrower or MFH Servicing official liquidate the property according to RD Instruction 1962-A, and applying the proceeds to the borrower's accounts. Authorized methods of acquisition of chattel property include:

- **Sales**, including execution sales, Agency foreclosure sales, sale by trustee in bankruptcy, public sale by prior lien holder, and public sale conducted under voluntary liquidation.

- **Voluntary conveyance**, which is acceptable only when the borrower can convey ownership free of other liens and the borrower can be released from liability under the conditions set forth in 7 CFR 3560.457. Payment of other lien holders' debts by the Agency in order to accept voluntary conveyance of chattels is not authorized. If the Agency declines an offer of voluntary conveyance of chattels, the MFH Servicing official will provide a copy of the rejection to the borrower.

- **Attending sales**, which the MFH Servicing official will attend unless it is deemed to be physically unsafe to do so or if attending the sale would cause unfavorable publicity. The MFH Servicing official will attend a sale held by a prior lien holder if the market value of the chattel is significantly greater than the amount of the prior lien.

- **Appraising chattel property**, which is the MFH Servicing official's responsibility prior to the sale. An outside contractor in accordance with RD Instruction 2024-A may conduct an appraisal.

- **Abandonment of security interest**, should the chattel property have no market value and obtaining title would not be in the best interest of the Government. Such a situation might occur if costs of moving or rehabilitation are excessive.

- **Bidding at sale**, which the MFH Servicing official might do if there are no other bids or if the property may be sold at an amount which is less than the Government's authorized bid. The MFH Servicing official may not bid if the chattel property under prior lien is significantly less than the amount owed to the prior lien holder or if the Agency debt has been satisfied. MFH Servicing officials may not bid at a sale held by a junior lien holder or at a private sale.

Unless costs are incurred after the government acquires title to the chattel property, the borrower will pay all costs related to acquisition of the property. The MFH Servicing official will use *MFH Advice of Mortgaged Real Estate Acquired form,* to report acquisition of chattel property.

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SECTION 3: DEBT SETTLEMENT

Debt settlement is a process in which the Agency attempts to maximize repayment of outstanding debts that are not satisfied through voluntary or involuntary liquidation. There are four types of debt settlement: compromise, adjustment, charge-off, and cancellation. The Agency complies with the Debt Collection and Improvement Act of 1996 in pursuing outstanding debt. However, a majority of MFH loans are to non-recourse borrowers for which no additional recovery is possible after liquidation. Therefore, the Agency primarily uses debt settlement in conjunction with voluntary liquidation.

The Leadership Designee may approve or reject proposed debt settlements when the outstanding balance of the indebtedness amount in the offer is less than $1 million. The National Office must approve or reject any settlements totaling $1 million or more.

12.10 BORROWER ELIGIBILITY

A borrower may request debt settlement in conjunction with or after voluntary liquidation of security. The Agency may agree to settle a borrower's debt if:

- All liable parties apply for debt settlement;
- The loan security is sold for cash or transferred to a third party;
- The borrower pays a compromise or adjustment offer of the current market value of the security, less prior liens, plus any additional amount the Agency determines the borrower can pay; and
- The initial payment, with a compromise or adjustment offer must be equal to or greater than the value of the security, less prior liens.

The Agency will not debt settle a borrower's debt if:

- The borrower possesses another Agency loan for which he or she cannot or will not settle the debt;
- The Department of Justice has jurisdiction over the borrower's loans or has a case pending against the borrower because of a suspected criminal violation in connection with the debt or security for the debt; or
- The Agency requests the Department of Justice to institute a civil action against the borrower to protect its interests.

12.11 APPLICATION REQUIREMENTS

The Agency considers a borrower's financial status when evaluating the borrower's request for debt settlement. A borrower must submit complete and accurate information from which the Agency can make a full determination of the borrower's financial condition. This information must include the following items from all liable parties:

- A completed *Form RD 3560-57, Application for Settlement of Indebtedness*;
- A current financial statement and cash flow projections;
- Verification of income;
- Verification of assets for the past 12 months;
- Verification of debts greater than $1,000;
- Tax returns for the past three years; and
- Any other items requested by the Agency.

12.12 COMPROMISE AND ADJUSTMENT

A borrower is not required to dispose of security prior to application for debt settlement. However, if a borrower has disposed of security prior to applying for debt settlement, proceeds from the disposed security must first be applied to the borrower's account. If the Agency approves a compromise or adjustment offer, the Agency will cancel any debt remaining after the compromise or adjustment offer is paid and applied to the debt.

A. Secured Debts

Secured debts may be compromised or adjusted as follows:

- The debt is fully matured under the terms of the note or other instrument, or has been accelerated by the Agency prior to the settlement application;
- A compromise offer must at least equal the net recovery value of the security as determined by the Agency, less prior liens, plus any additional amount the Agency determines the borrower is able to pay based on a current financial statement; and
- An adjustment offer must meet the requirements of a compromise offer, except the payments may be made over the shortest period the Agency determines is feasible, not to exceed five years

B. Unsecured Debts

Unsecured debts are most frequently account balances remaining after the borrower has voluntarily liquidated security property. The borrower's compromise or adjustment offer must represent the maximum amount the Agency determines the borrower can pay based on a current financial statement and any other available information. An adjustment agreement may not exceed five years.

C. Handling Payments

All compromise or adjustment payments will be recorded. The St. Louis Office will hold payments in the Deposits Fund Account until notification is received from the Agency of the approval or rejection of the offer. For approved offers, payments will be applied in accordance with established policies, beginning with the oldest loan in the settlement. When the Agency accepts an adjustment offer, the St. Louis Office does not adjust the accounts involved until the borrower makes all the payments to the Agency.

D. Delinquent Adjustment Agreement

Adjustment payments that are more than 30 days past due are referred to the Leadership Designee. The Leadership Designee may:

- Void the agreement;
- Process a new debt settlement agreement; or
- Grant a time extension.

The borrower may appeal the cancellation of the adjustment agreement.

12.13 CHARGE-OFF

Charge-off is an administrative tool the Agency uses to write off nonperforming debt from the Agency's portfolio. However, borrowers remain liable for charged-off debt, and the Government may continue to pursue collection. The Agency may charge off nonjudgment debt when:

- The principal balance is $2,000 or less, and efforts to collect the debt have been unsuccessful or would not be economical;
- OGC advises in writing that the Agency's claim is legally without merit;
- Efforts to induce voluntary repayment are unsuccessful and OGC advises in writing that evidence to prove the Agency's claim in court cannot be produced;
- The borrower is unable to pay any part of the debt and has no apparent future debt repayment ability; or
- There is no security for the debt.

12.14 CANCELLATION

When the Agency administratively extinguishes a debt owed to it, a cancellation occurs. Under these circumstances, the Agency releases the borrower from liability for the debt.

A. Cancellation with Application

When the borrower applies for debt settlement, the Agency may approve the request if the borrower's application shows that the borrower cannot make any compromise or adjustment offer. The MFH Servicing official must obtain documentation from the borrower that, due to unusual or extenuating circumstances, a compromise or adjustment offer is not feasible.

B. Cancellation without Application

The MFH Servicing official may make a recommendation to cancel debt, without an application from the borrower in the following circumstances:

- All liable entities no longer exist;
- The 6-year statute of limitations of offset expires;
- The borrower has been discharged of the debt in bankruptcy;
- The debt, including a deficiency judgment, is otherwise legally without merit; or
- The account has been returned to the Agency after cross-servicing by the Department of Treasury.

C. Processing and Approving Cancellations

The MFH Servicing official must execute the completed *Form RD 3560-57* and process the cancellation in accordance with the FMI.

The MFH Servicing official must notify the borrower in writing of the debt settlement approval and the approximate amount that the Agency will report to the IRS. When the Agency cancels debt without application from the borrower, the Agency must send a letter regarding the debt cancellation to the borrower's last known address.

The Agency must cancel any requests for offsets against the borrower after debt settlement approval.

12.15 REFERRAL TO THE DEPARTMENT OF TREASURY

Because most borrowers are nonrecourse borrowers, the Agency does not often refer accounts to the Department of Treasury for cross-servicing or offset as there are no liable parties for the debt. However, there may be times when it is appropriate to refer an account to the Department of Treasury for debt collection. The Agency should refer an account to the Department of Treasury when:

- The debt is 180 days past due;
- The security has been liquidated; and

- The balance is due and payable.

The Agency should not refer an account to the Department of Treasury when:

- There are no liable entities to pursue;
- An internal offset is sufficient to collect the debt within three years after the debt becomes past due;
- The borrower is in compliance with an adjustment agreement;
- The debt is in litigation or bankruptcy action is pending; or
- The borrower is deceased.

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ATTACHMENT 12-A

NET RECOVERY VALUE WORKSHEET

I. BACKGROUND		
(1) Case Number:	(2) Borrower Name/ID:	
(3) Proposed Liquidation Option:		(4) Calculation Date:
(5) Estimated Holding Period: [1]		
II. CALCULATION OF NET RECOVERY VALUE		
(6) Market Value (use current appraisal)		
(7) Deductions from Market Value		
A. Liquidation costs		$_____
B. Acquisition cost		$_____
C. Settlement cost of prior liens		$_____
D. Estimated cost to operate during appraisal period[2]		$_____
E. Cost to correct health and safety violations		$_____
F. Cost to address environmental hazards (if different from E)		$_____
G. Selling costs		$_____
(8) Additions to Present Market Value		
A. Appreciation during holding period		$_____
B. Income during holding period		$_____
C. Total Additions (sum of items 8A and 8B)		$_____
(9) NET RECOVERY VALUE (6 minus Item 7G plus Item 8C)		

[1] The estimated inventory holding period prior to resale should be based upon previous experience in selling non-program property in the state and the availability of current funding for non-program inventory properties. If a MFH Servicing official has not had experience in marketing non-program properties, their Team Lead should be consulted prior to contacting the Asset Management Division.

[2] The cost to operate the project during the inventory holding period prior to resale should be based upon typical operating costs, excluding debt payments to the government, for similar projects in the servicing jurisdiction.

CHAPTER 13: OTHER SPECIAL CASES
[7 CFR 3560.458 THROUGH 3560.459]

13.1 INTRODUCTION

There are a number of special circumstances that necessitate additional servicing procedures beyond those presented in previous chapters. Most of these cases involve characteristics unique to either a particular property or to a particular borrower. Property and borrower issues include a number of relatively uncommon, but nevertheless important, situations that MFH Servicing officials need to know how to address. Property issues include abandonment, valueless liens, and other security issues. Borrower issues include death, divorce, bankruptcy/insolvency, and membership liability agreements.

This chapter presents the requirements for these other special servicing cases and Agency procedures for addressing them.

SECTION 1: PROPERTY ISSUES

13.2 OVERVIEW OF PROPERTY ISSUES

The Agency's servicing goal is to protect the physical and financial asset that each project represents, and ensure that each project is operated in a way that meets program objectives. Sometimes, a property becomes troubled due to mismanagement, deferred maintenance, or market changes. As a result, the property may lose a significant share of its value. Whether a borrower chooses to abandon the property or to continue with its management, the Agency needs to address the situation created by the property's problems with appropriate servicing measures that protect the interest of the tenants and the Government. This section describes those measures.

In general, MFH Servicing officials should obtain the advice of the Office of General Counsel (OGC) as needed for handling the special circumstances addressed in this section. These circumstances include:

- Abandonment;
- Valueless liens;
- Other security issues; and
- Taking additional security to protect Agency interests.

Prior to any decision involving real property under the above-listed special circumstances, MFH Servicing officials will complete an environmental review (including an *ASTM Standard E-1528 Transaction Screen Questionnaire, (TSQ))* under The National Environmental Policy Act (NEPA), and a due diligence report. Refer to 7 CFR part 1970 and Chapter 3, Section 3 of HB-1-3560 for further information.

13.3 ABANDONMENT

When the Agency believes that a borrower has abandoned a project, it will make an immediate check to determine if the borrower has moved and, if so, whether a forwarding address can be determined so that further servicing actions can be taken. The Agency will take the steps necessary to protect the Government's security interest in the property. In general, the steps taken following abandonment are similar to those taken following foreclosure, once abandonment has been confirmed.

A. Indicators of Abandonment

The Agency considers a property to be abandoned when any or all of the following conditions exist:

- The borrower cannot be located after the MFH Servicing official has made diligent efforts to contact the borrower. This condition also applies to instances where the general partner(s) of a limited partnership cannot be located and the limited partners are unknown or cannot be located.

- The project remains unoccupied for an extended period of time, and the borrower makes no effort to maintain the security property, secure eligible occupants, and/or comply with the objectives of the loan within a reasonable period of time as specified by the MFH Servicing official in a certified letter sent to the borrower requesting compliance.

B. Contacting Prior Lien Holders

If the property is not being maintained and the MFH Servicing official determines that the borrower has abandoned the project, the MFH Servicing official will attempt to contact any prior lien holders with a request that they take control of the property and make any emergency repairs necessary.

If no prior lien holder is involved or the prior lien holder cannot immediately be contacted or refuses to make the emergency repairs, the MFH Servicing official will immediately notify the Leadership Designee and request permission to:

- Take possession of the property pending liquidation;

- Make health and safety repairs to prevent further deterioration of the security; and

- Enter into a management or caretaker's agreement on behalf of the owner.

C. Making Emergency Health and Safety Repairs

When making necessary health and safety repairs where an emergency exists, MFH Servicing officials should recognize that the repairs need to be completed as quickly and effectively as possible. Accordingly, a commonsense approach that balances the health and safety of tenants with the price, speed, and quality of the repairs should be employed.

Bids for specific services may be obtained from several local contractors only if the bid process does not adversely affect the health and safety of the tenants. MFH Servicing officials must document the circumstances leading to the emergency situation, as well as the reasonable steps taken to address health and safety concerns in the case file, to later back up any costs incurred.

All costs incurred at the project during the interim period between abandonment and eventual disposition by the Agency—including repair costs—are the responsibility of the borrower. The Agency treats the costs of managing abandoned property as a recoverable cost item.

D. Appointing a Caretaker or Management Agent

A caretaker or management agent will normally be appointed when the borrower has abandoned the security property or has failed to maintain its operation and the Leadership Designee determines, with the advice of OGC, that the Agency should take possession of the property to best protect the interest of the government. Selection of a caretaker or management agent is subject to the following requirements:

- **Qualifications.** Persons or firms chosen as caretakers or management agents should have experience in operating and managing similar properties or have business experience that qualifies them to provide the needed services. They must be located near the property to provide day-to-day supervision, or be able to appoint a qualified local person to meet this requirement. Caretakers will normally be selected for unoccupied projects or those not suitable for occupancy. Management agents will only be selected for projects that are occupied or suitable for occupancy. The selection process—which must comply with all applicable Federal Acquisition Regulation (FAR) requirements—must be adequately documented by MFH Servicing officials in the case file.

- **Allowable fees.** The amount of the management agent or caretaker fee must be set in accordance with Agency requirements for management fees. The requirements regarding management fees are established at 7 CFR 3560.102(i) and described in Chapter 3 of HB-2-3560. These fees will be paid as a project expense if project funds (e.g., reserve accounts) are available. If project funds are not available, fees will be paid with Government vouchers, considered a recoverable cost, and charged to the borrower's account. The fees will be paid on a monthly basis.

- **Rental rates.** Rental rates at abandoned properties will normally remain the same for eligible occupants as when the project was under the control of the borrower, although revisions may be allowed under certain circumstances with the approval of the Leadership Designee. Such conditions include:

  ◊ The lease agreement between the borrower and tenant permits changing the rates;

◊ A change of rates is needed to provide income sufficient to pay operational and maintenance expenses, including the caretaker's fee, and to repay the loan on schedule; or

◊ Any increase will not result in rental rates above the payment ability of eligible occupants, unless the Leadership Designee has given the authority to rent units to ineligible occupants.

- **OGC advice.** The Leadership Designee should consult OGC for advice, including the possibility of having a receiver appointed, when the following conditions exist:

  ◊ The project is occupied but rent is not paid or collected;

  ◊ The eligibility of the occupants cannot be determined; and

  ◊ The borrower has failed to comply with the objectives of the loan within a reasonable time frame as specified by the MFH Servicing official in a certified letter to the borrower requesting compliance.

E. Addressing the Agency's Relationship with the Borrower

To resolve the abandonment situation, the Agency must determine the cause of the abandonment. If a property is abandoned in accordance with Section 13.3 A of this chapter, MFH Servicing officials need to document that the Agency will proceed with one of three servicing options: foreclosure, acceptance of a deed in lieu of foreclosure, or debt settlement. The Agency normally will proceed with foreclosure unless one of the other two options is offered by the borrower. If the Agency determines after investigating the causes for the abandonment that the borrower entity is no longer viable, it will normally proceed to foreclosure or accept a deed in lieu of foreclosure, if debt settlement cannot be achieved. The Agency will consider negotiated debt settlement only in cases where a default is evident and doing so is in the best interest of the Government. Properties in which debts are settled may be declared non-program properties.

Upon foreclosure, the Agency has the authority to seize any project accounts on which the Agency has countersigned (e.g., reserve accounts).

13.4 VALUELESS LIENS

A valueless lien exists at a property where the recoverable value of the lien is less than the estimated cost of recovery. When the Agency determines that it has a valueless lien, it will prepare a written determination to that effect and release its lien.

A. Declaring a Valueless Lien

To declare a valueless lien, the MFH Servicing official must provide the following submissions to the Leadership Designee:

- Identification of property (legal description);

- Description of the Agency's lien position;
- Documentation of reasons that lien is determined to be without value; and
- Explanation of the reasons for releasing the lien and a description of the type of release sought (i.e., partial or full).

B. Documenting Valueless Liens

To document the reasons the lien on a project is determined to be valueless and to devise a strategy for releasing the lien, MFH Servicing officials should take the following steps:

- Within the context of a problem case report, write up an assessment of the value of the project and forward it to the Leadership Designee for review and guidance on how to release the lien; and
- Follow Leadership Designee's instructions, as applicable.

13.5 OTHER SECURITY

The Agency also services other security instruments, such as collateral assignments, assignments of rents, Housing Assistance Payments (HAP) contracts, and notices of lien holder interest in a manner indicated by the agreements and according to acceptable practices in the respective states. When other security is taken, the Agency should develop a plan for servicing it at the outset.

- The Leadership Designee should develop any special servicing actions with the advice of OGC to protect the Agency's interest.
- MFH Servicing officials should file evidence of the other security in the loan docket.
- The MFH Servicing official should make a notation on the management system card showing that the security has been retained.

13.6 OBTAINING ADDITIONAL SECURITY TO PROTECT AGENCY INTERESTS

The Agency generally does not need additional security to protect its interest. However, the Agency may negotiate with the borrower to obtain additional security in the form of real estate or other security when a decline in the value of the original security or other changes adversely affect the security available to the Agency in the event of a default. Examples of cases where the Agency may seek additional security include when the account is delinquent, the property has not been properly managed or maintained, or there is serious doubt that the borrower can carry out loan objectives.

While the Agency has the authority to seek additional security in the circumstances listed above, it is generally a negotiated, nonforcible action. However, there may be instances where the Agency can use its leverage to obtain additional security (e.g., a case where loan funds are

used to purchase land on which the borrower plans to build a parking lot). In such cases, the Agency might demand an interest in the parking lot as additional security for the entire project. Additional security is taken by executing a deed of trust with the borrower.

A. Leadership Designee Authorization

In cases where taking additional security is warranted, the MFH Servicing official must forward the borrower's case file to the Leadership Designee for authorization, along with a memorandum providing the following information:

- The facts that justify the taking of additional security;
- A conservative estimate of the market value of any real estate to be mortgaged (*Note:* It is not necessary to obtain an appraisal of the property to be mortgaged unless required by the Leadership Designee.;
- A brief description of any existing liens on the additional security, including the repayment terms and the unpaid balance;
- The name of the title holder and how the title to the property is held (*Note:* Title evidence is not required.);
- A plan for servicing the additional security to be taken; and
- A description of other servicing alternatives available to ensure that the objectives of the loan will be met and to protect the Government from loss.

The highest quality security available should be taken whenever additional security is considered. This means that if several security options are available, the option that has the least amount of risk associated with it (and would thus be easiest to liquidate if necessary) should be chosen. Security property with known environmental hazards or other risks generally should not be taken as additional security. Such risks will generally be identified when the MFH Servicing official conducts due diligence, including an environmental review. When the Agency chooses not to acquire additional security property, whether in whole or in part due to the presence of or potential for release of hazardous substances or petroleum products, the MFH Servicing official will notify the appropriate regulatory authority of the Agency's findings and actions.

B. OGC Advice

MFH Servicing officials should obtain OGC advice and assistance whenever additional security is taken. Specifically, OGC can provide a title opinion, which will advise MFH Servicing officials as to what lien position is available to the Agency.

13.7 SECURITY ISSUES INVOLVING PROJECTS WITH PARTICIPATION LOANS

The Agency's rule states that when other participation is involved, the Agency will service the account in accordance with appropriate Agency servicing regulations and the agreements made with the other participants at the time of loan origination.

SECTION 2: BORROWER ISSUES

13.8 OVERVIEW OF BORROWER ISSUES

Borrowers may occasionally experience special circumstances that affect their ability to operate the property and, thus, the Agency's approach to servicing their accounts. Bankruptcy, death, and divorce are events that require special attention to ensure that the interests of the tenants and the Government are protected. Similarly, special agreements that borrowers may have with members of the organization may affect the Agency's servicing approaches and decisions. This section addresses such special cases.

13.9 REQUIREMENTS FOR ADDRESSING BORROWER ISSUES

The Agency will address borrower accounts affected by special circumstances, such as death, bankruptcy, insolvency, and divorce, on a case-specific basis. The Agency will make servicing decisions in such cases that are in the best interest of the tenants and the Government. The Agency will bring legal action questioning the legal capacity of the borrower to administer the project if found necessary to protect the Government's interest. The borrower or the borrower's representative will provide to the Agency information concerning the:

- Evidence of legal action, due to a will or court actions that establish who is to become the owner, on the part of the heirs or trustee following the borrower's death;
- Financial status of the borrower;
- Status of the security property; and
- Impact of the identified actions on the project's operation.

In general, MFH Servicing officials should obtain the advice of OGC as necessary to handle circumstances involving death, bankruptcy, insolvency, and divorce.

A. Bankruptcy

The handling of bankruptcy cases varies from state to state. In general, however, MFH Servicing officials should obtain and follow the advice of OGC as necessary whenever general partners file for bankruptcy.

B. Divorce

When individual borrowers with loans are involved in a divorce action, the MFH Servicing official will review the case after the final divorce decree has been granted to

determine if any action is needed for the future servicing of the account. The MFH Servicing official will submit the case file to the Leadership Designee for advice if the MFH Servicing official is uncertain of the servicing actions needed to protect the Agency's interest, or if continuation of the loan with the remaining borrower is not authorized. The Agency will not make subsequent loans to pay equity as a result of a divorce action.

C. Membership Liability Agreements

As a loan approval requirement, some borrowers may have special agreements with members of the organization for the purchase of shares of stock or for the payment of a pro rata share of the loan in the event of a default. Alternatively, they may have instruments commonly referred to as individual liability agreements, which are usually assigned to and held by the Agency as additional security for the loan. In other cases, the borrower's note may be endorsed by individuals. The Agency will service these security and liability instruments in a manner indicated by the agreements to adequately protect the Agency's interest. The Leadership Designee will develop servicing actions with the advice of OGC.

CHAPTER 14: MANAGEMENT AND DISPOSAL OF REAL ESTATE OWNED PROPERTY

14.1 INTRODUCTION

When the Agency takes ownership of a project, adding the property to its inventory through liquidation proceedings, the project becomes real estate owned (REO). When the title transfers to the Agency, the property becomes an Agency asset. The Agency's objectives in managing and selling its inventory of REO properties include:

- Preserving affordable, decent, safe, and sanitary housing for tenants or potential tenants;
- Maintaining the value of the housing project;
- Protecting the Agency's financial interests;
- Ensuring that the properties comply with state and local code requirements and applicable environmental regulations; and

14.2 OVERVIEW OF THE CHAPTER

This chapter is divided into five sections.

- Section 1 describes the management of custodial and REO property. It describes acceptable management methods; discusses issues related to taking possession of custodial and REO properties, such as disposing of nonsecurity property and paying taxes and insurance premiums; and explains requirements related to maintenance, environmental concerns, and other management issues.
- Section 2 covers the disposition of REO property. It describes the methods for pricing and selling the properties and outlines procedures for accepting bids from potential purchasers. It also describes the standards the property must meet before being sold.
- Section 3 describes the environmental requirements that must be fulfilled before selling an REO property. These include requirements related to flood and mudslide hazard areas, wetlands, coastal barrier resources systems, historic places, protective covenants and easements, underground storage tanks, and hazardous substances.
- Section 4 outlines the procedures for processing and closing the sale of an REO property. These procedures are similar to the procedures for closing other Agency loans. This section also highlights some of the special considerations for REO properties.
- Section 5 provides instructions on processing credit sales for non-program terms.

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SECTION 1: MANAGEMENT OF CUSTODIAL AND REO PROPERTY

14.3 OVERVIEW

The Agency assumes management responsibility for two types of properties: custodial and REO. Custodial property is borrower-owned property that has been abandoned. REO is Agency-owned property to which the Agency has acquired title, either as a result of foreclosure or conveyance by deed in lieu of foreclosure. This section outlines the requirements for management of each type of property.

MFH Servicing officials are responsible for ensuring that custodial and REO properties are appropriately managed and maintained. The goal of property management is to protect the tenants and the interests of the Government. Consequently, Agency efforts to secure and manage these properties are to begin immediately once the following occurs:

- The property title is conveyed to the Agency; or
- The Agency determines property is abandoned.

14.4 MANAGEMENT METHODS AND CONTRACTS

The Agency has the authority to contract with qualified management entities to perform the management activities discussed in this section. The extent of management is dependent on factors such as:

- The nature of the project;
- The project's location;
- The condition of the project;
- Necessary maintenance; and
- Availability of acceptable management entities.

In some cases, the existing management agent can be maintained; in others, the Agency must hire a new management agent to provide all property management services on behalf of the Agency.

A. Selecting a Management Contractor

Management contractors are selected in accordance with Agency procurement procedures outlined in RD Instruction 2024-A. Alternative methods for selecting a management contractor may be established by the Agency if it is in the best interest of the Government. Alternative selection methods require advice from the Office of General Counsel (OGC). Prior to obtaining a management agent for custodial property, the Agency should determine if court approval is required.

B. Management Contract Requirements

At a minimum, management contracts must:

- Allow for properties to be added or removed from the contractor's assignment, whenever necessary, such as when a property is taken into custody, acquired, or sold during the period of a contract;

- Prohibit the contractor or associates of the contractor from performing repairs if the executed agreement calls for the contractor to provide detailed repair specifications;

- Require the management agent to hold security deposits in trust and handle them in accordance with the tenant's lease or occupancy agreement; and

- Require compliance with environmental laws.

The management agent must develop an Affirmative Fair Housing Marketing Plan (AFHMP), in accordance with RD Instruction 1901-E. The AFHMP must be submitted to the loan office. The AFHMP must receive written approval from Rural Development's Civil Rights Staff. *Form RD 1955-62, Request for Contract Services for Custodial/Inventory Property or Program Services* is a sample statement of work for a project management contract.

C. Management Costs

The costs of management services related to REO property will be paid out of income generated by the housing project being managed. If income from the housing project is inadequate to pay for management services, Agency resources may be used to pay for management services.

D. Project Funds

When a property becomes REO, the Agency transmits operating and maintenance, reserve accounts, and escrow funds to the St. Louis Office. The former borrower's account is credited for these amounts. If there is a surplus of funds, the St. Louis Office will forward a refund check payable to the former borrower.

14.5 TAKING POSSESSION

A. Taking Custodial Possession

The Agency is authorized to take custody of security property when a borrower becomes incapacitated, dies, or has abandoned a security property. When the MFH Servicing official has attempted for more than 30 days and is unable to contact a borrower, the MFH Servicing official must inspect the property to determine its status and attempt to locate and contact the borrower. The MFH Servicing official should seek the advice of OGC in making its determination and recommendation.

1. Determining Whether a Property Has Been Abandoned

The determination that a property has been abandoned requires significant investigation and documentation. In addition to the actions described in this paragraph, the MFH Servicing official must follow any procedures required by state or local law in order to confirm the determination of abandonment and to take custodial possession. The Agency cannot act to obtain possession of a property as long as a lien holder has legal possession of the property, or the borrower or the lien holder has a right to lease proceeds. MFH Servicing officials cannot classify a property as "abandoned" prior to documenting attempts to:

- Determine that there is no clear evidence of management presence at the project. For example, a site visit indicates that tenants are unable to contact borrower or property manager regarding repairs or rent collection, the project has fallen into disrepair due to a total lack of maintenance activities, or the Loan Servicer cannot locate the borrower or property manager;

- Locate the borrower through sources including, but not limited to, tenants, the postal service, utility companies, business associates, relatives, insurance agents, and tax authorities; and

- Determine whether there are other liens on the property**.** If liens exist, whether the lien holder(s) are willing to work with the Agency to secure the property.

2. Recommendation for Taking Custody

The MFH Servicing official will report its findings to the Leadership Designee. The report will recommend that a property be taken into custodial possession if it appears that the property has been completely abandoned and the Agency needs to assume responsibility for it to protect the security. Alternatively, if the MFH Servicing official reports that the property is occupied, the report will give details as to whether the occupants are under a lease or are unauthorized. The MFH Servicing official will provide any other relevant details and recommend future action. When appropriate, the Leadership Designee will authorize the MFH Servicing official to take custodial possession. When the MFH Servicing official believes that a property is abandoned, it must prepare a report that provides evidence of a property's abandonment. The report is placed in the borrower's case file, and a copy of the report is forwarded to the Leadership Designee.

3. Liquidation

The need to take custodial possession of a property may occur before or after a loan has been accelerated. If liquidation is not already in progress, taking custodial possession should initiate the process. MFH Servicing officials are responsible for conducting liquidation activities.

B. Acquiring an REO Property

When MFH Servicing staff acquires a property, the MFH Servicing official must notify the Leadership Designee. An additional REO case file should be created from the original case. The REO case file should include the property title, recent inspection reports, appraisals, environmental reviews, and any other documentation related to the physical condition or value of the property. No information related to the borrower is needed in the REO file.

14.6 INSPECTING AND SECURING CUSTODIAL AND REO PROPERTY

Once REO property is acquired, a MFH Servicing official must inspect the property to determine what steps need to be taken to further ensure its security and maintain its value. The inspection will allow the MFH Servicing official to designate the property as program or non-program and evaluate the need for repairs.

A. Inspecting and Classifying the Property

A MFH Servicing official must perform an on-site field inspection of REO property to:

- Determine repair needs;
- Gather information to assist in completing the environmental review;
- Assist in updating the due diligence report and appraisal, as necessary; and
- Take necessary actions to secure and maintain the housing project.

Based on the results of the inspection, the MFH Servicing official will designate the REO property as program or non-program property after considering factors such as size; design; possible health and/or safety hazards; and obsolescence due to functional, economic, or locational conditions. REO property may be sold as non-program property it any of the following conditions exist:

- The housing project does not meet Agency requirements and the cost of bringing the housing into compliance is determined, by the Agency, to be economically unfeasible based on the amount of funds available to the Agency and the housing needs in the market area where the housing is located;
- Attempting to sell the property on program terms is not in the best interest of the Federal Government; or
- Hazardous substances or petroleum products have been released on the property and the cost of cleanup is estimated to exceed the dollar value the Agency will recover through sale of the property.

REO property in an area no longer designated rural is treated as if it were still in a rural area.

B. Securing Custodial and REO Property

When the Agency assumes management responsibility and takes possession of REO or custodial property, immediate steps must be taken to inspect and secure the property whether by a MFH Servicing official or management contractor.

1. Physical Security of Vacant Properties

If the property is vacant, it should be locked or otherwise secured and a no trespassing notice should be posted. For REO only, after an inspection determines utility systems are in safe operable condition, utility companies should be contacted to maintain or reinstate utility service. An inventory should be made of any nonsecurity personal property left on the premises and efforts made to identify any owners or lien holders.

2. REO Properties Occupied by Tenants

REO property may be occupied by tenants with leases executed by the former borrower. The Agency may require tenants to sign a new lease, but if it is in the best interest of the Government, the Agency may honor existing leases. The Agency may evict unauthorized tenants.

When units in an REO property are under an existing lease and the Agency decides to continue the lease, the tenant must be notified, in writing, that the Agency has acquired the former owner's rights under the lease and that all payments should be remitted to the Agency's management agent. If a lease is to be terminated, the tenant must be notified, in writing, that their lease is being terminated in 30 days, and they must vacate. The OGC should be contacted for advice and assistance prior to evicting a tenant in order to obtain possession of an REO property.

Rent payments due and payable before the date the Agency acquired the property are applied to the borrower's account. Any surplus funds will remain with the project.

14.7 DISPOSITION OF NONSECURITY PROPERTY

The Agency has no legal claim to any nonsecurity, owner, or tenant property left on the premises. State or local law may affect procedures for disposing of personal property left on the premises of an REO or custodial property. The Agency must comply with any state or local requirements, as well as the procedures discussed in this paragraph. If the owners or lien holders of any personal property that remains custodial or REO property can be identified and located, the Agency must offer them a reasonable opportunity to remove the property. Any conversations with the owner of the property should be documented and placed in the case file.

A. Custodial Property

The Agency may remove any nonsecurity personal property from custodial properties as long as such property can be safely stored. Personal property cannot be removed and stored if:

- The storage facility presents a hazard to the security of the property, such as a leaking roof or unsecured area, which allows access to the property by unauthorized persons; and

- The personal property itself presents a hazard, such as flammables or explosives. Hazardous materials must be managed in compliance with Paragraph 14.10.

B. REO Property

1. Notice to Owners or Lien Holders of Personal Property

If the property is not retrieved after the initial notification, a certified letter should be sent, return receipt requested, notifying the owner or lien holder of the date on which the Agency will dispose of the property, and that the property may be retrieved before the disposition upon payment of any expenses incurred by the Agency related to the personal property, such as advertisement or storage.

2. Disposal of Unclaimed Property

The Agency will dispose of unclaimed property in accordance with its value and conforming with local practices. For example, if there are items of significant value, an advertisement may be placed in the local newspaper. Unclaimed tenant property will be disposed of in accordance with the terms of the lease.

3. Income from Disposition

Proceeds from the sale of items under lien should be paid to any owner or lien holder after deducting Agency selling expenses. If there is no known owner or lien holder, proceeds are applied to the REO account.

14.8 TAXES AND INSURANCE

A. Taxes

REO property is subject to taxation by state and local political jurisdictions in the same manner and to the same extent as other properties, unless state law specifically exempts property owned by the Federal Government. If a jurisdiction changes the law to begin taxing Government-owned property, only taxes accrued after the effective date of the change will be paid. A MFH Servicing official must notify the taxing authority, in writing, when title to real estate is acquired and provide the MFH Servicing address to which tax bills should be sent during Agency ownership.

If the value of the property is significantly less than the value at which it is being taxed, as soon as it is acquired the Agency may request a new assessment by the local taxing authority. Management contracts between the Agency and property managers may include provisions allowing the management agent to request a new tax assessment.

If property is acquired subject to a prior lien, before the Agency pays taxes, the MFH Servicing official must contact the prior lien holder to determine if that lien holder will pay the taxes.

Taxes on program property are paid when due. Taxes on non-program property may be deferred until the property is sold if the taxes that accrue before disposition exceed the value of the property. If the taxing authority schedules a tax sale before the Agency can sell the property, the MFH Servicing official will determine what is in best interest of the Government. To make this determination the MFH Servicing official will calculate the net recovery value that would result from paying the taxes and continuing sales efforts. This calculation will be compared with the net recovery value if the Agency allowed the property to be sold for delinquent taxes. (See Chapter 12 for a more detailed discussion of net recovery value.)

B. Insurance

1. Custodial Property

Insurance on custodial property will be maintained per program instructions.

2. REO Property

Insurance will not be canceled when property is acquired. However, the Agency will pay additional premiums to continue coverage only when it is in the best interest of the Federal Government. If it is necessary to file a claim, the MFH Servicing official should submit the claim and direct that insurance proceeds be forwarded to the St. Louis Office.

14.9 PHYSICAL MAINTENANCE AND REPAIR

Custodial property will be maintained and repaired only as needed to protect the security of the property and to prevent deterioration. In the case of historic buildings, such repair and maintenance will be done in a manner that preserves the design integrity. Consult with the SEC and/or SHPO to resolve any issues in this regard**.** In the event of damage or theft, the procedures described under subparagraph A of this section should be followed.

All contracts for management or lease of REO property will contain provisions that protect environmental resources determined to be present in keeping with Section 3, Environmental Requirements

REO property designated to be sold as program property must be repaired, as necessary to meet the Agency's requirements for decent, safe, and sanitary housing.

REO property designated to be sold as non-program property will be managed in a manner that:

- Removes health and safety hazards;
- Prevents deterioration; and
- Complies with state and local requirements for the sale of the property.

Additional repairs or renovations will only be made if they will enhance the sale value of the property and are determined, by the Agency, to be in the best interest of the Government.

A. Vandalism and Theft

The MFH Servicing official will report any willful damage or theft to the local law enforcement authorities and in whatever manner necessary, to attempt to resolve the incident, including signing complaints and testifying at hearings or trials.

The MFH Servicing official should send a written report of the incident to the Leadership Designee and a copy to the Regional Office of the Inspector General (OIG). The Leadership Designee, in consultation with the OGC as necessary, will advise and assist the MFH Servicing official.

Damage to REO program property as a result of vandalism and theft may be repaired as necessary to continue marketing. Repairs may include cost-effective improvements to minimize the likelihood of future damage, such as increased lighting, security fencing, and removal of shrubs that limit visibility. Non-program property should be broom swept, but generally will not be repaired unless necessary to prevent deterioration. Custodial property should be repaired only to protect the security and prevent deterioration.

B. Off-Site Repairs or Improvements

The Agency may require off-site repairs or improvements to protect property from damage, to protect the Government's interest or enhance the marketability of property. Off-site improvements must be approved by the Leadership Designee. To obtain approval, the MFH Servicing official must prepare a justification that demonstrates failure to make the improvements would likely result in a loss in property net recovery value greater than the expenditure, and that there are no other feasible means with state or local entities to accomplish the same result.

To obtain off-site improvements, the Agency may enter into a contract with a private company or enter into a cooperative agreement with a state or local government, or other entity to obtain repairs or improvements. Under a cooperative agreement, the entity will provide money, property, services, or other items of value to the entity to accomplish a public purpose. While cooperative agreements are not a contract action, the authority, responsibility, and administration of a cooperative agreement must be consistent with contract action. OGC should be consulted when a cooperative agreement is considered.

14.10 SPECIAL USES OF REO

A. Transitional Housing for the Homeless

By a Memorandum of Understanding (MOU) between the Agency and the Department of Health and Human Services, REO property that is not under lease or sales agreement may be leased to public bodies and nonprofit organizations to provide transitional housing for the homeless.

B. Mineral Leases

When it is in the best interest of the Government, the Agency may lease mineral rights associated with REO property. OGC should be contacted for assistance in preparing the lease agreement. The appropriate level of environmental review must be completed prior to any agreement to lease mineral rights. Since such actions may be controversial and may have the potential for significant impact on the environment, prior consultation with the Agency Environmental Staff is required.

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SECTION 2: DISPOSITION OF REO PROPERTY *[7 CFR 3560.503]*

14.11 OVERVIEW

The Agency will make every effort to sell REO properties quickly and at the best possible price. Whenever possible, preference will be given to selling REO program property to a program borrower. Preference will be given to offers from bidders who are determined eligible by the Agency to purchase REO property designated to be sold as program property.

A. Sale Methods and Pricing

Most REO properties are sold through public drawing. However, the Agency may sell properties through auction, sealed bid, negotiation, or agreements with other Federal Agencies, such as the Department of Housing and Urban Development (HUD).

REO properties are initially priced for sale at their present market value, as determined by appraisal. Administrative price reductions may be taken over time to facilitate sale of the property (see Paragraph 14.14 for a discussion of price reduction). A schedule is published that restricts sales of program property to program-eligible buyers for a period of time before any offering to the general public, and whenever there is a reduction in price.

An Affirmative Fair Housing Marketing Plan, as described in Paragraph 14.15, must be prepared for REO multi-family housing properties of four or more units.

B. Financing

When funds are available, the Agency may offer financing to buyers of REO property. When program credit is offered, the loan is processed following the procedures described in HB-1-3560.

Non-program credit terms are offered when the buyer is not eligible for a Section 514 or 515 loan, or the property does not qualify as a program property. Section 5 provides instructions for credit sales on non-program terms. Buyers who receive financing on non-program terms must be advised that they are not eligible for interest credit or rental assistance.

C. Warranty

The Agency does not provide a warranty of either the title or the physical condition of any REO property.

14.12 PRICING AND SALES SCHEDULES

REO housing is priced and initially offered for sale at its present market value, based on a current appraisal. Administrative price reductions may reduce the offering price to facilitate the sale. Mineral, water, and similar rights are generally sold with the property and are not sold

separately except when the Government's security interest will not be jeopardized. Lease or royalty interests that do not pass by deed are assigned to the buyer.

A. Appraisals

To determine the property's present market value, the MFH Servicing official must arrange for an appraisal in accordance with the procedures described in Chapter 4, Notice of Funding Availability (NOFA) and Initial Application Process. If repair or improvement is planned, the appraisal must provide both as-is and as-improved values. Each as-improved appraisal must include a list of the planned repairs. Any special flood or mudslide hazard areas or wetlands and related use restrictions must be reflected in the appraisal. All REO property considered for disposal or lease must be evaluated for possible contamination from hazardous substances or petroleum products through the process of due diligence and completion of the Transaction Screen Questionnaire (*TSQ)* as described in Paragraph 14.26. This will normally be completed at the same time as, or prior to, the appraisal.

A property must be reappraised whenever its condition has deteriorated, it has been significantly damaged or vandalized, additional repairs and improvements have been made, cleanup of hazardous material or lead-based paint, or there has been a change in market conditions. Refer to Section 3 for detailed environmental requirements.

B. Sales Schedules and Administrative Price Reductions

The sale of REO program property is restricted to program-eligible buyers when a property is offered for sale and any time an administrative price reduction is taken. Exhibit 14-1 provides the sales schedule for program property. The sales price is fixed when a sales contract is executed and does not decrease further based upon scheduled price reductions.

Exhibit 14-1

Sales Schedule for Multi-family Housing REO Property Program Property

Days from Initial Offer	Action
Day 1	Initial offer (appraised as-is value with subsidy).
Day 45	If no acceptable offer, reduce price by 10 percent and offer again.
Day 91	If no acceptable offer, reduce price by another 10 percent or use other methods (additional 10 percent price reductions allowable after 45 days)
Day 180	If no acceptable offer, submit REO case file with documentation of marketing efforts to State Office for further advice on sales incentives or to authorize sealed bid/auction. MFH Servicing official may reevaluate whether the project should be classified as a program property.

Exhibit 14-2 provides the sales schedule for non-program properties. If a program property has not sold following active marketing efforts and two price reductions, the MFH Servicing official will reevaluate the property to determination if it should continue to be marketed as a program property. The reevaluation process may include an updated appraisal.

Exhibit 14-2

Sales Schedule for Non-Program REO Property

Days from Initial Offer	Action
Day 1	Initial offer (appraised as-is value without subsidy).
Day 45	If no offer, reduce price by 10 percent and offer again. Additional 10 percent price reductions are allowable after 45 days.
Day 91	If no acceptable offer, reduce the price by another 10 percent or use other sale methods.
Day 180	Submit REO case file with documentation of marketing efforts to State Office for further advice on sales initiatives to authorize sealed bid/auction.

14.13 MARKETING AND ADVERTISEMENT

A good marketing plan is the key to reaching the maximum number of potential buyers and to ensuring that eligible program applicants have an opportunity to purchase REO properties. The Agency may advertise directly or contract for advertising services. Broker contracts may include advertising services. All advertisements must state occupancy or environmental restrictions.

A. Fair Housing and Affirmative Fair Housing Marketing Plan

All advertising must meet equal housing opportunity requirements and contain the equal housing opportunity statement and logo.

B. Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA) Integrated Mortgage Disclosures rule (TRID)

If the availability of Agency financing will be advertised, marketing efforts must conform to the requirements of the TRID. Exhibit 14-3 highlights these requirements.

Exhibit 14-3

TRID Highlights

- Advertisements that state specific credit terms must state only terms that will actually be offered.
- Any finance charge listed must be stated as an annual percentage rate.
- Key terms related to financing used in the advertisement must be defined

C. Advertising and Marketing Methods

Advertising efforts should be designed to reach a broad audience. The MFH Servicing official or Leadership Designee should identify appropriate marketing efforts and tailor them for each market area. At a minimum, advertisements must be placed in newspapers of general circulation and posted on the local Field Office bulletin board. Other marketing efforts that may be appropriate include:

- Posting an advertisement on the Agency's multi-family housing REO Web site at https://mfhreo.sc.egov.usda.gov. This site allows staff to upload, modify, and delete properties. The general public will view multi-family housing REO properties for sale at: http://www.resales.usda.gov;

- Posting advertisements in public locations accessible to prospective purchasers, including community bulletin boards and major employment sites;

- Broadcasting announcements on radio or television; or

- Informing potential program applicants or investors of the availability of REO properties.

Advertisements must include the following:

- Appropriate language, stressing the need for potential buyers to complete and submit an application and other required documentation;

- Any restrictive-use requirements that will be attached to the project and added to the property's title;

- Sale price; and

- Date, time, and location of drawing. The date and time must allow adequate time for advertising and review of application packages.

D. Review of Marketing for Unsold Properties

At least quarterly, the Leadership Designee must review the status of unsold REO property to ensure that acquired properties are being placed on the market promptly, properties on the market are selling within a reasonable time frame, and that properties under contract are closed in a timely manner. Of particular concern are:

- Properties acquired more than 90 days ago that have not yet been made available for sale;

- Program properties that have been available for sale for 6 months or more and are not under contract;

- Non-program properties that have been available for sale for 4 months or more and are not under contract; and

- Properties that have been under contract for more than 60 days and have not closed.

14.14 SPECIAL MARKETING TECHNIQUES

A. Buyer Incentives

The Leadership Designee may authorize buyer incentives when the MFH Servicing official provides evidence that a specific market area is depressed and the incentives are required to stimulate buyer interest. To request approval for buyer incentives, the MFH Servicing official must describe past efforts to sell the property and explain why the proposed incentives are expected to produce improved results. Incentives, such as the payment of closing costs, may be appropriate for any property. Amortization schedules longer than the standard term may be offered for non-program properties.

B. Broker Incentives

When an additional broker incentive is needed, such as when a very low-value property offers an inadequate commission; the Leadership Designee may authorize a minimum commission or fixed-amount sale bonus. To request the incentive, the MFH Servicing official must describe the past efforts to sell the property and justify the amount and the purpose of the incentive. Upon the approval of the Leadership Designee, a

written offer of the incentive that specifies the requirements and circumstances in which the incentive will be given must be provided to the broker.

C. Acquisition of Land, Easements, or Rights-of-Way to Effect Sale

When it will help the sale of REO property and it is in the best interest of the Government, the Leadership Designee may authorize the acquisition of adjacent land, easements, or rights-of-way in order to cure title defects or encroachments. Additional land may not be acquired at a cost in excess of its appraised market value.

14.15 REO PROPERTY NOT MEETING PHYSICAL STANDARDS

When REO property does not meet the Agency's dwelling standards, and making repairs that will allow the property to meet these standards is not economically feasible for the Government, the property is listed, advertised, and sold with specific occupancy restrictions.

Housing that does not meet the Agency's dwelling standards may still be considered decent, safe, and sanitary if it:

- Is structurally sound and habitable;
- Has a potable water supply;
- Has functionally adequate, safe, and operable heating, plumbing, electrical, and sewage disposal systems;
- Meets the Agency's thermal performance standards; and
- Is safe—that is, a hazard does not exist that would endanger the health or safety of occupants.

The deed by which such a property is conveyed will contain a covenant restricting the new owner from allowing occupancy of affected residential units until it those units meet the Agency's dwelling standards, as discussed in Chapter 3 of HB-1-3560. Property that is not decent, safe, and sanitary must still meet the Agency's environmental requirements, including the management of hazardous substance requirements discussed in Paragraph 14.10.

In the event that the Agency has acquired property that is unsafe and cannot feasibly be made safe, for reasons that are environmental in nature or relate to contamination from hazardous substances or petroleum products, the MFH Servicing official will provide appropriate information to the Leadership Designee, including the observations and recommendations of the Agency Environmental Staff. The Leadership Designee will submit the case file, along with complete documentation of the problem and a recommended course of action, to the Deputy Administrator, Multi-Family Housing, with a copy to the Director, Program Support Staff, for their joint review and guidance.

A. Notice of Occupancy Restriction

The notice of sale and sale contract must describe the specific conditions that prohibit occupancy and the items necessary for the property to meet decent, safe, and sanitary standards, using language similar to the following:

> "Pursuant to Section 510(e) of the Housing Act of 1949, as amended, 42 U.S.C. 1480, RHS has determined dwelling unit or units on this property inadequate for residential occupancy. The quitclaim deed by which this property will be conveyed will contain a covenant excluding the inadequate residential unit(s) from residential use until the dwelling unit(s) is repaired or renovated as follows:" (insert the items necessary for the property to meet decent, safe, and sanitary standards, clearly indicating the inadequate unit(s) and necessary repairs for each unit).

For purposes of advertising, the list of specifications may be replaced with a statement to contact the Agency, or the real estate broker under an exclusive listing contract or "any real estate broker" for open listing agreements, whichever is relevant, for a list of specific items necessary for the property to meet decent, safe, and sanitary standards.

B. Quitclaim Deed Restrictive Covenant

The quitclaim deed must contain a covenant restricting residential occupancy if units within the project fail to meet the Agency's dwelling standards. The covenant must describe the conditions that prohibit occupancy of specific units and specify the improvements that are necessary for the property to fully comply with Agency standards for housing that is decent, safe, and sanitary. The covenant may use language in a State Supplement, similar to the following:

> "Pursuant to Section 510(e) of the Housing Act of 1949, as amended, 42 U.S.C. 1480, the purchaser ('Grantee' herein) of the above described property ('subject property' herein) covenants and agrees with the United States acting by and through the U.S. Department of Agriculture ('Grantor' herein) that the inadequate dwelling unit(s) located on the subject property as of the date of this quitclaim deed will not be occupied or used for residential purposes until the item(s) listed at the end of this paragraph have been accomplished. This covenant shall be binding on Grantee and Grantee's heirs, assigns, and successors and will be construed as both a covenant running with the subject property and as equitable servitude. This covenant will be enforceable by the United States in any court of competent jurisdiction. When the existing dwelling unit(s) on the subject property complies with the aforementioned standards of the U.S. Department of Agriculture in accordance with its regulations, the subject property may be

released from the effect of this covenant and the covenant will thereafter be of no further force or effect. The property must be repaired as follows:_____." (insert the items referenced in the notice of sale and sale contract, necessary for the property to meet decent, safe, and sanitary standards)

C. Release of Restrictive Covenant

When the owner requests a release of the restrictive covenant, the Agency inspects the property. The Agency will release the covenant if the conditions that prohibited occupancy have been corrected; the specific items necessary for the property to meet decent, safe, and sanitary standards have been provided; or the structure necessitating the restrictive covenant has been removed from the site. Restrictive covenants, established as environmental mitigation measures, will not be released without the concurrence of the Leadership Designee.

14.16 DISPOSITION BY PUBLIC DRAWING

Public drawing is the preferred and most common method of sale for REO properties. Exhibit 14-4 outlines the public drawing process. Use of any other sale method requires approval from the Leadership Designee.

Exhibit 14-4 The Disposition by Public Drawing Process	
Step 1	The property is offered for sale at market value. MFH Servicing official completes *Form RD 1955-40, Notice of Real Property for Sale*.
Step 2	The MFH Servicing official advertises the property. Contacting known interested parties is part of advertising efforts. Program properties are offered exclusively to program applicants for the first 45 days, after which the property is available to anyone. The Agency may accept offers from program applicants prior to the advertised drawing date. Non-program purchase offers cannot be accepted prior to the drawing date.
Step 3	Offers are accepted and stamped with the date and time of receipt.
Step 4	Agency reviews offers. If only one offer is received and the offer meets Agency requirements, that single offer may be accepted. If more than one offer is received, the Agency will accept the offer that is in the best interest of the Government. If acceptable offers are comparable, these will be sealed, placed in a receptacle, and drawn sequentially.
Step 5	If no acceptable offer is received, reduce price by 10 percent or use other incentives. Repeat steps 1 through 4.
Step 6	If no acceptable offer is received, submit REO case file with documentation of marketing efforts to the State Office for further advice on sales incentives or to authorize sealed bid/auction. MFH Servicing official may reevaluate whether the project should be classified as a program property.

A. Listing the Property

REO property is offered for sale using *Form RD 1955-40.* The date indicated on *Form RD 1955-40* is the effective date of the offer to sell. An offer to purchase may be submitted at any time after the effective date listed in the notice.

When an offer is accepted, the notice of sale is revised to indicate that only back-up offers will be taken. The notice is not withdrawn until the sale is closed, except when the offer is from a nonprofit organization or a public body for transitional housing for the homeless.

REO Property Subject to Redemption Rights

REO property subject to redemption rights may still be sold if the MFH Servicing official determines there is no probability of its redemption and state law permits its sale. In states where such sales are permitted, a State Supplement will be issued with the specific state law requirements. The buyer must sign a statement acknowledging sale conditions under state law. The original signed statement will be filed in the REO case file and transferred to the borrower's case file if it is Agency financed.

B. Submission Requirements

An offer to buy must be submitted on *Form RD 1955-45, Standard Sales Contract, Sale of Real Property of the United States.* Offers received in any other form must be returned to the offeror. Any offer to buy that is contingent upon Agency credit must be accompanied by a completed *Form SF 424, Application for Federal Assistance.* Applications are considered completed and acceptable only if they include the required attachments. To establish borrower eligibility, the following attachments must be included when the application is submitted:

- Financial statements for the past two years;
- Credit report for each general partner (if limited partnership) or each officer (if corporation);
- Proposed limited partnership agreement and certificates of limited partners, if applicable;
- Tax-exempt ruling from the IRS designating the borrower organization as a 501(c)(3) or 501(c)(4) if applicant is nonprofit (if designation is pending, a copy of the designation request);
- Mission statement;
- Evidence of organization under state and local law or copies of pending applications; and
- List of board members

Those requesting Agency credit must meet the applicant eligibility requirements as outlined in Paragraph 4.16 of HB-1-3560.

C. Receiving and Considering Offers

Each offer must be date stamped when it is received. Offers received on the same day will be selected for consideration by lot. Names will be placed in a receptacle, drawn, and numbered sequentially. Offers drawn after the first are held as backup and the offeror so notified.

The Agency selects the first minimum acceptable offer received and executes *Form RD 1955-45*. The form is then sent to the bidder along with a letter to indicate acceptance of the offer. A letter is also sent to notify all unsuccessful bidders of the status of their offers.

D. Cancellation of Sales Contracts

If an offer contingent upon obtaining Agency financing on program terms is selected and the credit request is subsequently rejected, the next offer is considered. Property is

not held off the market pending the outcome of an appeal. If there are no backup offers, the notice of sale is revised to indicate the new status of the property.

When a sales contract is canceled due to offeror default, any earnest money collected is forwarded to the MFH Servicing official where it will in turn be forwarded to the St. Louis Office for application to the General Fund.

14.17 DISPOSITION BY SEALED BID OR AUCTION

Any use of the sealed bid or auction methods must be authorized by the Leadership Designee. Program properties may be sold using these methods only after regular sales efforts have been unsuccessful for six months. Either method may be used as the initial sale effort for non-program properties when regular sale efforts are not likely to result in prompt sale (such as when structures have been substantially destroyed by fire).

A. Establishing the Minimum Acceptable Offer

The MFH Servicing official must develop and document the recommendation for the minimum acceptable bid or sales price using the net recovery value worksheet provided in Chapter 12, **Attachment 12-A**.

B. Publicizing the Sale

The Agency solicits sealed bids or publicizes an auction by public notice. The notice must include the date, time, and place of the bid opening or auction and describe how bids are to be made, the required percentage of bid deposit, the maximum credit terms, the cash preference percentage described in subparagraph C.3 of this section, and other pertinent information, such as a notice of special flood or mudslide hazard area or wetland and any related use restrictions.

C. Sealed Bid Procedures

1. Submission Requirements

Sealed bids must be made on *Form RD 1955-46, Invitation, Bid, and Acceptance, Sale of Real Property of the United States*, and be accompanied by a deposit provided in the form specified in the bidding instructions. No deposit is required from bidders who are eligible program purchasers. A minimum deposit of 10 percent is required for non-program loans.

Bidders must submit their bids in a sealed envelope marked: "SEALED BID OFFER _____*" (*insert Property Identification Number).

Bids may be submitted for individual properties or a group of properties.

2. Receiving and Opening Bids

All bids will be date and time stamped when they are received. Sealed bids will be held in a secured file before bid opening. If the bidder wants to withdraw their bid, this must be done prior to the drawing date. The bid opening will be held publicly at the place and time specified in the notice with at least two Agency employees present. Each bid received will be recorded showing the name and address of the bidder, the amount of the bid, the amount and form of deposit, and any conditions of the bid. The record of bids will be signed by the staff person conducting the bid opening and retained in the REO file.

3. Reviewing and Accepting Bids

Only responsive bids will be considered. To be considered responsive, bids must be signed and dated by the offeror, include any required deposit, and be for an amount at least equal to the established minimum bid. Minor deviations or defects in the bid submission may be waived by the Leadership Designee so long as the bid meets these minimum requirements.

Generally, the highest bid will be selected. However, cash bids will be given preference over bids that are contingent upon the offeror obtaining financing if the cash offer is at least equal to a specified percentage of the highest offer. Exhibit B of RD Instruction 440.1 specifies the applicable percentage.

In the case of two identical bids for a program property, program-eligible purchasers will be selected before bidders who are not program-eligible.

4. No Acceptable Bid

If no acceptable bids are received, the Agency may negotiate a sale at the best price possible in accordance with Paragraph 14.18. All bidders must be informed, in writing, of any anticipated negotiations. Deposits must be returned to all bidders by certified mail, return receipt requested.

5. Notification to Bidders

The MFH Servicing official also must notify unsuccessful bidders in writing that their bids were not accepted and who the successful bidder was. Deposits must be returned to all unsuccessful bidders by certified mail, return receipt requested.

When a bid is accepted, the MFH Servicing official must execute *Form RD 1955-46* and send a written acceptance of the bid.

6. Failure to Close

If a successful bidder fails to perform under the terms of the offer, for any reason other than denial of credit by the Agency, the bid deposit will be forfeited and forwarded to the St. Louis Office for application to the General Fund.

Upon determination that the successful bidder will not close, the Leadership Designee may authorize direct negotiations with the next highest bidder, authorize another sealed bid sale, or authorize negotiations with other interested parties, as described in Paragraph 14.18.

D. Auction Procedures

The Leadership Designee will determine whether an Agency employee will conduct the auction or whether the complexity of the sale requires the services of a professional auctioneer. *Form RD 1955-46* is used for auction sales.

1. Selecting a Professional Auctioneer

Auctioneers are selected through a competitive process using the procedures described in RD Instruction 2024-A. The commission will be set as part of the auctioneer solicitation. If an auctioneer submits a bid with a commission rate that is significantly lower than other bids, detailed documentation will be provided attesting that they have successfully sold properties at the lower rate with no compromise in service.

2. Bid Deposits

Successful bidders will be required to make a bid deposit of 10 percent of the purchase offer. This fee will be waived for program-eligible bidders, pending final determination of eligibility. Deposits should be in the form of cashier's check, certified check, postal or bank money order, or bank draft payable to the Agency. Cash and/or personal check may be accepted only if deemed necessary for a successful auction to occur by the person conducting the auction.

Where program financing is authorized, all notices and publicity should provide for a method of prior approval of credit and the credit limit for potential program-eligible purchasers. This may include submission of letters of credit or financial statements prior to the auction. The auctioneer should not accept bids that request program financing in excess of the market value.

3. Accepting Bids

When the highest bid is lower than the minimum amount acceptable to the Agency, negotiations should be conducted with the highest bidder or, in turn, the next highest bidder(s) or other persons known to be interested in obtaining an executed bid at the predetermined minimum.

4. Purchaser's Default

Upon purchaser's default, the MFH Servicing official will remit the bid deposit to the St. Louis Office as a miscellaneous collection. The property may than be disposed of through a negotiated sale.

14.18 NEGOTIATED SALE

If no acceptable bid is received either from a sealed bid sale or at a public auction, the Leadership Designee may negotiate a sale at the best price possible without further public notice by negotiating with interested parties, including previous bidders.

A sale made through negotiation will be documented and accepted by Leadership Designee on *Form RD 1955-46* and must be accompanied by a bid deposit of 10 percent of the negotiated sales price, except that the deposit will be waived for program-eligible buyers.

14.19 DISPOSAL OF PROPERTY FOR SPECIAL PURPOSES

REO properties may benefit people in need of housing who can be reached in cooperation with other programs or Federal agencies. Cooperative agreements with other Federal or state-assisted housing programs will be announced and updated with administrative notices.

14.20 DISPOSAL AS CHATTEL OR SALVAGE

If the Agency is unable to sell non-program property by regular sale, sealed bid, or public auction, the structure may be sold as chattel or salvage to be removed from the site. *Form RD 1955-47* is used to transfer title of real property converted to chattel to the purchaser.

If no offer is received to remove the structure, the Leadership Designee may contract or arrange to have it demolished, in exchange for the salvaged materials or otherwise as determined appropriate. For example, the local fire-fighting unit may be permitted to use a structure slated for demolition as a burn for fire fighting practice. Once the structure is disposed of, the lot is offered for sale as non-program REO property.

If REO property is a vacant lot, the lot is offered for sale as non-program property.

SECTION 3: ENVIRONMENTAL REQUIREMENTS

14.21 OVERVIEW

The Agency must complete the appropriate level of environmental review under the National Environmental Policy Act for disposal of REO property in accordance with RD Instruction 1940-G prior to determining the disposition of the property. The proposed disposal of REO property will normally qualify as a categorical exclusion. However, an environmental assessment and an environmental impact statement (EIS), when deemed necessary, is required for any proposed disposal of REO property that meets one of the following criteria:

- The Agency has evidence that the transaction would result in a change in use of the REO property (for example, residential to commercial);
- The transaction is controversial for environmental reasons;
- The original environmental assessment for the project contains mitigation measures requiring an on-going managerial action (such as preservation of an historic building or setbacks from wetlands);
- The transaction affects environmental resources identified in 1940-G, or
- The property is contaminated with hazardous substances or petroleum products.

This section summarizes the basic environmental information that pertains to disposal of REO properties. For more detailed information and assistance, refer to RD Instruction 1940-G and the State Natural Resource Management Guide.

14.22 PROPERTY LOCATED WITHIN A SPECIAL FLOOD OR MUDSLIDE HAZARD AREA OR CONTAINS WETLANDS

Prospective buyers will be provided written notice that the REO property is in a special flood or mudslide hazard area.

*Form RD 1955-46 , "*Invitation, Bid, and Acceptance, Sale of Real Property of the United States" must include notice of special flood or mudslide hazard areas, wetlands and other environmental use restrictions. Prospective purchasers, auctioneers, and brokers must be provided a copy of this information.

The conveyance instrument for disposal of REO property containing wetlands or located in a special flood or mudslide hazard area must specify those uses of the property that are restricted under any Federal, state or local floodplain and wetland regulations, as well as other relevant restrictions. Use restrictions will relate to the use of the property by the purchaser and any successors as determined by the Agency. See 14.28.

14.23 COASTAL BARRIER RESOURCES SYSTEMS

REO property located within a Coastal Barrier Resource System (CBRS) will not be sold until the Agency completes consultation with the USFWS Regional Director, and agreement is reached that the proposed sale does not violate the provisions of the CBRS.

No continued Federal financing is permitted for REO property located within a CBRS.

14.24 NATIONAL REGISTER OF HISTORIC PLACES

When REO property has been determined to be listed on (or eligible to be listed on) the National Historic Register, the MFH Servicing official must consult with the SHPO. This consultation will establish any necessary restrictions on future use of the property to maintain compatibility with preservation objectives per 14.28.

A property that is listed or eligible for listing on the National Register of Historic Places may be leased or operated by management contract, the lease or management contract will contain provisions that the use will preserve property's condition and historic character.

14.25 UNDERGROUND STORAGE TANKS (UST)

USTs found on the property will be investigated to determine the contents of the tank and whether the tank has leaked or is leaking. Investigations will include the extent of contamination and methods of remediation. Such investigations will be undertaken by persons authorized by state law and provided to the appropriate state regulatory agency for consultation on appropriate steps to take. The report will be made a part of public information provided to prospective buyers and lenders. Notice of cleanup will be made a part of covenants to the deed to assure notice to future buyers as further discussed at 14.28. When a UST is leaking, the tank will be removed and the areas of contamination cleaned up in accordance with state regulations. If the UST is replaced, the work will be in accordance with state and local requirements

14.26 MANAGEMENT OF HAZARDOUS SUBSTANCES AND PETROLEUM PRODUCTS

All property considered for disposal or lease must be evaluated for possible hazardous substance contamination as part of the Agency's environmental due diligence. The minimum level of documentation of due diligence is the Transaction Screen Questionnaire (TSQ), which will be prepared by the Agency or an environmental professional under contract to the Agency. If the TSQ indicates the possibility of contamination a Phase I Environmental Site Assessment (ESA) will be prepared to determine the types of contamination present. If determined necessary by the ESA, a Phase II ESA will be prepared to determine the extent and potential costs for remediation. An environmental professional will prepare the ESA. The SEC should be consulted during this process for guidance and assistance in review and acceptability of the reports.

Environmental due diligence is normally conducted prior to the Agency taking action to foreclose and the reports previously prepared should be reviewed and supplemented as necessary prior to sale or lease.

14.27 LEAD-BASED PAINT

All projects constructed prior to 1978 will be assessed for the presence of lead-based paint in accordance with the Rural Development adopted portions of the HUD "Lead Safe Housing Rule." To assist staff in determining the requirements for compliance the "Lead-Based Paint Compliance Key" is available at the RHS Intranet site. This automated tool should be run and a copy saved for records and any requirements for investigation and remediation included in the scope of work for repair prior to sale. The costs of the lead-based paint work should also be included in the appraisal of property value.

Prospective purchasers must be notified of the results of the inspection and any remediation efforts. **Attachment 14-A** is a sample disclosure format to provide purchasers with information about known lead-based paint hazards in the property.

14.28 PROTECTIVE COVENANTS RESTRICTIONS AND EASEMENTS

The Agency has a responsibility to take actions to protect environmental resources on REO property. Protective actions or mitigation measures on future use of the property may take the form of covenants, restrictions or conservation easements and will be filed with the deed. Such protection may be used to limit use of and to protect:

- Floodplains;
- Wetlands;
- Coastal barrier systems;
- Historic and cultural resources;
- Endangered or threatened species;
- Critical habitat;
- Wilderness areas;
- Wild or scenic rivers;
- Natural landmarks listed in the National Register of Natural Landmarks; Sole source aquifer recharge areas designated by EPA;
- Designated national trails;
- Important farmland; or
- Other resources identified in 1940-G or protected under state law.

The appropriate state and Federal agencies should be consulted for determinations of effect. The advice of the Agency Environmental Staff should be sought if it appears that

disposal of the REO property may affect any of these resources and the environmental review raised as indicated in 1940-G.

Examples of use restrictions include prohibition of draining, filling or building in a floodplain or wetland area, maintaining the property in keeping with results of consultation with the SHPO or notifications on hazardous material remediation on the site.

In any case in which a property has been contaminated with hazardous materials or petroleum products, notice shall be provided to prospective buyers and a covenant attached to the deed providing notice to future buyers. The notice shall include all findings and actions to cleanup taken by the Agency. Any information from Agency site reconnaissance, investigations and clearances provided by independent environmental professionals will be made a part of presale notices and covenants or restrictions in the deed. In addition, the Agency is obligated to cleanup any materials found on site in the future provided that the materials were in place prior to the date of conveyance. Covenants and restrictions to address the specific conditions will be developed with the assistance of OGC, the SEC and Agency Environmental Staff.

SECTION 4: PROCESSING AND CLOSING

14.29 OVERVIEW

If the Agency is closing the sale with program financing, the sale is closed in accordance with program closing instructions provided in Chapter 8 of HB-1-3560. If other financing is being used, the financing agent's closing procedures should be followed. Cash sales are closed by the Agency collecting the sale price and delivering the quitclaim deed to the buyer.

Title clearance and property insurance requirements for a program-financed sale are the same as for a program loan.

14.30 SPECIAL NOTICES AT SALE

In accordance with the Residential Lead-Based Paint Hazard Reduction Act of 1992, sellers of housing built before 1978 receiving Federal assistance must provide the purchasers of such housing with specific information about the housing's lead history and general information on lead exposure prevention. As seller the Agency must:

- Provide the buyer with the lead hazard information pamphlet, *Protect Your Family from Lead in Your Home*, available from the National Lead Information Clearinghouse at 1-800-424-LEAD, or a similar EPA-approved pamphlet developed by the State;

- Permit the buyer a 10-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint hazard; and

- Include in the sales contract: (1) disclosure of any lead-based paint hazard or a statement that the Agency has no knowledge of such hazard; (2) a list of any information about the hazard available to the seller and passed on to the buyer; and (3) a Lead Warning Statement and acknowledgment, signed by the buyer. A sample disclosure format, including the required Lead Warning Statement, is provided in **Attachment 14-A**.

- Notice shall be provided to prospective buyers of all hazardous material activities and findings. This shall include access to records of Agency site reconnaissance and investigations by environmental professionals. If hazardous materials have been found in performance of due diligence, notification of remediation results will be provided. Covenants or restrictions to the deed will be developed with the assistance of OGC to address the specific conditions. The Agency Environmental Staff and the SEC should be consulted in the preparation of all environmental covenants or restrictions.

14.31 INSPECTION

An inspection of the property by the buyer should be scheduled immediately before closing to ensure satisfactory condition of the property and the resolution of any problems or discrepancies.

14.32 PRORATING REAL ESTATE TAXES AND/OR ASSESSMENTS

When REO property is subject to taxation and/or assessment, they are prorated between the Agency and the buyer, as of the date the title is conveyed. The Agency is responsible for all taxes and assessments accrued as of the settlement date, and the buyer is responsible for all taxes and assessment that accrue after the closing date. The Agency's pro rata share is deducted from the proceeds of the sale at closing, if sufficient funds are available, or is paid under RD Instruction 2024-A.

14.33 COMMISSIONS

Commissions are paid at closing if there is sufficient cash from sale proceeds to cover the commission. If not, the Agency will pay the commission and charge it to the REO account as a recoverable cost.

14.34 TRANSFERRING TITLE

The Agency conveys the property to the buyer by *Form RD 1955-49, Quitclaim Deed*, or other form of non-warranty deed approved by OGC. The Leadership Designee signs the conveyance instrument, a copy of which is retained in the REO case file. The buyer is responsible for recording the instrument.

14.35 REPORTING SALE

When the transaction is closed and the conveying instrument has been delivered, the disposition is recorded in the REO system. Real property that has been disposed of by means other than sale, including total loss or destruction, will also be reported in the REO system. Sale proceeds are forwarded to the St. Louis Office to be credited to the General Fund.

SECTION 5: PROCESSING CREDIT SALES ON NON-PROGRAM TERMS

14.36 OVERVIEW

The sale of non-program properties is conducted in a manner similar to other sales; however, there are some differences in the terms of the sale, the processing of the offers, loan closing, and the treatment of the property after the sale is complete. This section highlights these differences. See HB-1-3560 for processing credit sales for program properties.

14.37 TERMS OF A NON-PROGRAM CREDIT SALE

The following provisions apply to credit sales on non-program terms.

- **Interest rate.** The Section 515 interest rate plus 0.5 percent will be charged on all types of housing credit sales. Refer to Exhibit B of RD Instruction 440.1 for interest rates. Loans made on non-program terms will be equal to the lesser of the prevailing interest rate at the time of loan approval or loan closing; and

- **Term of note.** The note amount will be amortized over a period not to exceed 10 years. If the Leadership Designee determines more favorable terms are necessary to facilitate the sale, the note amount may be amortized using a 30-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing. In no case will the term be longer than the period for which the property will serve as adequate security.

Agency loans to finance the purchase of non-program REO property are subject to the availability of funds.

Each tenant in an REO property designated to be sold as a non-program property will be notified by the Agency, in writing, of the housing project's non-program designation and will be given an opportunity to obtain a Letter of Priority Entitlement (LOPE).

14.38 ACCEPTING OFFERS

The sale of a non-program property is similar to other sales. The MFH Servicing official will publicize the sale, accept bids, and choose a bid from the first acceptable bids received.

- **Documenting offers and acceptance.** MFH Servicing official must use *Forms RD 1955-45* and *1955-46*, as appropriate, to document the offer and acceptance. The Leadership Designee must accept the contract prior to processing a request for credit on non-program terms.

- **Cash sales.** If the offeror can purchase the property without Agency assistance, the Leadership Designee or MFH Servicing official will simply collect the purchase price (less any deposits) and deliver the deed to the purchaser.

- **Purchase with non-program credit.** Purchasers requesting credit on non-program terms will be required to submit documentation to establish financial stability, repayment ability, and creditworthiness:

  ◊ The borrower may submit the standard forms used to process program applications or comparable documentation. The Agency may request additional information as needed to support loan approval.

  ◊ A current comprehensive credit report for both the entity and the individual principals, partners, members, and the individual sub-entities or natural persons who are responsible for controlling the ownership and operations of the applicant entity, including but not limited to, principals, partners or members. The Agency will also accept combination comprehensive credit reports which provide a comprehensive view of the applicant's credit profile by combining data from all three major credit bureaus (Experian, Equifax, and TransUnion).

14.39 APPROVAL

Agency Staff must use *Form RD 3560-51* to approve a credit sale even though no obligation of funds is involved. For guidance on how to complete the form, see the special instructions on the FMI pertaining to non-program credit sales.

The MFH Production and Preservation Staff must review *Form RD 1910-11* with the applicant, and the form must be signed by the applicant.

14.40 CLOSING SALE

The MFH Production and Preservation Staff will provide the closing agent with necessary information for closing the sale. Title clearance, loan closing, and property insurance requirements for a credit sale are similar to those for program loans. As for program sales, OGC assistance will be requested to provide closing instructions.

The following are the highlights of the closing process for non-program sales:

- **Closing costs.** The purchaser will pay their own closing costs. Earnest money, if any, will be used to pay purchaser's closing costs with any balance of closing costs being paid by the purchaser. Any closing costs which are legally or customarily paid by the seller will be paid by the Agency from the down payment;

- **Down payment.** A down payment of not less than 10 percent of the purchase price is required at closing and will be remitted by the MFH Production and Preservation Staff;

- **Modification of security instruments.** MFH Production and Preservation Staff must modify security instruments as necessary:

  ◊ On the *Form RD 3560-52, Promissory Note* and/or security instrument (mortgage or deed of trust) any covenants relating to graduation to other credit, restrictive-

use provisions, personal occupancy, inability to secure other financing, and restrictions on leasing may be deleted; and

◊ Deletions are made by drawing a line through the specific inapplicable language. The borrower and an Agency representative must initial the changes.

- **Purchase of more than one property.** When more than one property is bought by the same buyer and the transactions are closed at the same time, a separate *Form RD 3560-52* will be prepared for each property, but one mortgage will cover all the properties; and

- **Reporting sale.** When the transaction is closed and the conveying instrument has been delivered, the MFH Staff will report the sale like all other sales. They will process *the MFH Advice of Mortgaged Real Estate Acquired form.*

14.41 SERVICING THE NON-PROGRAM LOAN

Credit sales on non-program terms will be classified as non-program loans and serviced accordingly. The project is not subject to any rent, occupancy, or other program requirements.

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ATTACHMENT 14-A

LEAD-BASED PAINT DISCLOSURE FORM

SAMPLE Disclosure Form for Target Housing Sales

Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

This form is also available at HUD's Lead Safe Housing website.

LEAD WARNING STATEMENT

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

SELLER'S DISCLOSURE (INITIAL)

_____(a) Presence of lead-based paint and/or lead-based paint hazards (check one below):

☐ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

_____

_____

_____

☐ Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing

_____(b) Records and reports available to the seller (check one below):

☐ Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

_____

_____

_____

☐ Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

☐ Purchaser's Acknowledgment (initial)

_____ (c) Purchaser has received copies of all information listed above.

_____ (d) Purchaser has received the pamphlet *Protect Your Family From Lead in Your Home*.

_____ (e) Purchaser has (check one below):

☐ Received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or

☐ Waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

AGENT'S ACKNOWLEDGMENT (INITIAL)

____ (f) Agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

CERTIFICATION OF ACCURACY

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information provided by the signatory is true and accurate.

_____	_____	_____	_____
Seller	Date	Seller	Date
_____	_____	_____	_____
Purchaser	Date	Purchaser	Date
_____	_____	_____	_____
Agent	Date	Agent	Date

CHAPTER 15: PROJECT PRESERVATION

15.1 INTRODUCTION

Some borrowers may want to prepay their Agency loans and convert their properties to conventional use. To protect the supply of affordable housing and to ensure that tenants of multi-family housing properties do not suffer from rent over burden or the loss of their units; the Agency requires that borrowers obtain approval before prepaying their loans *[7 CFR part 3560, subpart N]*. The approval process may allow the Agency to offer the borrower incentives to forgo prepayment and maintain the affordability of the housing. This chapter explains prepayment requirements and describes the prepayment request and approval process.

15.2 OVERVIEW OF THE CHAPTER

The key decision points in the prepayment process are shown in Exhibit 15-1 of this section. For an overview of the process, see **Attachment 15-A**.

This chapter addresses the process in five parts:

- Section 1 outlines the key eligibility requirements for participating in the process and obtaining approval to prepay.
- Section 2 describes requirements and procedures for processing and evaluating prepayment requests for loans closed before 1979 or loans with no restrictive covenants.
- Section 3 describes requirements and procedures for processing and evaluating prepayment requests for loans closed between 1979 and 1989 that have restrictive covenants. This section also describes the process of offering the property for sale to non-profit organizations and public agencies.
- Section 4 discusses properties subject to special circumstances, including foreclosure, bankruptcy, acceleration and the advance payment of accounts.

Portfolio Management Branch (PMB)

PMB was established to ensures a standard approach to the prepayment decision-making process. PMB will approve all incentive offers made by the MFH Servicing Official and authorize the closing of these offers.

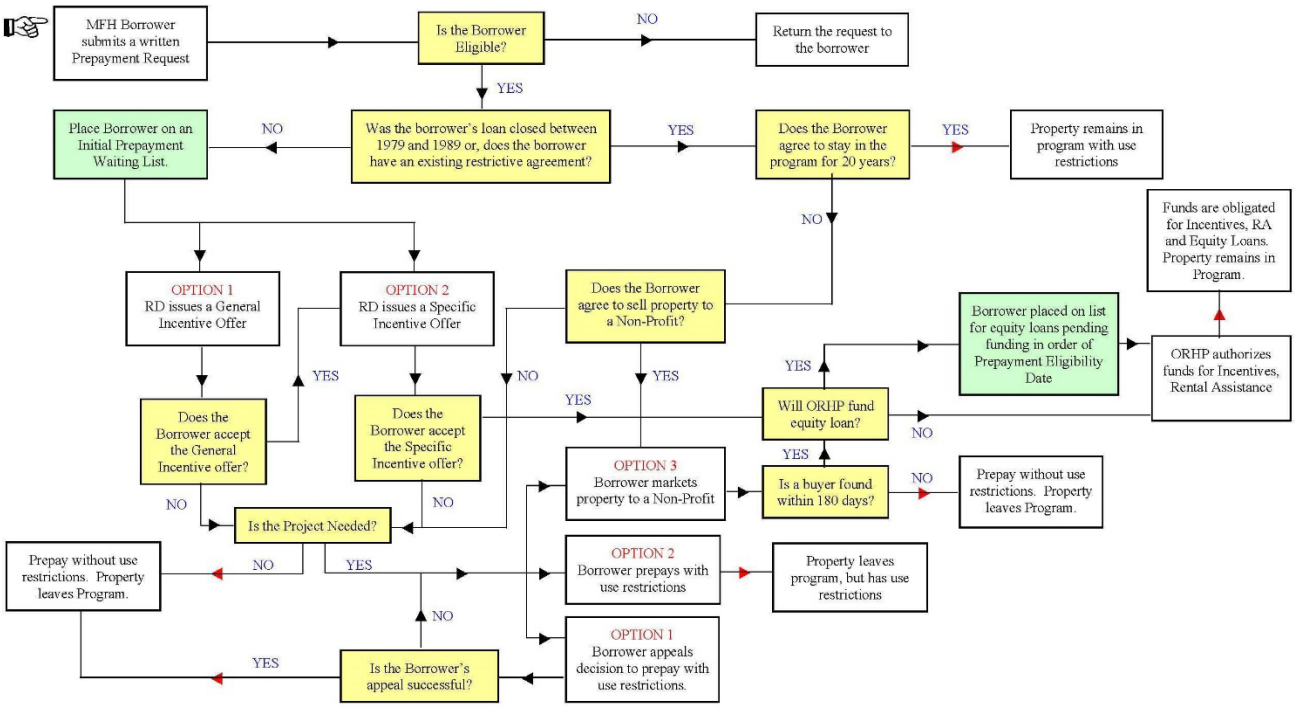
Through Prepayment Tracking and Concurrence (PRE-TRAC), PMB should be kept informed of the prepayment request's progress through the process. MFH Servicing Officials should inform PMB when:

- A prepayment request is received;
- A request is to be removed from the list;
- An incentive offer is developed and ready for PMB approval before being offered;
- A borrower accepts incentives;
- A borrower rejects an incentive offer;
- The MFH Servicing Official is ready to process a transfer to a non-profit or public body; or
- The Servicing Official requests prepayment with or without restrictive-use provisions.

MFH Servicing Officials should use PRE-TRAC, which is an Internet-ready database application that allows MFH Servicing Officials to process multi-family housing prepayment requests.

Exhibit 15-1

Flow Chart of Prepayment Requests & Incentives



SECTION 1: PRESERVATION AND ELIGIBILITY FOR PREPAYMENT

15.3 OVERVIEW

This section covers key eligibility requirements that apply to prepayment process, including:

- Determining eligibility to submit a prepayment request;
- Meeting with the borrower;
- Notifying tenants;
- Receiving a prepayment request and conducting a completeness review; and
- Determining prepayment feasibility.

15.4 BORROWERS ELIGIBLE TO REQUEST PREPAYMENT *[7 CFR 3560.652]*

Before submitting a prepayment request, borrowers should confirm that they are eligible to prepay and that they are required to submit a written prepayment request. All loans approved prior to December 15, 1989, are subject to prepayment regulations and must file a prepayment application to request payoff of the loan(s). Loans made on or after December 15, 1989, to build or acquire new multi-family housing units are prohibited from prepayment.

15.5 MEETING WITH THE BORROWER

Whenever MFH Servicing Officials receive an inquiry concerning prepayment, they should invite the borrower to a meeting. If the borrower begins the prepayment request process with an understanding of the steps involved and the incentives available, the process is more likely to proceed with fewer miscommunications and delays.

At the meeting, the MFH Servicing Official should:

- Provide the borrower with the items necessary to constitute a prepayment request in accordance with 7 CFR 3560.653 and review the list of items to be submitted. Answer any questions regarding the submissions. Make clear that a complete request includes evidence that the borrower is able to prepay the loan;
- Explain the prepayment process, including the procedures for requesting prepayment, the offer of incentives, and the sale to non-profit organizations or public agencies;
- Recommend that the borrower hold a meeting with tenants to inform them of the prepayment request and explain the implications of the prepayment process for tenants. The borrower may invite other affordable housing agencies to this meeting to discuss options with the tenants. The MFH Servicing Official may attend this meeting as well;

- Describe the incentives that may be available and explain that the offer will depend on the value of the borrower's project and its potential conventional use (**Attachment 15-B** provided a description of incentives and the incentive development process that can be given to the borrower); and
- Explain the restrictive use covenants that will apply if the borrower accepts the Agency's offer of incentives (see **Attachment 15-E**).

15.6 TENANT NOTIFICATION REQUIREMENTS *[7 CFR 3560.654]*

Throughout the prepayment process, the Agency and the borrower both have a responsibility to inform tenants of the status of the prepayment request.

Tenants are often alarmed by the prospect of prepayment and uninformed about its implications for their housing situation. The Agency recommends that owners hold a meeting early in the request process. Items to cover at such a meeting include:

- The meaning of the first tenant notification letter;
- The steps in the prepayment process;
- Potential outcomes for the property;
- Alternative housing options for the tenants; and
- Tenants' eligibility for LOPE letters.

- **Initial notice.** Within 30 days of the receipt of a written request to prepay the loan, the MFH Servicing Official must send a notification to each tenant in the project. A sample letter is attached as **Attachment 15-C**.
  - The Agency may deliver the notices to the borrower by mail or directly.
  - The Agency should also send copies of the notification to the borrower and the management agent because the borrower must post copies of the notifications in public areas in the project. These notices must remain posted until the next notice providing an update on the status of the prepayment request is sent.
  - The borrower must provide copies of the notifications to any tenants who occupy units after these notices were sent.

- **Subsequent notices.** To keep the tenants informed of the progress of the prepayment request, additional notifications are sent after key decisions in the process are made. These notices should be sent, posted and provided to new tenants, as described for the initial notice. A list of appropriate times to send these notices is provided in **Exhibit 15-2**.
- **Other interested parties.** Whenever MFH Servicing Officials provide notices to tenants regarding the prepayment process, they must also notify other interested parties such as non-profit organizations and public bodies.

Exhibit 15-2
List of Notices to be Provided to Tenants During the Prepayment Process

The following notifications must be sent to tenants at the times indicated below. These notices must be sent to individual tenant households and posted in the project.

1. Within 30 days of receipt of the prepayment request:

Tenant Notification #1: This notice must be sent within 30 days of receipt of a complete prepayment request. This letter informs tenants that the borrower has submitted a request to prepay. This letter may be coordinated with a meeting including the borrower, the tenants, and the Agency. *[7 CFR 3560.654(a)]*

2. After a decision has been made to accept prepayment or offer incentives:

Tenant Notification #2A: If the borrower's prepayment request is withdrawn, the Loan Servicer will send a letter to the tenants informing them that prepayment will not take place. If there is an appeal, this letter should be delayed until the outcome of the appeal is known. *[7 CFR 3560.654(d)]*
Tenant Notification #2B: If the borrower is permitted to prepay with or without use restrictions, the Loan Servicer will send a letter to the tenants informing them of the prepayment and providing them information on their rights (such as reimbursement of relocation costs). This letter must be sent 60 days prior to prepayment. *[7 CFR 3560.654(c)]*

3. After the offer of incentives has been accepted or rejected:

Tenant Notification #3A: If the borrower accepts the incentives and related use restrictions, the Loan Servicer will send tenants a letter informing them of the outcome and describing the use restrictions. *[7 CFR 3560.654(e)]*
Tenant Notification #3B: If the borrower rejects the incentives, the Agency will decide if prepayment will be accepted with or without use restrictions. The Loan Servicer will send letters to the tenants informing them that the borrower is prepaying with or without and explaining their rights under the use restrictions. This letter must be sent 60 days prior to prepayment. *[7 CFR 3560.654(c)]*
Tenant Notification #3C: If the borrower chooses to offer the property for sale to a non-profit organization or a public agency, the Loan Servicer will send a letter to the tenants informing them that the borrower is offering the property for sale and explaining the sale process. *[7 CFR 3560.654(f)]*

4. After the offer for sale is complete:

Tenant Notification #4A: If the borrower does not receive a good faith offer within 180 days and is proceeding to prepay the loan, the Loan Servicer will notify tenants of the prepayment. This letter must be sent 60 days prior to prepayment (i.e., 60 days prior to the end of the 180-day marketing period). If a good faith offer is received within the final 60 days of the marketing period, a new letter must be sent to the tenants as described in Tenant Notification #4B. *[7 CFR 3560.654(h)]*
Tenant Notification #4B: If a tenant applicant signs a lease in a housing project for which a prepayment request has been submitted, the borrower must provide the tenant with copies of all notifications provided to tenants by the Agency or the borrower prior to the tenant's occupancy in the housing project. *[7 CFR 3560.654(g)]*

15.7 REQUIREMENTS FOR PREPAYMENT REQUEST *[7 CFR 3560.653]*

To be considered for prepayment, the borrower must submit a complete written request at least 180 days before the expected date of prepayment. This timeframe allows the Agency time to review the request, complete the application analyses, and offer incentives, if appropriate, prior to the prepayment date. If all required procedures can be completed in fewer than 180 days, the prepayment may occur at an earlier date.

A copy of all items to be submitted by the borrower can be found in PRE-TRAC on the Prepayment Application Checklist Screen.

Good Practice-Notification to Borrowers

Some borrowers may pay their loans on an accelerated schedule. As these borrowers approach 180 days from their last payment, the Agency should notify them of their status and of their obligation to submit a prepayment request. See Paragraph 15.33 for more information on the advance payment of accounts.

15.8 RECEIPT OF PREPAYMENT REQUESTS

When a request for prepayment is received, the MFH Servicing Official must take the following steps to establish the date of receipt and begin a project file.

- Immediately upon receipt of a written prepayment request, date stamp the request and enter the date of receipt in PRE-TRAC on the Timeline Screen at Activity A00. If the completeness review shows the request to be complete (as described in Paragraph 15.9) the date stamped on the request will be used as the date of receipt. (This date will be the date the Agency receives written notification of the owner's intent to prepay.)
- Begin a project file. The Agency should have a separate file on each prepayment request that includes:
    - Application (with coversheet that summarizes all key project information);
    - Tenant notifications;
    - Project appraisal;
    - Documentation of all analysis performed;
    - Communications with the borrower; and
    - The mortgage.
- Enter prepayment-related project data info Multi-Family Information System (MFIS) and PRE-TRAC.

15.9 COMPLETENESS REVIEW

Within 10 days of receiving the prepayment request, the MFH Servicing Official must review it for completeness. This entails a brief look at the submission to ensure that all the items listed in the PRE-TRAC Prepayment Application Checklist Screen are included.

- **Complete request.** If the MFH Servicing Official determines that the request is complete, the MFH Servicing Official must:

- Send a letter to the borrower providing the date of receipt of the request, and informing the borrower that the Agency is reviewing the request and may ask for additional information;
- Send a letter to tenants informing them that the borrower has submitted a request to prepay. This letter must be sent within 30 days of receiving the request (as described in Paragraph 15.6). Also notify other interested parties at this time; and
- Complete a review of the request for the feasibility of prepayment. This review must be completed within 60 days of the receipt of the complete request and is described in Paragraph 15.10.

- **Incomplete requests.** If the MFH Servicing Official finds that all items are not included, the incomplete request must be returned to the borrower with a letter listing the missing items. The borrower may submit a new request to begin the prepayment request process again.

15.10 DETERMINATION OF PREPAYMENT FEASIBILITY

To receive an offer of incentives, the borrower must demonstrate the ability to prepay the Agency loan. Within 60 days of the receipt of a complete application, the MFH Servicing Official must review the prepayment request to determine the feasibility of prepayment and enter the date of complete application into PRE-TRAC on the Timeline Screen at Activity A06.

To determine the feasibility of prepayment, the MFH Servicing Official must review the borrower's ability to prepay. To be considered "feasible", the borrower must have the ability to prepay the loan, as discussed below. It is not in the Agency's best interest to offer incentives to a borrower who does not have the financial capacity to prepay the loan since there is little risk that the borrower will actually prepay and remove the project from the program.

The borrower may be planning to refinance the prepayment in one of three ways:

- From the borrower's own resources;
- With financing from a lender or other third-party; or
- By selling the project.

Regardless of the source of funds, the borrower must be able to show that the proposed source of financing is available. The MFH Servicing Official must review the borrower's prepayment request to ensure that the borrower has submitted sufficient evidence that the funding is available, as described below.

A. BORROWER'S FUNDS

If using their own funds, the borrower must provide:

- A balance sheet and income statement showing that sufficient cash is available to pay the loan principal or that assets of sufficient value are available and can be readily converted to cash; and

- Certification that the income or assets are not pledged elsewhere (e.g., to other prepayment requests or other loans).

B. THIRD-PARTY LENDER

If obtaining a loan, the borrower must provide an original copy of the precommitment letter from the lender, stating:

- The rates and terms of loan;
- The amount financed; and
- A description of the security of the loan.

C. SALE

If the borrower is planning to sell the project, the borrower must submit a purchase agreement and documentation of the purchaser's ability to pay. The purchaser's ability to pay can be documented in the same manner as the borrower's, as described in Paragraph 15.10 A.

15.11 ELIGIBILITY DETERMINATION

If the MFH Servicing Official determines that the borrower is eligible with a complete prepayment request and prepayment is feasible, the MFH Servicing Official continues to process the request. If the borrower is not eligible for prepayment, the MFH Servicing Official notifies the borrower in writing stating the reasons that the borrower is not eligible for prepayment.

For loans that were closed prior to 1979, or if the loan does not have any existing restrictive covenants, the MFH Servicing Official follows the process described in Section 2 of this chapter. If the borrower's loan closed between 1979 and 1989 and has a restrictive agreement, the MFH Servicing Official follows the process described in Section 3 of this chapter.

SECTION 2: LOANS CLOSED BEFORE 1979 OR LOANS WITH NO RESTRICTIVE COVENANTS

15.12 PREPAYMENT WAITING LIST

For borrowers who meet the eligibility requirements of Section 1 of this chapter and who have loans that closed prior to 1979 or have no restrictive covenants, the MFH Servicing Official will place the borrower on an initial prepayment waiting list using PRE-TRAC.

15.13 MAKING THE INCENTIVE OFFER-OVERVIEW

To encourage borrowers to forgo prepayment, the Agency offers incentives to all borrowers applicable under this section. Paragraph 15.14 through 15.21 of this section describes

the process for offering incentives and responding to the borrower's acceptance or rejection of Agency incentives.

15.14 GENERAL INCENTIVE OFFER

At the discretion of the Agency, the MFH Servicing Official may make a general incentive offer to the borrower before developing the specific incentive package. The MFH Servicing Official should make a general offer only if the borrower indicates that any specific incentive offer will be rejected. From the date of the general offer, the borrower has 30 calendar days to accept or reject the offer.

- If the borrower rejects the general offer in writing, the Agency will not develop a specific incentive offer. The Agency will determine the impact of prepayment as described in Paragraph 15.22.
- If the borrower accepts the general offer, the Agency will develop a specific incentive offer in accordance with this section.
- If the borrower rejects the general offer in writing after 30 calendar days, the Agency will not complete the specific incentive offer and will consider all incentives rejected.

15.15 SPECIFIC INCENTIVE REQUIREMENTS *[7 CFR 3560.656]*

Specific incentive offers are subject to the following requirements.

- **Value of incentive offer.** The incentive offer must be based on the Agency's assessment of:
  - The amount necessary to provide a fair return on the investment of the borrower;
  - An amount that will not cause project rents to increase above the Conventional Rents for Comparable Units (CRCU) standard in accordance with Chapter 4 of HB-2-3560; and
  - The lease costly alternative for the Federal Government that is consistent with extending the low-income use of the property.

- **Eligible recipients.** The Agency will offer incentives only to borrowers who have met the requirements outlined in Section 1 of this chapter.
- **Timeframe for offer response.** The Agency must develop the offer within 60 days of completing the review for feasibility and impact. The borrower must respond to an incentive offer within 30 calendar days. If no answer to the offer is received within 30 calendar days, the Agency must consider the incentive offer rejected.
- **Reserve requirements.** At the time the incentive is developed, the maximum reserve amount must be adjusted to include the costs of any deferred maintenance items or expected long-term repair or replacement costs of the project based on the project's capital plan. The Agency may require an additional deposit to the reserve account from the incentive package and/or reduce the incentive in order to allow the rents to be increased to fund the reserve at a level necessary to meet capital needs.

- **Capital improvements.** Any necessary capital improvements must be addressed (monies set-aside) prior to receiving any incentives.
- **Consolidation and reamortization of loans.** If a project has more than one Agency loan, existing project loans must be consolidated and reamortized unless consolidation is not necessary to maintain feasibility of the project for the current tenants or the level of monthly rental subsidies must be reduced.
- **Appraisal requirements.** An appraisal is required to provide the Agency the information needed to establish the appropriate value of the incentive offer. It is the Agency's responsibility to assure that an appraisal is obtained.

15.16 TYPES OF INCENTIVES *[7 CFR 3560.656(C)]*

The Agency may offer the borrower one or more of the items discussed below as incentives to forgo prepayment. The following considerations apply to the development of the incentive package:

- Incentive offers must not be made without sufficient Rental Assistance (RA) to protect current tenants against rent overburden. Unused State RA may be used to facilitate these transactions; alternatively, borrowers may elect to be placed on the Agency waiting list until RA is available.
- If the incentive package involves a rent increase, the Agency must approve the rent increase in accordance with budget approval procedures outlined in Chapter 4 of HB-2-3560. In no case may the rent increase cause rents to increase above the CRCU standard; except that when determined necessary by the Agency to allow for decent, safe and sanitary housing to be provided in market areas where conventional rents are not sufficient to cover necessary operating, maintenance and reserve costs. Basic rents may be allowed to exceed comparable rents for conventional unit rent level; and 150 percent of the comparable rents for conventional unit level, as discussed in Chapter 4 of HB-2-3560 *[7 CFR 3560.656(b)(3)]*; and
- An Agency equity loan must be the last incentive option considered in developing an offer.

A. Rental Assistance

The Agency may offer RA if the project tenants will experience rent overburden as a result of the incentive offer.

B. Increase in Annual Return

The Agency may offer an increase in the amount of the borrower's annual return on investment by one or both of the following methods:

- The Agency may recognize the borrower's current equity in the project at the original rate of return; and/or
- The Agency may increase the borrower's rate of return on the original equity.

The actual withdrawal of the return remains subject to conditions specified in Chapter 4 of HB-2-3560.

C. Excess HUD Section 8 Rents

For projects with project-based HUD Section 8 assistance, the Agency may permit the borrower to receive rents paid to the project in excess of the amounts needed to meet annual project operating and maintenance expenses, debt service and reserve requirements. This payment is received in a lump sum.

In these cases, the reserve account will be adjusted to provide adequate funding for long-term capital repairs and maintenance based on the project's capital plan.

D. Project Conversion or Modifications of Interest Rate

The Agency may agree to convert full-profit loans to limited profit Plan II loans or increase the interest subsidy for loans with HUD Section 8 assistance to lower the interest rate on the loan and make basic rents more financially feasible.

E. Agency Equity Loans

The Agency may make an equity loan to the borrower. The Agency may offer an equity loan only after it determines that all other incentive options will not result in an adequate incentive offer. The equity loan may not exceed the difference between the current unpaid loan balance and 90 percent of the project's value appraised as unsubsidized conventional housing.

The following requirements apply to equity loans:

- Labor housing projects are not eligible for equity loans;
- The loan must not adversely affect the borrower's prepayment ability;
- Equity loans may be processed and closed with the current borrower or any eligible transferee; and
- If the equity loan is made in conjunction with excess HUD Section 8 funds, the equity will be paid using excess reserves before an equity loan is made.

F. Third-Party Equity Loans

A third-party equity loan is not considered an incentive, but it is an option the Agency may give the borrower at the same time it makes an incentive offer.

- All incentive requirements described in Paragraph 15.15 apply to third-party equity loans;
- An offer to allow the borrower to receive a third-party equity loan must be included in the incentive calculation worksheet located in PRE-TRAC or by completing and Excel spreadsheet version for consideration in the Agency's incentive offer;
- In exchange for taking a third-party equity loan, the borrower must agree to the applicable 20-year use restrictions and all relevant requirements under this chapter;

- The Agency may subordinate its lien position on third -party transactions.
- The third-party lender must agree in writing that foreclosure action under its lien will not be initiated before holding a discussion with the MFH Servicing Official and after giving a reasonable period of notice to the Agency; and
- A third-party equity loan may be associated with a transfer of ownership.

15.17 DEVELOPMENT OF THE INCENTIVE OFFER

MFH Servicing Officials will develop the incentive offer based on calculation outlined in PRE-TRAC or using the electronic version in the form of an Excel spreadsheet. MFH Servicing Officials should complete the worksheet, according to the directions in PRE-TRAC (also provided in **Attachment 15-D** for the electronic version) and submit it to PMB prior to making the offer to the borrower.

To help ensure the consistency of incentive offers, PMB will review each completed worksheet and approve the proposed incentives before the offer is made to the borrower.

15.18 AGENCY OFFER OF INCENTIVES

Once PMB approves the incentive package, the MFH Servicing Official must send a letter (located in REP-TRAC) to the borrower outlining the choice of incentives and informing the borrower that they must respond to the offer within 30 days.

15.19 BORROWER ACCEPTANCE OF INCENTIVES AND SUBSEQUENT ACTIONS *[7 CFR 3560.657]*

If a borrower accepts the Agency's offer of incentives, both the borrower and the MFH Servicing Official have a number of responsibilities.

A. Borrower Acceptance

If the borrower accepts the Agency's offer of incentives, the borrower must complete the following actions:

- The borrower must agree to restrictive use covenants for 20 years and adopt appropriate amendments to the project's loan documents and RA agreements (if applicable);
- If the incentive offer accepted includes an Agency equity loan, the borrower must complete an application for the equity loan and the borrower must remain eligible for it. For additional information on how to process the equity loan, see Chapter 10 of HB-1-3560; and
- If the incentive offer accepted includes rent increases, the borrower must follow program requirements for rent increases. See Chapter 4 of HB-2-3560.

B. Closing the Incentive Offer

To close the incentive offer, the MFH Servicing Official must take the following steps:

- Prior to closing, notify PMB via PRE-TRAC that the borrower has accepted the incentive offer and to request the allocation of equity loan funds or RA (as appropriate);
- PMB will authorize all incentives and notify the MFH Servicing Official of the authorization;
- Insert appropriate restrictive-use provisions in the loan documents and RA agreements (e.g., the deed, security instruments, loan agreement/resolution, assumption agreement and/or reamortization agreement) with consultation from the Office of the General Counsel:

    - **For equity loans.** Execute a new loan agreement/resolution, *Form RD 3560-52, Promissory Note*, and mortgage and convert to Plan II if needed. Follow other loan closing procedures as described in Chapter 8 of HB-1-3560; and
    - **For RA or increase in owner return.** Execute a new *Form RD 3560-9, Interest Credit and Rental Assistance Agreement*, with the borrower and change the loan agreement/loan resolution as necessary.

- Notify tenants and other interested parties that prepayment will not take place.

C. Transfers

If a transfer is to take place simultaneously with the Agency incentive offer, a complete transfer application package must be submitted as described in Chapter 7 of this handbook.

- If a proposed transferee is determined not to be eligible for the transfer and assumption, the borrower will be given an additional 45 days to reconsider whether to accept the original incentive offer or find another transferee; and
- In some cases, the Agency may make an offer of incentives contingent on the successful transfer of the project to an acceptable purchaser. The Agency may offer a smaller incentive if the transfer does not take place.

15.20 INSUFFICIENT FUNDING FOR INCENTIVES

In some cases, the borrower may be offer incentives that can not be provided immediately. For example, the Agency may lack funding for equity loans or sufficient RA. If a borrower accepts an incentive offer but the Agency is unable to fund the incentive within 15 months, the borrower will be removed from the incentive waiting list. The borrower then has three options:

- The borrower may offer to sell the project to a non-profit or public agency as described in Section 3 of this chapter;
- The borrower may stay on the list of borrowers awaiting incentives until the borrower's incentive offer is funded. If this option is chosen, the Agency will not renegotiate the incentive offer; and

- The borrower may withdraw the prepayment request and be removed from the list of borrowers awaiting incentives. If the borrower chooses this option, the borrower may submit a new request for prepayment and repeat the prepayment process.

15.21 BORROWER REJECTION OF INCENTIVE OFFER AND SUBSEQUENT ACTIONS *[7 CFR 3560.658]*

If the borrower rejects the incentive offer, the MFH Servicing Official must make a determination of the project's impact and whether it is needed, in accordance with Paragraph 15.22

If the Agency determines that the project is not needed and that there is no adverse impact on minorities, the borrower may prepay without restrictions. After prepayment, the property leaves the program. Processing the prepayment request is described in 15.22.

If the project is needed, or there is an adverse impact on minorities, the MFH Servicing Official must send the borrower a letter informing the borrower of four options:

- The borrower may prepay the Agency loan subject to use restrictions. The letter should describe the applicable use restrictions. Guidance on how to determine the appropriate use restriction is described in Paragraph 15.22 A.
- If the borrower does not want to accept the use restrictions, the borrower may offer the property for sale to non-profit organizations and public agencies. This process is described in Section 3 of this chapter.
- The borrower may forgo prepayment and stay in the program.
- The borrower may appeal the decision to prepay with use restrictions. The borrower and Agency follow the appeal procedures described in Chapter 1.

The letter should also request the borrower to send a written response indicating the borrower's intentions within 30 days.

If the borrower chooses to prepay the loan subject to restrictive-use provisions, the MFH Servicing Official must determine the appropriate use restrictions to apply. The analysis for making this determination follows:

- **For prepayments that will have an adverse impact on minorities.** If the borrower chooses to prepay subject to use restrictions, the Agency must make a determination regarding the impact of the prepayment on minorities. Loan Servicing Staff should consult with the Civil Rights Staff to make this determination. The Civil Rights Staff's role is limited to the assessment of prepayment impact on minorities. Accepting prepayment with or without restrictions is an Agency determination. Relevant factors include:

    - The percentage of minorities residing in the project and the percentage of minorities residing in the projects in the market area where displaced tenants are most likely to move;

- The impact of prepayment on minority residents in the project and in the market area. Determine whether displaced minority tenants will be forced to move to other low-income housing in areas not convenient to their places of employment, to areas with a concentrated minority population and/or to areas with a concentration of substandard housing;
- The vacancy trends and number of potential minority tenants on the waiting list at the project being prepaid and at other projects in the market that might attract minority tenants; and
- The impact prepayment will have on the opportunity for minorities residing in substandard housing in the market area to have comparable decent, safe and affordable housing, as is offered by the project being prepaid.

If Civil Rights Staff determine that the prepayment will have a negative impact on minorities, the borrower must adopt use restrictions that protect the affordability of the project over the long term.

- **For prepayments that will have an adverse impact on the adequate supply of affordable housing.** In projects where the prepayment does not have an adverse impact on minorities, the borrower is required to adopt use restrictions that protect the access of current tenants to adequate affordable housing. The rent will remain at the subsidized amount even though the tenant will no longer receive RA. These provisions prohibit the borrower from raising rents for tenants who live in the property at the time of prepayment unless the rent increase is necessary to meet the operating cost of the project. (Their rents can not be raised as a result of actions associated with prepayment.)

15.22 DETERMINATION OF PREPAYMENT IMPACT

One of the Agency's key goals in the prepayment process is to ensure that affordable housing opportunities exist for program eligible tenants. Therefore, one of the most important issues to address is the impact of the prepayment on project tenants. In cases where prepayment will have little or no impact on project rents or availability of units, the Agency has less interest in keeping the property in the program than in cases where prepayment will likely result in the displacement of project tenants.

To make this determination, the MFH Servicing Official will review the following information:

- Existence of comparable conventional units, their rents and vacancy rates;
- Any plans to build a similar project in the market area; and
- Other subsidized units and the availability of RA.

The goal of this analysis is to determine if tenant will lose their units or suffer from rent overburden. The steps involved in the analysis of impact depend on whether the project has RA.

A. Prepayment Impact on Projects without Rental Assistance

For these projects, the MFH Servicing Official must review the prepayment request, including market information and address the following items:

- **Change in rents or loss of units.** The MFH Servicing Official must look at the impact of the prepayment on tenant's ability to stay in the project. This analysis depends on the proposed use of the project after prepayment and rents for comparable conventional units in the market area. (For example, if the proposed use of the project is conventional rental units, the Loan Servicer should compare rents in the project to conventional rents in the market area.) Likely rents should be compared to tenant's income to ensure that a change in rents will not result in rent overburden.

  - If prepayment is not likely to result in an increase in rents above current rents or 30 percent of tenant's adjusted incomes, the prepayment is considered to have no adverse impact on project tenants; and
  - If prepayment is likely to result in an increase in rents that will create rent overburden, the Loan Servicer must consider the availability of alternative comparable housing as described below.

- **Availability of alternative housing.** If the proposed us of the project after prepayment is likely to cause an increase in rents or a loss of units, the Loans Servicer must assess the availability of comparable housing in the community. The Loan Servicer must determine if there is sufficient housing that is comparable in size and rent to house project tenants in local communities without causing them rent overburden.

  - If there is sufficient comparable housing in the local community to replace the units that will be lost after prepayment, then the prepayment is considered to have no adverse impact on project tenants; and
  - If sufficient comparable housing is not available in the local community, the prepayment is considered to have an adverse impact on project tenants.

B. Prepayment Impact on Projects with Rental Assistance

If project tenants have RA, the Loan Servicer must conduct the same analysis as described in Paragraph 15.22 A. However, in assessing the availability of comparable affordable units, the Loan Servicer must identify comparable units with RA or other rental subsidy such as HUD Section 8 (as long as the tenants will have priority for these units).

- If sufficient comparable units with RA are available in the local community to house all tenants with RA (for example, if another Section 515 project in the local community has vacancies to house the tenants from this prepaid property), the prepayment is considered to have no adverse impact.
- If insufficient units with RA are available, the prepayment is considered to have an adverse impact on project tenants.

Exhibit 15-3 of this section provides an overview of the full analysis of impact.

HB-3-3560

Exhibit 15-3
Analysis of Impact on Tenants

Step 1: Answer the following questions about rents and loss of units.
Will prepayment result in an increase in tenant payments and if so, will this new payment be higher than 30 percent of the current tenant's incomes?

OR

A. Will prepayment result in a loss of units?

If the answer to both A and B is no, there is no adverse impact on tenants.
If the answer to either A or B is yes, proceed to step 2

Step 2: Answer the following questions about the availability of alternative housing:

A. Are there sufficient comparable vacant units in the market area for displaced tenants to find alternative housing?

AND

B. Are the tenants paying in these units equal to or less than the greater of their current rent of 30 percent of their income?

If the answer to both C and D is yes, there is no adverse impact on tenants.
If the answer to either C or D is no, there is an adverse impact on tenants.

C. Processing the Prepayment

Prior to prepayment, the Loan Servicer must take the following steps:

- Establish the target date for the prepayment to occur;
- Prepare the prepayment figures based on the borrower's outstanding balance on the Agency loan; and
- Notify tenants and other interested parties of the prepayment and its implications. Tenants must be notified 60 days in advance of the prepayment date.
- To finalize the prepayment, the Loan Servicer must:
- Document the borrower's satisfaction of the mortgage; and
- Place a deed restriction on the property to establish the use restrictions. Third-party subsidy (e.g., Section 8) will not be used as a substitute for Restrictive-Use Provisions (RUPs).

D. Monitoring Compliance with the Use Restrictions

If a borrower prepays a loan and the project remains subject to continued RUPs, the following requirements apply after prepayment:

- The owner of the prepaid project (formerly the borrower) is responsible for ensuring that the RUPs agreed to as a condition of prepayment are observed and must retain appropriate documentation to demonstrate compliance with the use restrictions;
- The owners must provide the Agency with a signed and dated certification within 30 days of the beginning of each calendar year for the full period of the RUPs establishing that these provisions are being met;
- The Loan Servicer must visit the site on an as needed basis to perform a physical inspection;

- The Loan Servicer must also investigate any complaints from tenants or other parties regarding the violation of the use restriction; and
- The Leadership Designee must establish a notification system to alter Agency personnel of upcoming annual certification due dates on all prepaid loans. The MFH Servicing Official must keep owner certifications and records of visits in the project file.

SECTION 3: LOANS CLOSED BETWEEN 1979 AND 1989 WITH A RESTRICTIVE AGREEMENT

15.23 APPLICABILITY

For borrowers whose loans have restrictive covenants and which closed between 1979 and 1989, MFH Servicing Officials should follow the procedures in this section. For loans closed between 1979 and 1989 with no restrictive covenants, follow the procedures in Section 2 of this chapter.

15.24 REQUEST BORROWER TO REMAIN IN PROGRAM

The Agency will make an effort to enter into a restrictive-use agreement with borrowers who received Section 514 or 515 loans on which RUPs are still in place, who received "restricted" loans, or who make a prepayment request and prepayment is feasible. If a borrower accepts the Agency's request to enter into a 20-year restrictive-use agreement, without prepayment, no further action is necessary.

After receiving a complete application to prepay and determining the borrower's ability to prepay, the Agency must make a reasonable effort to enter into a new restrictive-use agreement with the borrower before accepting prepayment of a restricted loan.

If a borrower declines the Agency's offer, the MFH Servicing Official should document this in writing, noting the date on which this information was obtained. The document should be included in the case file. The MFH Servicing Official should then proceed to review the prepayment process to determine the impact of prepayment.

15.25 SALE TO A NON-PROFIT OR PUBLIC BODY *[7 CFR 3560.659]*

A borrower who rejects the Agency's offer to enter into a restrictive-use agreement may offer the project for sale to non-profit or public agencies. A borrower who is being processed under Section 2 of this chapter, where the Agency's incentive offer is rejected may offer the project for sale to non-profit or public agencies. A borrower, who accepts the incentives but does not receive them within 15 months of accepting them, may offer the project for sale to non-profit and public agencies. This process can take up to 30 months to complete. At the end of this process, if the property has not been purchased, the borrower is permitted to prepay without RUPs.

The sale process has several steps:

- The property must be marketed for 180 days as described in Paragraph 15.27. Marketing for 180 days means that an advertisement must appear in newspapers, periodicals, newsletters, or be listed with a real estate agent for 180 days consecutively;
- The marketing information must include the following statement of the availability of financing from USDA Rural Development: USDA Rural Development may provide funding to make this purchase possible. Funding includes 100 percent RA a one percent loan for purchase and a $50,000 grant for purchase expenses;
- The borrower must provide copies of documentation, e.g., copies of advertisements and marketing letters, a list of interested non-profit organizations and public bodies to which the marketing information was provided will be submitted to the Agency during the 180 days to verify marketing met all requirements.
- The first 60 days, the borrower will market to local non-profits and public agencies. After 60 days, the borrower will market to regional and national non-profit organizations and public bodies. It should also state local non-profit organizations and public agencies have priority over regional and national non-profit organizations and public agencies.
- If no offer is made within 180 days, the borrower may prepay the loan without use restrictions **(see Paragraph 15.31)**;
- Offers received within the 180 days must be treated as described in Paragraph 15.28;
- If an offer is accepted, the purchaser must finalize the sale within 24 months. If the sale is not finalized, the borrower may prepay the loan without use restrictions **(see Paragraph 15.31)**; and
- After a sale is completed, the MFH Servicing Official must oversee the transfer of the property and continue to monitor the project as a program property **(see Paragraph 15.30)**.

15.26 ESTABLISHING THE PROJECT VALUE

To establish the value of the property (as an unsubsidized conventional property) and determine an acceptable offer, two independent "as-is" market value appraisals will be completed in accordance with Chapter 7 of HB-1-3560. The borrower must pay the expense of the borrower's appraisal. The appraiser selected may not have an identity-of-interest with the borrower.

If the two appraisers fail to agree on the fair market value, the Agency and the borrower will jointly select an appraiser whose appraisal will be binding. The Agency and the borrower will jointly fund the cost of the appraisal.

15.27 MARKETING REQUIREMENTS

The MFH Servicing Official must ensure that the borrower takes appropriate actions to inform appropriate entities of the sale. The borrower must provide the MFH Servicing Official with appropriate documentation (e.g., copies of advertisements) to demonstrate that the following actions occurred:

- The borrower must contact interested non-profit organizations and public agencies from the list maintained by PMB.
- The borrower must provide these entities with sufficient information regarding the project and its operations for interested purchasers to make an informed decision. This information must include. It should include project name, project address (city, state, zip), the minimum acceptable bid prices based on the appraised market value (as discussed in Paragraph 15.26), total number of units, bedroom types, basic and market rents, owner's name, owner's address (city, state, zip), phone and fax number, borrower's contact person/representative, and the name of the Rural Development Office that services the loan, address (city, state, zip), and phone number. If a picture of the project is available; it should be included. It should also state the preference for local entities, as described in Paragraph 15.28.
- If an interested purchaser requests additional information concerning the project, the borrower must promptly provide the requested materials.
- The borrower must advertise and offer to sell the project for a minimum of 180 days. The borrower may choose to suspend advertising and other sales efforts while eligibility of an interested purchaser is determined. If the purchaser is determined to be ineligible, the borrower must resume advertising for the balance of the required 180 days.

15.28 SELECTING AN OFFER

The borrower must accept any good faith offer at or above the minimum acceptable bid price.

- **Requirements for non-profit organizations and public agencies to purchase.** To buy and operate a multi-family housing project, a non-profit organization or public agency must meet the requirements listed in Exhibit 15-4.

Exhibit 15-4
Requirements for Non-profit Organizations and Public Agencies to Purchase

- The purchaser must agree to maintain the housing for very low- and low-income families or persons for the remaining useful life of the project and related facilities. However, currently eligible moderate-income tenants will not be required to move;
- The purchaser must agree that no subsequent transfer of the housing and related facilities will be permitted for the remaining useful life of the housing and related facilities unless the Agency determines that the transfer will further the provision of housing and related facilities for low-income families and persons, or there is no longer a need for such housing and related facilities;
- The purchaser must show financial feasibility of the project including anticipated funding;
- The purchaser must certify on *Form RD 3560-30* that there are no identity-of-interest relationships;
- The purchaser must complete an Agency-approved application and obtain Agency approval in accordance with 7 CFR part 3560, subpart I; and
- To be eligible to purchase properties, non-profit organizations must meet the criteria outlined in 7 CFR part 3650, subpart B. These requirements are discussed in Chapter 4 of HB-1-3560.

- **Preference for local non-profit and public agencies.** Local non-profit organizations and public agencies have priority over regional and national non-profit and public agencies. The borrower may not accept an offer from a regional or national non-profit organization or public agency during the first 60 days that the property is advertised.

    - If no offer from a local non-profit or public agency is received in the first 60 days, the borrower may accept an offer from a regional or national non-profit organization or public agency.
    - If more than one qualified non-profit organization or public agency submits an offer to purchase the project, the Agency will give priority to qualified local non-profit organizations and public agencies over regional and national non-profit organizations and public agencies.
    - If additional criteria are needed to make a selection, the borrower must consider the organization's past success in developing and maintaining subsidized housing and the length of experience in developing and maintaining subsidized housing. Past success is given priority over length of experience when comparing equal offers.

- **Approving an offer.** The MFH Servicing Official must approve the borrower's acceptance or rejection of any offer for purchase. If the borrower receives an offer, they must notify the MFH Servicing Official of the offer and whether or not they want to accept the offer. The MFH Servicing Official must review the borrower's decision.

    - If the borrower wants to reject the offer, the MFH Servicing Official must concur with the borrower's reasons for rejection. If the MFH Servicing Official does not concur, the borrower must accept the offer.
    - If the offer is to be accepted, the proposed purchaser must submit appropriate documentation to the Agency to demonstrate eligibility for the transfer. The MFH Servicing Official must approve the transfer and then take appropriate steps to close the transfer (see Chapter 7 for the procedures for transfer).

15.29 LOANS MADE BY THE AGENCY OR OTHER SOURCES TO NON-PROFIT ORGANIZATIONS AND PUBLIC AGENCIES

The Agency may make loans to non-profit organizations or public agencies to facilitate the purchase of the project. Alternatively, the Agency may approve a loan from another entity. These loans must be approved as described in HB-1-3560. They may be made for either of the purposes described below.

- A loan may be made to enable the non-profit organization or public agency to purchase a project at the appraised value; and
- With proper justification, a loan may be made to help meet the project's first-year operating expense if current operating funds are not sufficient. This loan may not exceed two percent of the project's appraised value.

The Agency may also make an advance of up to $50,000 to a non-profit organization or public agency to cover the costs to develop a loan application package or close a loan to purchase a property.

15.30 POST SALE REQUIREMENTS

Once the property has been sold to a non-profit or public agency, the new owner of the property is subject to all applicable program requirements and use restrictions that applied to the property prior to the sale.

- The MFH Servicing Official must ensure that the transfer of the property takes place according to Agency rules and that the new owner is made subject to all applicable use restrictions (see Chapter 7)
- The MFH Servicing Official must notify tenants and other interested parties that the sale will take place; and
- The MFH Servicing Official will monitor this property as it monitors all other program properties (see Chapter 9 of HB-2-3560).

15.31 REQUIREMENTS FOR BORROWERS IF AN ACCEPTABLE PURCHASER IS NOT FOUND

If no purchaser is found for the property within the 180-day period or if any offer is made but the purchaser fails to come up with the funds to complete the purchase within 24 months, the borrower is considered to have fulfilled the requirements for offering the property for sale. At this time, the borrower is permitted to prepay the Agency loan without use restrictions.

The MFH Servicing Official must:

- Send a letter to the borrower notifying him or her that prepayment is permitted; and
- Close out the application in PRE-TRAC.

SECTION 4: SPECIAL CIRCUMSTANCES

15.32 PROPERTIES UNDER BANKRUPTCY ON FORECLOSURE

Bankruptcy proceedings will have no effect on contractual requirements for restrictive use.

If a project that is subject to restrictive-use provisions is sold outside the program at a foreclosure sale, the Agency has no means to continue to enforce restrictive-use provisions after the purchase.

15.33 ADVANCE PAYMENT OF ACCOUNTS

When an Agency loan, which is not subject to prepayment prohibitions, reaches or falls below six remaining payments due to a borrower's voluntary advance payments or extra payments required by the Agency, the borrower will be notified that the final payment on the account can not be accepted unless a prepayment request is made. The borrower will be required to submit all applicable information to a prepayment request.

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ATTACHMENT 15-A
OVERVIEW OF PREPAYMENT PROCESS

Outlined below is a summary of the conditions to be met for making key decisions related to the prepayment process.

What are the criteria for accepting a prepayment request?

- The borrowers' loans were closed before 1989;
- All items on the application checklist have been submitted; and
- The borrowers submit proof of their ability to prepay their loans.

You may issue a general or specific incentive offer to a borrower if the following conditions are met:

- The application has been accepted (see criteria listed above);
- The existing loan is a Rural Rental Housing (RRH) loan or an Off-Farm Labor Housing loan;
- The loan closed prior to 1979; and
- There are no restrictive-use provisions associated with the loan.

Note: If the borrower is inclined not to accept a specific incentive offer, you may proffer a general offer and proceed from there when the borrower declines the offer. If, however, the borrower accepts the general offer, you must then proceed with a specific incentive offer.

A borrower may prepay WITHOUT use restrictions when the following conditions are met:

- If the borrower rejects the general and/or specific incentive offers and the property is not needed;
- If the borrower appeals the decision to prepay with use restrictions, when the property is needed, and wins the appeal;
- If the borrower markets the property to a non-profit organization and a buyer is not found within 180 days; and
- If the borrower markets the property and a buyer is found, but the deal fails to close.

A borrower may prepay WITH use restrictions when the following conditions are met:

- If the borrower rejects the general or specific incentive offer and the property is needed.

A borrower can market the property to a non-profit organization under the following circumstances:

- If the borrower's loan closed between 1979 and 1989 and the borrower does not wish to continue in the program, but agrees to sell the property to a non-profit organization;
- If the borrower's loan closed between 1979 and 1989 and the borrower does not wish to continue in the program or sell to a non-profit organization. However, a subsequent needs assessment reveals that minority tenants will be materially affected. In this case, the borrower is obligated to sell to a non-profit organization;
- If a pre-1979 borrower declines both the general and specific incentive offers, but a needs assessment reveals that the property is needed. The borrowers can then appeal the decision. However, if they lose the appeal or choose not to appeal, they can agree to sell to a non-profit organization if they do not wish to prepay with use restrictions.

A request is returned to the borrower under the following circumstances:

- If the borrower's loan closed after 1989;
- If the borrower's prepayment request is withdrawn or rejected; and
- If the project is needed, the borrower is obligated to prepay with use restrictions. The borrower can then appeal. It the borrower loses the appeal, he or she may decide to withdraw the application rather than have to sell to a non-profit organization.

Attachment 15-B
EXPLANATION OF INCENTIVE OFFERS

A. The Agency may increase the borrower's annual return on equity by one of the following two methods. The actual withdrawal of the return remains subject to the procedures and conditions for withdrawal specified in 7 CFR part 3560 subpart G of this part.

B. The Agency may recognize the borrower's current equity in the housing project. The equity will be determined using an Agency accepted appraisal based on the housing project's MARKET value.

C. When a current appraisal indicates an equity loan can not be made, the Agency may recognize the borrower's current equity in the housing project at the higher of the original rate of return or the current 15-year Treasury bond rate plus 2 percent rounded to the nearest one-quarter percent. The equity will be determined using the most recent Agency accepted appraisal of the housing project prior to receiving the prepayment request.

D. The Agency may agree to convert projects without interest credit or with Plan I interest credit to Plan II interest credit or increase the interest credit subsidy for loans with HUD Section 8 assistance to lower the interest rate on the loan and make basic rents more financially feasible.

E. The Agency may offer additional rental assistance, or an increase in assistance provided under existing contracts under §§ 521(a)(2), 521(a)(5) of the Housing Act of 1949 [42 U.S.C. 1490a (a)(2)] or section 8 of the United States Housing Act of 1937 [42 U.S.C. § 1437f].

F. The Agency may make an equity loan to the borrower. The equity loan must not adversely affect the borrower's ability to repay other Agency loans held by the borrower and must be made in conformance with the following requirements:

The equity loan must not exceed the difference between the current unpaid loan balance and 90 percent of the housing project's value as determined by an "as-is" market value appraisal conducted in accordance with 7 CFR part 3560 subpart P.

1. Borrowers with farm labor housing loans are not eligible to receive equity loans as incentives.
2. If an incentive offer for an equity loan is accepted, the equity loan may be processed and closed with the borrower or any eligible transferee.
3. Excess reserve funds will be used to reduce the amount of an equity loan offered to a borrower.
4. Equity loans may not be offered unless the Agency determines that other incentives are not adequate to provide a fair return on the investment of the borrower to prevent prepayment of the loan or to prevent displacement of project tenants.

G. The Agency will offer rental assistance to protect tenants from rent overburden caused by any rent increase as a result of a borrower's acceptance of an incentive offer or to protect tenants who are currently paying more than 30 percent of their annual adjusted income.

All incentives will be processed using the Incentive Calculation Worksheet. The Worksheet has two versions:

- A Stand Alone Excel Spreadsheet located on the Agency's Intranet; or
- The PRE-TRAC version.

SAMPLE LETTERS TO TENANTS

Initial Tenant Notification of Owner's Intent to Prepay and Voucher Availability

TO: The Tenants of [insert property name]

SUBJECT: Notice of Prepayment Request

Your apartment was developed with assistance from a loan given by the U.S. Department of Agriculture (USDA), Rural Development, and an Agency of the U.S. Government. The owners of your apartment recently asked USDA for permission to pay off their USDA loan ahead of it's final due date.

Based on USDA's communications with the owner so far, it is not clear whether:

- The owner plans to continue to operate the apartments as affordable rental housing.
- The owner wants to prepay their USDA loan, and then either sell or operate the apartment as non-subsidized apartments.
- The owner wants to sell the property to a new owner who is willing to continue to operate the apartments as affordable rental housing.
- The owner does not really plan to pay their USDA loan early. The owner has applied for financial incentives from USDA. In return for the incentives, the owner must agree to operate the apartments as affordable housing.

If USDA agrees to the owner's request and the owner pays off the USDA loan, rents at the apartments could go up and USDA would not be able to provide rent subsidy for tenants. Also, USDA would no longer be involved in supervising the apartment's management, leases, and rents.

USDA WOULD LIKE TO KNOW YOUR OPINION ABOUT THE OWNER'S REQUEST. We would like to know how you think the effect of paying off the loan would have on you, other tenants in the apartments, other people in the community, and any minorities living in the apartments and in the community.

You have 30 days from the date of this letter to give us your opinion in writing. If you wish to write us, please send your comments to the local USDA Office at the address shown above. It may be helpful to know that USDA follows a very careful process before deciding whether or not to allow apartment owners to pay off their USDA loans.

For example, USDA evaluates how prepayment would affect the tenants of the apartments.

- If USDA decides that housing opportunities for minorities would be materially affected by a prepayment, USDA will require that the owner try to sell the apartments to a non-profit organization or public agency which would continue to operate the apartment for affordable rental housing.
- If USDA decides that there is an inadequate supply of affordable housing nearby, USDA will require the owner to prepay the loan and agree to protect the existing tenants at the time of prepayment until the tenants voluntarily vacate their apartment. Even if USDA's loan is paid off, the owner will not be able to evict any tenant without cause.
- If USDA decides to allow the owner to prepay, you and the other tenants may be given immediate priority for other USDA financed apartments.

USDA has developed a rental housing voucher program. The intent of the program is to protect you if your landlord prepays the USDA loan.

If you are a tenant at a property where the owner pays off a loan before its final due date, you may be eligible for a voucher. This voucher will pay the difference between the market rent for your unit and the amount of the rent payment for that unit at the time the owner pays off the loan. This voucher will enable you to remain in your current home or move to another comparable rental unit.

We will keep you notified of the status of this request. You will be allowed to review the information used by USDA to make its decisions regarding prepayment.

If the owner disagrees with the decision that USDA makes on the prepayment request, the owner may be given an opportunity to appeal USDA's decision. If the owner appeals, tenants will be given the opportunity to submit evidence at the appeal hearing.

Please contact our office if you have any questions or concerns.

Sincerely,

Attachment
Voucher Program Form
Voucher Program Brochure

TO: The Tenants of _____

SUBJECT: Notice of Prepayment Request Withdrawal

Your apartment was developed with assistance from a loan made by U.S. Department of Agriculture (USDA) Rural Development, an Agency of the United States Government. The owners of your apartment complex recently asked USDA for permission to pay off their USDA loan ahead of schedule.

Based on USDA's communications with the owner so far, the owner plans to continue to operate the apartments as affordable rental housing and has withdrawn their prepayment request. You may remain as long as you are eligible and wish to occupy your apartment.

If you have any questions, please contact me at

Sincerely,

_____
(MFH Servicing Official)

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TENANT LETTER #2 - Prepayment Request Approved

Tenant Notification of Owner's Prepayment Acceptance
(With/Without Restrictions)

TO: The Tenants of _____

SUBJECT: Notice of Prepayment Acceptance

Rural Development has reviewed the information concerning your landlord's request to pay off the loan on **[Project Name]** and will be accepting the payment on **[Insert Date]**. As a result, you may experience an increase in your rent. This letter is following up on the letter you should have received **[Insert Date of Initial Tenant Notification Letter]**. The rent for your apartment will **[Become or Remain $]** on **[Insert Date]**.

RURAL DEVELOPMENT accepted the owner's request to payoff the loan because of the following reason(s):

[ ] The local housing market can not support a higher rent.
[ ] There are many empty apartments similar to yours in quality, size, location, and rent in (name of community)
[ ] The owner is legally agreeing to rent the apartments to (very- low, low- and moderate-income tenant) and to calculate the rents the same way they are now until _____.

[If restrictive-use provisions apply]: The owner has legally agreed to continue to rent to very-low/low-/moderate-income tenants. Rents can not be higher than what the Government determines you can afford, and will be calculated the same way as they are now, until [**Insert Date**]. The owner also has to keep the apartment as a suitable place for you to live. Any tenant, as well as USDA, may enforce the owner's agreement to rent to very-low/low-/moderate-income tenants. In order to comply with this agreement, the owner must certify your income every year.

[**If Section 8 or other subsidy**]: Part of your rent will continue to be paid by _____. However, even if _____ stops making these payments, the owner will have to continue to calculate your rent the same way it is calculated now until _____.

If you decide to remain in your apartment, the owner can not evict you without good cause, whether you or someone else is paying the rent.

The information that is attached to this letter tells you what you can do after this mortgage is paid off.

To help protect you from the impact of your landlord's mortgage payoff, you may be eligible for a USDA voucher that will provide a short-term rental subsidy and allow you to remain where you are, or to move somewhere else. If you have any questions, please contact us.

_____
(MFH Servicing Official)

_____
(Address)

_____

_____

_____
(Telephone Number)

Please contact our office if you want to see all the information Rural Development used to make this decision.

Attachments:

Attachment 1-B - Appeal Rights

ATTACHMENT 2A
TENANT LETTER #1 - Prepayment Request Received

TO: (Tenant Name)

SUBJECT: Notice of Prepayment Request

Your apartment was developed with a loan from U.S. Department of Agriculture (USDA) Rural Development, an Agency of the United States Government. The owners of your apartment recently asked USDA for permission to pay off their USDA loan ahead of schedule.

Based on USDA's communications with the owner so far, it is not clear whether:

- The owner plans to continue to operate the apartments as affordable rental housing, or to sell or operate the apartment as conventional, market rate apartments.
- The owner want to prepay their USDA loan, and then either sell or operate the apartment as conventional, market rate apartments.
- The owner wants to sell the property to a new owner who is willing to continue to operate the apartments as affordable rental housing.
- The owner does not really plan to prepay their USDA loan. The owner has applied in order to qualify for financial incentives from USDA. In return for the incentives, the owner must continue to operate the apartments as affordable rental housing.

In any case, if USDA agrees to the owner's request and if the owner actually does pay off the USDA loan, rents at the apartments could go up and USDA would not be able to provide rent subsidy for tenants. Also, USDA would no longer be involved in supervising the apartment's management, leases and rents.

USDA WOULD LIKE TO KNOW YOUR OPINION ABOUT THIS PAYOFF REQUEST. We would like to know what you think the effect of paying off the loan would be on you, other tenants in the apartments, other people in the community, and any minorities living in the apartments and in the community. You have 30 days from the date of this letter to give us your opinion in writing. If you wish to write us, please send your comments to the local USDA office at the address shown above.

It may be helpful to know that USDA follows a very careful process before deciding whether or not to allow apartment owners to pay off their USDA loans. First, USDA may offer various financial incentives to the owners to encourage them not to prepay their loan and to continue to operate the apartments for affordable rental housing. Often, such incentives are sufficient to prevent prepayment, and the apartment will continue to be operated without change for the tenants.

However, if the owner is not interested in the financial incentives that USDA can offer, USDA will evaluate how prepayment would affect the tenants of the apartments.

If USDA decides that housing opportunities for minorities would be materially affected by a prepayment, USDA will require that the owner try to sell the apartments to a non-profit organization or public agency which would continue to operate the apartments for affordable rental housing.

If USDA decides that there is an inadequate supply of affordable rental housing nearby, USDA may require that the owner continues to provide low rents to you and the other current renters, even if rents go up for future tenants.

If USDA decides to allow the owner to prepay, you and the other tenants may be given immediate priority for other USDA financed apartments. Even if USDA's loan is paid off, the owner will not be able to evict any tenant without cause. USDA has a rental housing voucher program. The intent of the program is to help protect you from the impact of your landlord's mortgage prepayment of payoff.

The USDA Voucher Program ***may be available to low-income tenant who is a citizen, United States non-citizen National, or qualified alien and resides at the property at the time of prepayment/payoff***. This voucher will pay the difference between the comparable market rent for your unit and the amount of your rent payment for that unit at the time of prepayment/payoff. This voucher will enable you to remain in your current home or move to another comparable unit.

More information about this program and your eligibility will be sent to you within the next 60 days

ATTACHMENT 2B
TENANT LETTER #2 - Prepayment Request Approved

Tenant Notification of Owner's Prepayment Acceptance
(With/Without Restrictions)

TO: The Tenants of _____

SUBJECT: Notice of Prepayment Acceptance

Rural Development has reviewed the information concerning your landlord's request to pay off the loan on [**Project Name]** and will be accepting the payment on [**Insert Date]**. As a result, you may experience an increase in your rent. This letter is following up on the letter you should have received **[Insert Date of Initial Tenant Notification Letter]**. The rent for your apartment will **[Become or Remain $]** on **[Insert Date]**.

RURAL DEVELOPMENT accepted the owner's request to pay off the loan because of the following reason (s):

[ ] The local housing market can not support a higher rent.
[ ] There are many empty apartments similar to yours in quality, size, location, and rent in (**name of community**)
[ ] The owner is legally agreeing to rent the apartments to **(very- low, low-moderate-income tenant)** and to calculate the rents the same way they are now until _____.

[If restrictive-use provisions apply]: The owner has legally agreed to continue to rent to very-low-/low-/moderate-income tenants. Rents can not be higher than what the Government determines you can afford, and will be calculated the same way as they are now, until [**Insert Date**]. The owner also has to keep the apartment as a suitable place for you to live. Any tenant, as well as the USDA, may enforce the owner's agreement to rent to very-low/low-/moderate-income tenants. In order to comply with this agreement, the owner must certify your income every year.

[If Section 8 or other subsidy]: Part of your rent will continue to be paid by _____.

However, even if _____ stops making these payments, the owner will have to continue to calculate your rent the same way it is calculated now until the end of the restrictive-use period.

If you decide to remain in your apartment after rents go up, the owner can not evict you without good cause, whether you or someone else is paying the rent.

The information that is attached to this letter tells you what you can do after this mortgage is paid off. To help protect you from the impact of your landlord's mortgage pay off, you may be eligible for a USDA voucher that will provide short-term rental subsidy payment and allow you to remain where you are, or to move somewhere else. If you have any questions, please contact us.

_____
(MFH Servicing Official)

_____
(Address)

_____

_____

_____
(Telephone Number)

Please contact our office if you want to see all the information Rural Development used to make this decision.

CURRENT ELIGIBLE TENANTS

WHAT CAN YOU DO TO PROTECT YOURSELF AFTER THE MORTGAGE IS PAID OFF?

Tenants Eligible for LOPE Letter [REFERENCE: 7 CFR 3560 HB2 3560, Rural Development Handbook Letter 201]

You may apply for a letter called a Letter of Priority Entitlement (LOPE). You may use the letter to go to the top of all waiting lists of any project Rural Development has the mortgage on, anywhere in the Country, if you are eligible to live there. You will have up to ONE-YEAR from the date of this letter to apply for your LOPE. You can use it to be placed on waiting lists for 60 days after you receive the letter. If Rural Development is paying part of your rent now and if you are eligible for this benefit at the project you are moving to, the Government will continue to help make your rent payment when you move. This letter may also help you get preference in a Department of Housing and Urban (HUD) apartment. The letter will be issued in accordance with all Civil Rights requirements.

Tenants Ineligible for LOPE Letters

If you think you will need to move some place you can afford after the rents are raised, you should give yourself enough time to find a new place to live, **OR**
Until you voluntarily move, your rent can not be raised above what the rent would have been, if the owner had kept the Rural Development loan. If, at any time, you feel the owner or anyone who buys the project is violating the terms of the agreement with the Government, you should notify the Rural Development office at the address below.

AVAILABILITY OF THE RURAL DEVELOPMENT VOUCHER

The Rural Development Voucher Program was created to offer some protection to eligible multi-family housing tenants of properties financed through Rural Development's Section 515 Rural Rental Housing Program who may be subject to economic hardship through prepayment of the Rural Development mortgage. When the owner of such a Rural Development pays off the loan, the Rural Development affordable housing requirements may be modified. Rents may increase thereby making the housing unaffordable to tenants. Rural Development will help eligible tenants by providing short-term rental subsidy that will supplement the tenant's rent payment in the event of an increase. ***Low-income tenants in the prepaying property may be eligible to receive a voucher that they may use at that property or take to any other rental unit in the United States that passes a unit inspection and where the owner will accept a Rural Development Voucher, with the exception of rental units in subsidized housing like Section 8 and public housing, where two housing subsidies would result. Low-income tenants who were not previously receiving Rural Development Rental Assistance may be eligible to receive a Rural Development Voucher also. Voucher assistance is available regardless of whether a property prepaid with or without restrictions.***

This voucher can be used to supplement your rent payment at any property where the owner will agree to accept the voucher, including the property that prepaid the Rural Development mortgage. However, the housing unit must be approved by Rural Development in order for you to use a voucher.

We will send to you, under separate cover, a letter detailing eligibility requirements and the amount of the voucher for which you may qualify.

ATTACHMENT 2C

RENT COMPARABILITY STUDY LETTER TO OWNERS

Dear Property Owner,

Upon prepayment of your U.S. Department of Agriculture (USDA) Section 515 loan, current tenants of your property at the time of prepayment may be eligible to receive USDA rental vouchers. To establish the value of these vouchers, we need to determine the market rent for each unit type at the property by conducting a Rent Comparability Study (RCS). The results of the RCS are used by USDA solely for the purpose of establishing the value of these vouchers. The RCS results are not used by USDA in the prepayment process, and have no effect on its outcome or your property.

USDA has contracted with a company called The Signal Group (Signal) to undertake an RCS to determine the current market rents for all unit types at your property. To prepare the RCS, Signal will need to make a site visit to your property to do a "walk through," and ask some questions of you or your property manager. Signal will be contacting you directly to set up a date and time to conduct this property visit. Generally, the site visits are completed within one to two hours.

The purpose of the site visit is to document the characteristics of your property that are relevant for determining the market rent for units at your property. At the time of the site visit, Signal will need to walk through, photograph, and measure one unit of each unit type, and walk through and photograph all common areas. In addition to the walk through, Signal also will be asking questions to ascertain specific information about the property to fully understand its characteristics and features. Below is a list of possible items that they may ask about:

1. Unit mix (i.e., number of 1, 2, 3 BR units at the property) and the number of vacant units.
2. Current rents and utility allowances (if applicable) for each unit type.
3. Any charges to tenants in addition to rent, for example for storage, parking etc.
4. Sources of heat, hot water, cooking, and air conditioning (i.e. gas, electricity etc.)
5. Whether utilities are included or excluded in rent.
6. Age of property.
7. Recent renovations or capital improvements to the property.
8. Project amenities (conference/meeting rooms, cable television, recreational facilities etc).
9. Services provided, if any, to tenants (i.e. transportation, meal services, social and/or educational activities).

Please note that Signal may have some additional questions about your property beyond the items above.

Because of your familiarity with the area in which the property is located, the Signal representative may also ask your opinions (or those of your property management staff person) about the area and community. We recognize that these questions involve your personal opinions (or those of your property management staff person), and you should provide this information only to the extent that you are comfortable doing so. Your knowledge and insights regarding the area are very helpful in informing Signal's research and analysis, and we encourage you to share them.

Again, the RCS is only used to establish the amount of the rental vouchers offered to eligible tenants and has no impact on the prepayment process.

We hope this background about RCS is helpful, and we appreciate your cooperation with Signal during the site visit. If you have questions, please feel comfortable asking the Signal representative conducting the site visit, or contact me at (___) ____ - _____.

Sincerely

[Rural Development MFH Servicing Official]

ATTACHMENT 2D
TENANT LETTER #3A
PRELIMINARY VOUCHER DETERMINATION LETTER

(Use this letter prior to prepayment)

Date

Tenant Name
Tenant Address
Tenant Address

Re: RURAL DEVELOPMENT VOUCHER INFORMATION - ELIGIBILITY AND VOUCHER AMOUNT DETERMINATION

Dear Tenant Name:

This letter is to advise you that USDA Rural Development has approved the mortgage prepayment request of the owner of your apartment complex. Prepayment means the USDA loan on the property no longer exists, and the rent for your unit may increase or you may wish to move.

This letter provides information about three types of future rent assistance that you may receive as a result of this action, specifically:

- **Letter of Priority Entitlement (LOPE)** moves you to the top of the waiting list for a rental unit in another Rural Development property;
- **Transfer of Rental Assistance (RA)** allows your rent payment to remain the same if you move to another Rural Development property; or
- **Rural Development Voucher** provides 12 monthly subsidy payments at most rental units anywhere in the United States.

Carefully read this entire letter for full information about your possible benefits and the actions required for you to receive these benefits.

LETTER OF PRIORITY ENTITLEMENT TO ANOTHER USDA UNIT

If you currently reside in a Rural Development-financed property that is pre-paying its mortgage, or if USDA expects to foreclose the mortgage, you are eligible for a **Letter of Priority Entitlement or LOPE letter - which moves you to the top of the waiting list in other Rural Development-financed properties**. You have **up to one year from the date of the prepayment to apply for a LOPE letter**. Using the LOPE letter can make it easier for you to obtain another USDA-financed unit where rents are lower than in the general market.

To obtain a list of Rural Development properties where the LOPE letter can be used, please visit the following website: http://rdmfhrentals.sc.egov.usda.gov/RDMFHRentals/select_state.jsp.

To receive a LOPE letter or learn more about this option, contact [Insert Rural Development Contact for LOPE for that State.]

TRANSFER OF RENTAL ASSISTANCE TO ANOTHER RURAL DEVELOPMENT PROPERTY

If you currently receive Rental Assistance (RA) in the Rural Development property where you live, RA will no longer be available when the owner pays off the mortgage or the foreclosure occurs. However, if you request, the **RA currently assigned to your unit can be transferred to another Rural Development property to which you want to move**.

- You have **up to four months after the owner pays off the mortgage to transfer and begin using the RA**.
- If RA is transferred, your rent should not change from what it is currently since your rent is based on 30 percent of your income.
- RA can not be transferred to a Rural Development -financed property that is 100 percent Section 8. (Management at the Rural Development property will be able to tell you whether or not the property is 100 percent Section 8.)
- You can not use RA in combination with a Rural Development Voucher. However, you can use the LOPE letter to get to the top of the waiting list, and then use the transferred RA to help you pay the rent.

For more information on the transfer of Rental Assistance, contact [Insert Rural Development Contact for RA for that State.]

AVAILABILITY OF THE PORTABLE RURAL DEVELOPMENT VOUCHER

If you live in the property on the date of actual prepayment you may be eligible to receive a Rural Development Voucher to assist in paying your rent in your current unit or elsewhere.

The Rural Development Voucher Program was created to offer some protection to eligible multifamily housing tenants of properties such as your complex who may be subject to economic hardship (for example, higher rents) as a result of the loan prepayment or foreclosure. The **Rural Development Voucher will help tenants by providing 12 monthly payments of rental subsidy that will supplement the tenant's rent payment**.

Eligible tenants may use the Rural Development Voucher to supplement rent at any rental unit in the United States, including your current unit, if -

1. The owner of the unit will accept a Rural Development Voucher; and
2. The unit is in acceptable physical condition; and
3. The unit is not already subsidized by Section 8 or as a public housing unit.

You should also understand the following information:

- ***You must be a citizen, United States non-citizen national or qualified alien to be eligible for the Rural Development Voucher Demonstration Program. A List of acceptable citizenship documentation is enclosed.***
- Even if you were not previously receiving Rural Development Rental Assistance (RA), you may be eligible to receive a Rural Development Voucher.
- Your Rural Development Voucher will provide 12 months of payment.
- You may not use your Rural Development Voucher in combination with a HUD Housing Choice Voucher or at a HUD-subsidized property. This means that in some instances, it may be more beneficial for you to give up your Rural Development Voucher than to keep it if you have the choice of other subsidy.
- You must use your Rural Development Voucher within 60 days of issuance. See additional information below in "Next Steps" for what this timeframe could mean.
- The amount of your Rural Development Voucher can not exceed the rent for your unit. If you want to use this voucher at another property where the amount of the voucher exceeds the rent, the voucher will be reduced to equal the rent. Your voucher amount could increase back to its original amount if your rent then increased above the voucher amount.

If the owner does not prepay the Rural Development mortgage, or if foreclosure does not occur, vouchers will not be offered to tenants of this apartment complex. Vouchers are only available if the loan is paid off.

PRELIMINARY RURAL DEVELOPMENT VOUCHER DETERMINATION

We [insert were/were not] able to determine that you are eligible for a Rural Development Voucher. See the attached Eligibility Determination for explanation of your eligibility.

The value of the Rural Development Voucher for which you are eligible has been preliminarily established at $_____ per month. If this amount is $0, this is because either you are ineligible (your annual income is above 80 percent of the Area Median Income, as explained in the attachment), or because your tenant contribution at the prepaying property was equal to or greater than the comparable market rent for your apartment unit size. See attached "Eligibility Information" for an explanation of how this voucher amount was calculated.

Note that this eligibility and voucher amount determination is not final until prepayment occurs. Provided you continue to reside in the property, immediately following prepayment you will receive another letter stating your final eligibility and voucher amount determination. **See "Eligibility Determination" for additional information.**

As stated above, **the amount of your Rural Development Voucher can not exceed the rent for your unit**. If you want to use this voucher at a property where the amount of the voucher exceeds the rent, the voucher will be reduced to equal the rent.

NEXT STEPS

If you are interested in receiving a Rural Development Voucher, you must sign the enclosed "Voucher Obligation Form" and return the original document and a copy of proof of citizenship to Rural Development at the following address:

Attn:

You have until September 15, 2008, to return the original, signed VOF and copy of proof of citizenship to Rural Development. Returning the form will generate the Rural Development Voucher for you to use. Rural Development Vouchers will be issued within either 30 days of your return of the Voucher Obligation Form or 30 days after the prepayment, whichever is later.

You should use your Rural Development Voucher within 60 days of issuance. Therefore, return the Voucher Obligation Form (VOF) approximately 90 days before you expect to use the Rural Development Voucher with a new lease. Timing considerations for returning the VOF would include when your lease expires or, if you wish to move immediately and your lease has not yet expired, the date when you and your landlord mutually agree to terminate your lease. You may submit a written request for an extension of 60 days to use the voucher. The maximum voucher search period for any family participating in the Rural Development Voucher Program is 120 days. If the Rural Development Voucher remains unused after a period of 150 days from issuance, the Rural Development Voucher will become void and funding will be cancelled. After that time, the Rural Development Voucher will no longer be available.

If you disagree with either the income-eligibility determination or the voucher amount determination, you are entitled to appeal that determination, in accordance with 7CFR Part 11. **Enclosed you will find information related to appeals.**

If you have any question, please call _____.

Sincerely,

Enclosure - Appeal Rights; Voucher Obligation Form, **Proof of Citizenship,** Preliminary Rural Development Voucher determination.

ATTACHMENT 2E
TENANT LETTER #3B
FINAL VOUCHER DETERMINATION LETTER

(Use this letter immediately after prepayment to existing tenants and for new tenants that did not receive tenant letter #3A)

Date

Tenant Name
Tenant Address
Tenant Address

Re: RURAL DEVELOPMENT VOUCHER INFORMATION - ELIGIBILITY AND VOUCHER AMOUNT DETERMINATION

Dear (Tenant Name):

[IF TENANTS RECEIVED TL 3A INSERT FOLLOWING: We notified you earlier that USDA Rural Development had approved the mortgage prepayment request of the owner of your apartment complex.] The purpose of this letter is to notify you that prepayment of your apartment complex occurred on [**insert date of prepayment**]. Prepayment means that the USDA loan on the property no longer exists, and the rent for your unit may increase or you may wish to move.

This letter reminds you about three types of future rent assistance that you may receive as a result of this action, specifically:

- **Letter of Priority Entitlement (LOPE)** moves you to the top of the waiting list in another Rural Development property;
- **Transfer of Rental Assistance (RA)** allows your rent payment to remain the same if you move to another Rural Development property; or
- **Rural Development Voucher** provides 12 monthly subsidy payments at most rental units anywhere in the United States.

Carefully read this entire letter for full information about your possible benefits and the actions required for you to receive these benefits.

AVAILABILITY OF THE LETTER OF PRIORITY ENTITLEMENT TO ANOTHER USDA UNIT

If you currently reside in a Rural Development -financed property that is pre-paying its mortgage, or if USDA expects to foreclose the mortgage, you are eligible for a Letter of Priority Entitlement or LOPE letter - which moves you to the top of the waiting list in other Rural Development -financed properties. You have up to one year from the date of the prepayment to apply for a LOPE letter. Using the LOPE letter can make it easier for you to obtain another USDA-financed unit where rents are lower than in the general market.

To obtain a list of Rural Development properties where the LOPE letter can be used, please visit the following website: http://rdmfhrentals.sc.egov.usda.gov/RDMFHRentals/select_state.jsp. To receive a LOPE letter or learn more about this option, contact **[*Insert* Rural Development Contact for LOPE for that State].**

TRANSFER OF RENTAL ASSISTANCE TO ANOTHER RURAL DEVELOPMENT PROPERTY

If you currently receive Rental Assistance (RA) in the Rural Development property where you live, RA will no longer be available when the owner pays off the mortgage or the foreclosure occurs. However, if you request, the RA currently assigned to your unit can be transferred to another Rural Development property to which you want to move.

- You have up to four months after the owner pays off the mortgage to transfer and begin using the RA.
- If RA is transferred, your rent should not change from what it is currently since your rent is based on 30 percent of your income.
- RA can not be transferred to a Rural Development -financed property that is 100 percent Section 8. (Management at the Rural Development property will be able to tell you whether or not the property is 100 percent Section 8.)
- You can not use RA in combination with a Rural Development Voucher. However, you can use the LOPE letter to get to the top of the waiting list, and then use the transferred RA to help you pay the rent.

For more information on the transfer of Rental Assistance, contact **[Insert Rural Rural Development Contact for RA for that State.]**

AVAILABILITY OF THE PORTABLE RURAL DEVELOPMENT VOUCHER

If you live in the property on the date of actual prepayment you may also be eligible to receive a Rural Development Voucher to assist in paying your rent in your current unit or elsewhere.

The Rural Development Voucher Program was created to offer some protection to eligible multifamily housing tenants of properties such as your complex who may be subject to economic hardship (for example, higher rents) as a result of the loan prepayment or foreclosure. The Rural Development Voucher will help tenants by providing 12 monthly payments of rental subsidy that will supplement the tenant's rent payment.

Eligible tenants may use the Rural Development Voucher to supplement rent at any rental unit in the United States, including your current unit, if:

- The owner of the unit will accept a Rural Development Voucher; and
- The unit is in acceptable physical condition; and
- The unit is not already subsidized by Section 8 or as a public housing unit.

You should also understand the following information:

- ***You must be a citizen, United States non-citizen national or qualified alien to be eligible for the Rural Development Voucher Demonstration Program. A list of acceptable citizenship documentation is enclosed.***
- Even if you were not previously receiving Rural Development Rental Assistance (RA), you may be eligible to receive a Rural Development Voucher.
- Your Rural Development Voucher will provide 12 months of payment.
- You may not use your Rural Development Voucher in combination with a HUD Housing Choice Voucher or at a HUD-subsidized property. This means that in some instances, it may be more beneficial for you to give up your Rural Development Voucher than to keep it if you have the choice of other subsidy.
- You must use your Rural Development Voucher within 60 days of issuance. See additional information below in "Next Steps" for what this timeframe could mean.
- The amount of your Rural Development Voucher can not exceed the rent for your unit. If you want to use this voucher at another property where the amount of the voucher exceeds the rent, the voucher will be reduced to equal the rent. Your voucher amount could increase back to its original amount if your rent then increased above the voucher amount.

[IF TENANTS RECEIVED TL 3A INSERT FOLLOWING: In previous letters, we informed you of your preliminary Rural Development Voucher eligibility and award amount determinations.**]** This letter provides your final eligibility and award amount determinations based on your circumstances on the date of prepayment. If you moved from the property prior to the date of prepayment, you are not eligible to receive a voucher. If your net tenant contribution changed prior to prepayment, you may be ineligible to receive a voucher or your voucher amount may have changed.

FINAL ELIGIBILITY DETERMINATION

We [Insert were/were not] able to determine that you are eligible for a Rural Development Voucher. See the attached Eligibility Determination.

FINAL VOUCHER AMOUNT DETERMINATION

The value of the Rural Development Voucher for which you are eligible has been established at $_____ per month. If this amount is $0, this is because either you are ineligible (your annual income is above 80 percent of the Area Median Income, as explained in the attachment), or because your tenant contribution at the prepaying property was equal to or greater than the comparable market rent for your apartment unit size. See attached "Eligibility Information" for an explanation of how this voucher amount was calculated.

As stated above, the amount of your Rural Development Voucher can not exceed the rent for your unit. If you want to use this voucher at a property where the amount of the voucher exceeds the rent, the voucher will be reduced to equal the rent.

NEXT STEPS

Our records indicate that you [**have/have not**] already returned a signed Voucher Obligation Form (VOF).

CHOOSE FROM FOLLOWING PARAGRAPHS:

IF TENANT HAS ALREADY RETURNED A SIGNED VOF - Since you have already returned a signed VOF to us, you do not need to return the attached VOF. We will be issuing your Rural Development Voucher within 15 business days. If you do not receive your Rural Development Voucher within that timeframe or if you have decided you no longer want a Rural Development Voucher, please call Rural Development at toll-free at .

IF TENANT HAS NOT ALREADY RETURNED A SIGNED VOF - If you are interested in receiving a Rural Development Voucher, you must sign the enclosed "Voucher Obligation Form" and return the original document along with a copy of your proof of citizenship to Rural Development at the following address:

Attn:

You have until September 15, 2008, to return the original, signed VOF with your copy of proof of citizenship to Rural Development. Returning the form will generate the Rural Development Voucher for you to use. Rural Development Vouchers will be issued within either 30 days of your return of the VOF or 30 days after the prepayment, whichever is later.

You should use your Rural Development Voucher within 60 days of issuance. Therefore, return the VOF approximately 90 days before you expect to use the Rural Development Voucher with a new lease. Timing considerations for returning the VOF would include when your lease expires or, if you wish to move immediately and your lease has not yet expired, the date when you and your landlord mutually agree to terminate your lease. You may submit a written request for an extension of 60 days to use the voucher. The maximum voucher search period for any family participating in the Rural Development Voucher Program is 120 days. After that time, the Rural Development Voucher will no longer be available.

Preliminary Rural Development Voucher Eligibility Determination

Eligibility to receive a voucher is based on you adjusted income indicated on the Tenant Certification in effect on the date of loan prepayment. Only those tenants who are low-income are eligible to receive a voucher. "Low-income" is defined as an annual adjusted income at or below 80 percent of the area median income.

Note that this eligibility and voucher amount determination listed below is not final until prepayment occurs. If you move from the property prior to the date of prepayment, you will not be eligible to receive a voucher. If your net tenant contribution changes prior to prepayment, you may become ineligible to receive a voucher or your voucher amount may change.

Immediately following prepayment, you will receive another letter stating your final eligibility and voucher amount determination.

The area median income for your area is $_____ and 80 percent of that figure is $_____.

[Insert if tenant income unknown] We were unable to determine if your adjusted income is at or below 80 percent of the area median, therefore we can not determine your eligibility to receive a voucher at this time. **If you believe you may be eligible, you may forward your most recent income certification to**:

Attn:

Your adjusted income is [<u>at or below/above</u>] 80 percent of the area median income; therefore, you [<u>are/are not</u>] income-eligible to participate in the Rural Development Program.

Preliminary Rural Development Voucher Amount Determination

The amount of your Rural Development Voucher was calculated as follows:

	$_____	Comparable market rent for your unit in the area where you rent at the time of prepayment
Minus	$_____	Net tenant contribution toward rent on date of prepayment
	$_____	Maximum Amount of your Rural Development Voucher

The amount of the voucher can not exceed the amount of tenant rent; therefore, your voucher amount will be adjusted downward if you choose a unit where the maximum voucher amount exceeds the tenant rent. The voucher amount could later be adjusted back to the maximum if your tenant rent changes to exceed the voucher amount.

Final Eligibility Determination

Eligibility to receive a voucher is based on your adjusted income indicated on the Tenant Certification in effect on the date of loan prepayment. Only those tenants who are low-income are eligible to receive a voucher. "Low-income" is defined as an annual adjusted income at or below 80 percent of area median income.

The area median income for your area is $_____ and 80 percent of that figure is $_____.

(Use this paragraph if you are unable to determine the adjusted income of the tenant). We were unable to determine if your adjusted income is at or below 80 percent of the area median; therefore, we can not determine your eligibility to receive a voucher at this time. If you believe you may be eligible, you may forward your most recent income certification to:

Attn:

Your adjusted income is [<u>at or below/above</u>] 80 percent of the area median income; therefore, you [<u>are/are not</u>] income-eligible to participate in the Rural Development Voucher Program.

Final Voucher Amount Determination

The amount of your Rural Development Voucher was calculated as follows:

	$_____	Comparable market rent for your unit in the area where you rent at the time of prepayment
Minus	$_____	Net tenant contribution toward rent on date of prepayment
	$_____	Maximum Amount of your Rural Development Voucher

Remember that the amount of the voucher can not exceed the amount of tenant rent; therefore, your voucher amount will be adjusted downward if you choose a unit where the maximum voucher amount exceeds the tenant rent. If this occurs, the voucher amount could later be adjusted back up to the maximum if your tenant rent changes to exceed the voucher amount.

<u>If you disagree with either the income-eligibility determination or the voucher amount determination</u>, you are entitled to appeal that determination, in accordance with 7 CFR Part 11. Enclosed you will find information related to appeals.

<u>If you have any questions</u>, please call Rural Development at _____.

Sincerely,

Enclosure - Appeal Rights; Voucher Obligation Form, ***Proof of Citizenship,*** Eligibility Determination, Voucher Amount Determination

Tenant Letter #3 -

This should be generated by the Rural Development Office and sent Certified Mail

Tenant Name
Tenant Address
Tenant Address

Re: RURAL DEVELOPMENT VOUCHER INFORMATION -
ELIGIBILITY AND VOUCHER AMOUNT DETERMINATION

Dear (Tenant Name):

This letter is to advise you that either: 1) USDA Rural Development has approved the mortgage prepayment request of the owner of your apartment complex, or 2) USDA expects to complete foreclosure on this property soon. Foreclosure means the USDA loan on the property no longer exists.

AVAILABILITY OF THE LETTER OF PRIORITY ENTITLEMENT

If you currently reside in a Rural Development-financed property where the owner is pre-paying its mortgage or USDA expects to foreclose, you are also eligible for a Letter of Priority Entitlement or LOPE letter - which moves you to the top of the waiting list in other Rural Development-financed properties. You have up to one year from the date of this letter to apply for a LOPE letter. To obtain a list of Rural Development properties where the LOPE letter can be used, please visit the following website: MFH Rentals (USDA Rural Development) or call your nearest Rural Development Servicing Office.

TRANSFER OF RENTAL ASSISTANCE

If you currently receive Rental Assistance (RA) in the Rural Development property where you live, RA will no longer be available when the owner pays off the mortgage. RA will no longer be available if a foreclosure occurs unless Rural Development becomes owner of the property. However, the RA currently assigned to you can be transferred to another Rural Development property if you want to move. You must make a request to your local Rural Development Office to move with RA. For four months after the owner pays-off the mortgage or foreclosure, you will continue to receive RA. You can use the LOPE letter to get to the top of the waiting list at another Rural Development property and then use the transferred RA to help you pay the rent.

There are some situations where you can not transfer the RA. For example: If you are going to a property that is already 100 percent RA or if the property is not a Rural Development-financed property.

AVAILABILITY OF THE Rural Development VOUCHER

If you live in the property on the date of actual prepayment, you may also be eligible to receive a Rural Development Voucher to assist you in paying your rent. The Rural Development Voucher Program was created to help tenants by providing a year's worth of vouchers that will supplement the tenant's rent payment. Eligible tenants receive a voucher that may be used at the property where he or she lives or at any other habitable rental unit in the United States where the owner will accept a Rural Development Voucher. Rural Development Vouchers can not be used if the tenant is receiving RA or living in Section 8 or other public housing. Even if you were not previously receiving Rural Development RA you may be eligible to receive a Rural Development Voucher. You may use a RD Voucher in combination with a LOPE letter.

ELIGIBILITY DETERMINATION

To determine if you eligible to receive a voucher, Rural Development looks at your adjusted income from the Tenant Certification being used on the date the loan was prepaid or foreclosure occurred. Only those tenants who are low-income are eligible to receive a voucher. You must meet the standard for low-income if your income is at or below 80 percent of the median income for your area.

The area median income for your area is $_____ and 80 percent of that figure is $_____.

(Use This Paragraph If You Are Unable To Determine The Adjusted Income of The Tenant). **We were unable to determine if your adjusted income is at or below 80 percent of the area median, therefore we can not determine your eligibility to receive a voucher at this time. If you believe you may be eligible, you may forward your most recent income certification to:**

Insert servicing office address, and contact name.

Because your adjusted income is [<u>less than/more than</u>] 80 percent of the area median income, you [<u>are/are not</u>] income-eligible to participate in the Rural Development Voucher Program.

VOUCHER AMOUNT DETERMINATION

If you are eligible to participate in the Rural Development Voucher program, the value of the Rural Development Voucher has been established at $_____ per month. If this amount is $0, this is because your rental payment at the prepaid or foreclosed property was equal to or greater than the similar rent charge for that type of apartment. See below for information on how this voucher amount was calculated.

The Rural Development Voucher is good for 12 monthly payments at this rate to the property owner of the housing unit where you choose to live. In order to maintain your eligibility for the voucher program, your income must remain below the 80 percent of area median income. To confirm your eligibility, please contact the nearest Rural Development Office. Locations of the Rural D Offices can be found on the Internet at <u>http://www.rurdev.usda.gov/recd_map.html</u>.

The amount of your Rural Development Voucher was calculated as follows:

	$_____	= Similar market rent for your unit in the area when the loan was prepaid or foreclosure occurred.
minus	$_____	= Your contribution toward rent on date the loan was prepaid or foreclosure occurred.
	$_____	= Amount of your Rural Development Voucher

You should know that the amount of the Rural Development Voucher can not be more than the rent where you live. If you move and the amount of the voucher exceeds the rent, the voucher amount will be reduced to equal the rent.

If you are interested in receiving a Rural Development Voucher, please sign the enclosed "Voucher Obligation Form" on page 2 and return it to the Rural Development MFH Servicing Official identified below.

For answers to any questions you may have and to express an interest in receiving a Rural Development Voucher, please contact the following:

Rural Development MFH Servicing Office contact name, address, phone number.

If you disagree with either the income-eligibility determination or the voucher amount determination, you are entitled to appeal that determination, in accordance with 7 CFR Part 11. Enclosed you will find information related to appeals.

Sincerely,

Rural Development MFH Servicing Official

Enclosure - Appeal Rights; Rural Development Voucher Obligation Form

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TO: Tenants of [Project Name]

SUBJECT: Notification of Acceptance of Incentives to Avert Prepayment

Rural Development has reviewed information concerning a request from your landlord **[Insert Owner's Name]** to pay off the Rural Development loan on **[Insert Project Name]**. This letter is to inform you that your landlord will not be paying the loan off. The owner has legally agreed, through a Restrictive-Use Agreement, to continue to rent to very-low-/low-/ moderate-income individuals and families and those wanting to move into the property. You may remain as long as you are eligible and wish to occupy your apartment.

Rents can not be higher than what the Government says you can afford and will be calculated the same way as they are now until **[Insert Date (end of the 20-year RUP)]**. Additionally, the owner can not change any conditions or charges to tenants so that the project would no longer be a suitable place for you to live. **[Insert Owner's Name]** would only be released from this agreement when the Government determines that 1) there is no longer a need for the housing; and 2) that other financial assistance provided to the residents of the housing will no longer be needed or provided due to no fault, action, or lack of action on the part of **[Insert Owner's Name]**. This agreement is intended to protect only very-low-/low-/ moderate-income individuals and families and those wanting to move into the property for the next 20 years. Any tenant, as well as the Government, may pursue legal enforcement of this agreement. In order to comply with this agreement, the owner will continue to certify your income every year.

If you have any questions, please contact me prior to [enter date].

Sincerely,

_____
(MFH Servicing Official)

_____

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TO: The Tenants of

SUBJECT: Notice of Offer to Sell to a Non-profit

Rural Development has reviewed the information concerning your landlord's request to pay off the loan on **[Project Name]**. This letter is following up on the letter you should have received **[Insert Date of Initial Tenant Notification Letter]**.

You landlord has chosen to advertise the property for sale to a non-profit organization or Public Housing Authority (PHA) who is willing to continue to operate the apartments as affordable rental housing. Your landlord will advertise the property for sale for a minimum of 180 days. Your landlord may suspend advertising and other sales efforts while eligibility of an interested purchaser is determined. If the purchaser is determined to be ineligible, your landlord must resume advertising for the balance of the required 180 days.

The property will first be offered to local non-profit and public bodies. If no eligible local non-profit and public bodies are found, the property will be offered for sale to regional or national non-profit organizations or public bodies.

To purchase and operate a housing complex, a non-profit or public body must agree to subsidize the housing complex for very low- and low-income families or persons for the remaining useful life of the housing and related facilities similar to how it is used now. Rural Development will notify you as soon as the 180 advertisement is concluded and a decision has been reached.

If you have any questions, please contact me at [insert contact information].

Sincerely,

_____

(MFH Servicing Official)

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CURRENT ELIGIBLE TENANTS NOT PROTECTED BY HUD SUBSIDY/RESTRICTIVE-USE PROVISIONS

WHAT CAN YOU DO TO PROTECT YOURSELF AFTER THE MORTGAGE IS PAID OFF?

AVAILABILITY OF THE LETTER OF PRIORITY ENTITLEMENT

[REFERENCE: 7 CFR 3560 HB2 3560, RD Handbook Letter 201]

If you currently reside in a Rural Development-financed property that is pre-paying its mortgage or USDA expects to foreclose the mortgage, you are also eligible for a Letter of Priority Entitlement or LOPE letter - which moves you to the top of the waiting list in other Rural Development-financed apartment projects. You have up to one year to apply for a LOPE letter. To obtain a list of Rural Development properties where the LOPE letter can be used, please visit the following website: **[insert website address]** or call your nearest Rural Development Servicing Office.

TRANSFER OF RENTAL ASSISTANCE

If you currently receive Rental Assistance (RA) in the Rural Development property where you live, RA will no longer be available when the owner pays off the mortgage. RA will no longer be available if a foreclosure occurs unless Rural Development becomes the owner of the property. However, if you request, the RA currently assigned to you can be transferred to another Rural Development property. You have up to four months after the owner pays-off the mortgage to use the RA. You can not use this RA with a Rural Development Voucher but you can use the LOPE letter to get to the top of the waiting list and then use the transferred RA to help you pay the rent.

There are some situations where you can not transfer the RA. For example: If you are going to a property that is already 100 percent RA or if the property is not a Rural Development-financed property.

If you live in the property on the date of actual prepayment, you may also be eligible to receive a Rural Development voucher to assist you in paying your rent.

AVAILABILITY OF THE RURAL DEVELOPMENT VOUCHER

The Rural Development Voucher Program was created to help tenants by providing a year's worth of vouchers that will supplement the tenant's rent payment. Eligible tenants receive a voucher that may be used at the property where he/she lives or at any other habitable rental unit in the United States where the owner will accept a Rural Development Voucher. Rural Development Vouchers can not be used if the tenant is receiving RA or living in Section 8 or other public housing. Even if you were not previously receiving Rural Development RA you may be eligible to receive a Rural Development Voucher. You may use a Rural Development Voucher and the LOPE letter.

Tenants Ineligible for LOPES

If the owner of the property prepays the loan and does not sign a restrictive-use agreement, rents can be raised. The increase in rent can occur as soon as USDA receives the final payment. If you think you will need to move to some place you can afford after the rents can be raised, you should give yourself enough time to find a new place to live, **OR**

Until you voluntarily move, your rent can not be raised above what the rent would have been, if the owner had kept the RURAL DEVELOPMENT loan. If, at any time, you feel the owner or anyone who buys the project is violating the terms of the agreement with the Government, you should notify the Rural Development Office at the address below.

_____
Serving Official

_____
Address

_____

_____

_____
Telephone Number

[If applicable]: Attached are lists of:

- Other Rural Development projects in the area, their addresses, telephone numbers and apartment sizes.
- Other Government agencies which have apartments or may be able to help you find another apartment and their telephone numbers.

RE: Prepayment Request for [Name of Property]

Dear Mr./Mrs. [Owner/Designee's Name]:

Rural Development has completed its analysis of your request to prepay your Rural Rental Housing (RRH) loan on the above named property located in [City, State]. This loan is currently subject to Restrictive-Use Provisions (RUP) until **[Enter date]**. Until the RUP expires, you are ineligible for any incentives to avert prepayment. If prepayment is approved, you must agree to enter into a new RUP and sign a restrictive-use agreement (RUA) which will extend the current restrictive-use period for a period of 20 years from the date on which the new RUP and RUA are executed.

If you are unwilling to sign the new RUA, you must consider either withdrawing your prepayment request or offer to sell the property to a non-profit organization or public body. Otherwise your prepayment request will be denied. Please indicate your preference by initialing below.

Extend RUP				Sell to NP/PB			
Agree		Disagree		Agree		Disagree	

If you choose to offer to sell to a non-profit organization or public body and no bona fide offer is received after 180 days has elapsed, you may prepay your loan without further restrictions.

Please contact our office via fax, e-mail, or letter to let us know if you are willing to accept the provisions stated herein. If you have any questions regarding this matter, please contact our office at [enter phone number].

Sincerely,

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ATTACHMENT 15-D
INCENTIVE CALCULATION WORKSHEET AND DIRECTIONS
INSTRUCTIONS FOR RHS INCENTIVE CALCULATION WORKSHEET

State Office:					Contact Person:		
Project Name:					Project Location:		
Borrower Name:					Borrower I.D.:		
Date Submitted to ORHP:					Project Number:		
Number of Units:		Current Basic Rents:		Comparable Rents:		Other Data:	
	: 0 Bedroom		: 0 Bedroom		: 0 Bedroom		: Original Debt
	: 1 Bedroom		: 1 Bedroom		: 1 Bedroom		: Current Debt
	: 2 Bedroom		: 2 Bedroom		: 2 Bedroom		: Initial Bor. contribution
	: 3 Bedroom		: 3 Bedroom		: 3 Bedroom		: Original ROI rate
	: Other Br.		: Other Br.		: Other Br.		: 30 yr. Tres. Bond rate
0	Total	#DIV/0!	Average	#DIV/0!	Average		: Authorized reserve balance
	: Appraised value prior to prepayment						: Current reserve balance
	: Appraised value as unsubsidized conventional housing						: Required capital needs
	: Interest rate of third party equity loan						: Add'l monthly reserve deposit per unit
	: Term of third party equity loan						: Current Debt Service
	: Term of reamortized RHS debt					#DIV/0!	Reamortized Debt Service
	: Term of Agency equity loan						Will you ream the debt? Enter yes or no.
1%	Interest rate for Agency equity loan/reamortization						

MAXIMUM RHS EQUITY LOAN		MAXIMUM THIRD-PARTY EQUITY LOAN	
$ -	Appraised value (unsub. conv. housing)	#DIV/0!	Max. equity loan after using excess reserves for equity
-	Maximum equity (90%)	#DIV/0!	New debt service for third party equity loan
$ -	(Current debt)	#DIV/0!	Debt Service for existing RHS loan
$ -	90% RHS equity	#DIV/0!	New total debt service
$ -	Total excess reserve	#DIV/0!	Difference between new and current debt service
$ -	90% eq. loan, less excess res. for eq., w/o regard to comp. rent	#DIV/0!	Monthly/per unit increase to debt service
#DIV/0!	Max. eq. loan w/i comp. rents, less ex. res. for eq.	#DIV/0!	TOTAL INCENTIVE (EQ. LOAN + EX. RESERVES)
#DIV/0!	TOTAL INCENTIVE (EQ. LOAN + EX. RESERVES)	#DIV/0!	Average current rent
#DIV/0!	New basic rent after RHS equity loan	#DIV/0!	Average rent with new debt service
#DIV/0!	Amount above or (below) comparable rent	#DIV/0!	Plus any additional reserve requirement
MAXIMUM RHS EQUITY LOAN AND INCREASED ROI		#DIV/0!	Average comparable rent
#DIV/0!	Max. eq'ty loan after using ex. res. for eq'ty	#DIV/0!	Amount above or (below) comparable rent
#DIV/0!	New debt service (DS) for equity loan	**INCREASED ROI WHEN AN EQUITY LOAN CANNOT BE OFFERED**	
#DIV/0!	Debt service for existing RHS loan	$ -	Appraised value prior to prepayment
#DIV/0!	New total debt service	$ -	(Current balance)
#DIV/0!	Difference between new and current DS	$ -	Current equity position
#DIV/0!	Monthly/per unit increase to DS	$ -	ROI w/o equity loan at 8%
#DIV/0!	New equity position	$ -	ROI w/o equity loan at Treasury rate +2
#DIV/0!	New ROI	$ -	Original ROI
$ -	Original ROI	$ -	TOTAL INCENTIVE: NEW ROI
#DIV/0!	Difference betw'n new and current ROI	$ -	Difference betw'n new and current ROI
#DIV/0!	Monthly/per unit increase to ROI	#DIV/0!	Monthly/per unit increase to ROI
#DIV/0!	TOTAL INCENTIVE (EQ. LOAN + INCR. ROI + EX. RES.)	#DIV/0!	Average current rent
#DIV/0!	Average current rent	#DIV/0!	Average rent with new ROI
#DIV/0!	Average rent with new ROI and DS	#DIV/0!	Plus any additional reserve requirement
#DIV/0!	Plus any additional reserve requirement	#DIV/0!	Average comparable rent
#DIV/0!	Average comparable rent	#DIV/0!	Amount above or (below) comparable rent
#DIV/0!	Amount above or (below) comparable rent	**RHS EQUITY LOANS IN CONJUNCTION WITH TRANSFERS AND SALES**	
INCREASED ROI WHEN AN EQUITY LOAN COULD BE OFFERED, BUT IS NOT		#DIV/0!	Max. eq. loan in transfer to ltd. Profit with tax credits (<=95%), less ex. res.
$ -	RHS Debt Service	#DIV/0!	TOTAL INCENTIVE (EQ. LOAN + EX. RESERVES)
$ -	Decrease in current monthly debt service, if any	#DIV/0!	New basic rent after equity loan
#DIV/0!	Monthly per-unit decrease to debt service, if any	#DIV/0!	Amount (below) comparable rent
$ -	Appraised value (unsub. conv. housing)	#DIV/0!	Max. eq. loan in transfer to ltd. Profit, no tax credits (<=97%), less ex. res.
$ -	(Current debt)	#DIV/0!	TOTAL INCENTIVE (EQ. LOAN + EX. RESERVES)
$ -	Max. new equity position with ROI only	#DIV/0!	New basic rent after equity loan
$ -	TOTAL INCENTIVE: NEW ROI	#DIV/0!	Amount (below) comparable rent
$ -	Original ROI	#DIV/0!	Max. eq. loan in transfer or sale to nonprofit (<=100%), less ex. res.
$ -	ROI increase with new equity position	#DIV/0!	TOTAL INCENTIVE (EQ. LOAN + EX. RESERVES)
#DIV/0!	Monthly/per unit increase to ROI	#DIV/0!	New basic rent after equity loan
#DIV/0!	Average current rent	#DIV/0!	Amount above or (below) comparable rent
#DIV/0!	Average rent with new ROI and DS	COMMENTS:	
#DIV/0!	Plus any additional reserve requirement		
#DIV/0!	Average comparable rent		
#DIV/0!	Amount above or (below) comparable rent		

INSTRUCTIONS FOR RHS INCENTIVE CALCULATION WORKSHEET

1. **GO TO PROJECT LIST SCREEN**

2. **CLICK ON QUERY**

3. **TYPE IN "OR"**

4. **CLICK ON QUERY AGAIN - this will give you a listing of every application in the State of Oregon.**

5. **ONCE YOU HAVE THE PROJECT NAME AND BORROWER NAME FROM THE PROJECT LISTING - CLICK ON SCREENS; THEN CLICK ON "BORROWER"**

6. **WHEN YOU GET TO THE BORROWER SCREEN, CLICK ON QUERY, TYPE IN OR IN THE STATE FIELD, CLICK ON QUERY AGAIN.**

7. **THE FIRST BORROWER WILL APPEAR FOR THE STATE OF OREGON**

8. **CLICK ON THE "DOWN" BUTTON UNTIL YOU SEE THE BORROWER YOU ARE LOOKING FOR.**

9. **PRINT THAT PAGE; THEN CLICK ON THE GREEN RECTANGULAR BUTTON THAT SAYS "PROJECT" AND PRINT THAT SCREEN**

10. **THEN CLICK ON THE "EXT" BUTTON (NOTE: You'll see a dialogue box that asks if you want to continue working with this borrower/application) CLICK YES**

11. **THIS WILL TAKE YOU BACK TO THE PROJECT LIST; CLICK ON TIMELINE FOR THAT APPLICATION**

12. **CLICK ON THE GREEN BUTTON THAT SAYS "TIMELINE TREE"**

13. **CLICK ON "TIMELINE TREE"**

14. **CLICK ON "TIMELINE RPT"**

15. **THE TIMELINE REPORT WILL APPEAR IN A SEPARATE ACROBAT WINDOW; CLICK ON THE "PRINTER" ICON**

16. **ONCE THE REPORT HAS PRINTED, CLOSE THE ACROBAT WINDOW.**

17. CLICK ON "TIMELINE" AND ONCE BACK TO THE TIMELINE SCREEN CLICK ON THE GREEN "NEXT" BUTTON (this will take you to the Application Checklist Screen)

18. PRINT PAGE 1 OF THE CHECKLIST SCREEN

19. CLICK ON THE GREEN RECTANGULAR "PROJECT NEEDED" BUTTON

20. PRINT PAGE 2 OF THE CHECKLIST SCREEN

21. CLICK ON THE GREEN "NEXT" BUTTON (this will take you to the Prepayment Information Screen)

22. PRINT PAGE 1 OF THE PREPAYMENT INFORMATION SCREEN

23. CLICK ON THE GREEN RECTANGULAR "PREPAY, PAGE 2" BUTTON

24. PRINT PAGE 2 OF THE PREPAYMENT INFORMATION SCREEN

25. CLICK ON THE GREEN "NEXT" BUTTON (this will take you to the Incentive Calculation Worksheet)

26. PRINT ALL 11 PAGES OF THE INCENTIVE CALCULATION WORKSHEETTHAT'S IT.

PLEASE PRINT THE SCREEN EVEN IF IT IS BLANK.

NOTE: CHECK THE TIMELINE SCREEN TO SEE IF ANY OF THE PROJECTS HAVE REHAB/REPAIR/DEFERRED MAINTENANCE; IF SO, PRINT THOSE 2 SCREENS AS WELL.

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RESTRICTIVE-USE COVENANTS (RUC) MATRIX

SITUATION	RUC TO USE
When Borrower Rejects Incentives	15-E-1
To Protect Existing Tenants	15-E-2
Transfers	15-E-3
Currently Restricted Loans	15-E-4
If Restrictions are not in Place	15-E-5
All Other Cases (i.e. incentives)	15-E-6

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RESTRICTIVE-USE COVENANT - 10-YEAR
Use After Borrower Rejection of the Incentive Offer (7 CFR 3560.662(b)(1))

WHEREAS, _____ [insert borrower's name and address] "Owner", or a predecessor in interest, received a loan from the United States of America, acting through the Rural Housing Service in Rural Development (Agency), U.S. Department of Agriculture which was evidenced by a promissory note or assumption agreement dated _____, in the original amount of _____ and secured by a certain Deed of Trust or Mortgage dated _____, and recorded in the land records for the City or County of _____ for the purpose of providing housing in accordance with Section 42 U.S.C. 1484 (Section 514) or 1485 (Section 515), whichever is applicable, and Title V of the Housing Act of 1949, as amended "Program"; and

NOW, THEREFORE, in consideration of the restrictions on the property as further described in Exhibit A, the sum of Ten Dollars ($10) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, for themselves and for their respective successors and assigns, hereby covenant and agree as follows:

(1) Term. The period of the restriction will be 10 years from the date this covenant is signed, unless sooner terminated under paragraph 7.

(2) Use Requirement. The owner, and any successors of interest, agree to use the property in compliance with 42 U.S.C. § 1484 or § 1485, whichever is applicable, and 7 CFR part 3560, and any other available regulations and amendments, for the purpose of housing program eligible very low-, low- or moderate-income tenants. In accordance with 7 CFR 3560.658(a)(1) or (a)(2), the undersigned agrees that at the end of the expiration of the period described in paragraph 1 of this agreement, the property will be offered for sale to a qualified non-profit organization or public body, in accordance with previously cited statutes and regulations.

(3) Enforcement. The Agency and program eligible tenants or applicants may enforce these restrictions as long as the Agency has not terminated the Restrictive Use Agreement pursuant to paragraph 7 below.

(4) Displacement Prohibition. The Owner agrees not to refuse to lease a dwelling unit offered for rent, or otherwise discriminate in the terms of tenancy, solely because any tenant or prospective tenant is the recipient of housing assistance from the Agency or any other Federal agency.

(5) Owner's Responsibilities. The Owners agrees to: set rents, other charges, and conditions of occupancy in a manner to meet the restrictions required in this restrictive use covenant, post an Agency approved notice of these restrictions for the tenants of the property; to adhere to applicable local, State, and Federal laws; and to obtain Agency concurrence for any rental procedures that deviate from those approved at the time of prepayment, prior to implementation.

(6) Civil Rights Requirements. The Owner will comply with the provisions of any applicable Federal, State or local law prohibiting discrimination in housing on the basis of race, color, religion, sex, national origin, handicap or familial status, including but not limited to: Title VI of the Civil Rights Act of 1964 (Public Law 90-284, 82 Stat. 73), the Fair Housing Act, Executive Order 11063, and all requirements imposed by or pursuant to the Agency regulations implementing these authorities, including, but not limited to, 7 CFR 3560.104.

(7) Release of Obligation. The Owner will be released from the obligations under this Restrictive Use Covenant before the termination of the period in paragraph 1 only when the Agency determines that there is a no longer a need for the housing or that HUD Section 8 vouchers provided the residents of the housing will no longer be provided due to no fault, action or lack of action on the part of the Owner.

(8) Violations; the Agency's Remedies. The parties further agree that upon any default under this covenant, the Agency may apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against violation of this covenant or for such other equitable relief as may be appropriate, since the injury to the Agency arising from a violation under any of the terms of this covenant would be irreparable and the amount of damage would be difficult to ascertain.

(9) Covenants to Run with Land. The Owner hereby subjects the property to the covenants, reservations and restrictions set forth in this covenant. The Owner hereby declares its express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land to the extent permitted by law and shall pass to and be binding upon the successors in title to the property throughout the term. Each and every contract, deed, mortgage or other instrument hereafter executed covering or conveying the property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument. The Agency hereby agrees that, upon the request of the Owner made after the Term of this covenant, the Agency shall execute a recordable instrument approved by the Agency for purposes of releasing this covenant of record. All costs and expenses relating to the preparation and recording of such release shall be paid by the Owner.

(10) Superiority. The document hereto constitutes a restrictive covenant that is filed of record, with all other Deeds of Trusts or Mortgages, and that, notwithstanding a foreclosure or transfer of title pursuant to any other instrument or agreement, the restrictive covenants and provisions hereunder shall remain in full force and effect.

(11) Subsequent Modifications and Statutory Amendments. The Agency may implement modifications necessitated by any subsequent statutory amendment without the consent of any other party, including those having the right of enforcement, to require that any third-party obtained prior to Agency approval for any enforcement action concerning preexisting or future violations of this covenant.

(12) Other Agreements. The Owner represents and warrants that it has not and will not execute any other agreements with provisions contradictory or in opposition to the provisions of this covenant and that, in any event, the provisions of this covenant are paramount and controlling as to the rights and obligations set forth herein and supersede any other conflicting requirements.

(13) Binding Effect. Upon conveyance of the property during the term, the Owner shall require its successor or assignee to assume its obligations under this covenant. In any event, this covenant shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and/or assigns.

(14) Amendment. This covenant may not be modified except by an instrument in writing executed by each of the parties that are signatories hereto.

(15) Severability. Notwithstanding anything herein contained, if any one or more of the provisions of this covenant shall for any reason whatsoever be held to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision of this covenant, but this covenant shall be construed as if such illegal, invalid or unenforceable provision had never been contained herein.

(16) Headings. The headings and titles to the sections of this covenant are inserted for convenience only and shall not be deemed a part hereof nor affect the construction or interpretation of any provisions hereof.

(17) Governing Law. This covenant shall be governed by all applicable Federal laws.

IN WITNESS WHEREOF, the parties hereto have caused this Restrictive Use Covenant to be executed and made effective as of the date first above written.

OWNER:_____,

a _____

Date: _____

By:_____

Name:_____

Title:_____

WITNESS/ATTEST: _____

[[insert appropriate acknowledgment form]]

EXHIBIT A
LEGAL DESCRIPTION

[attached]

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RESTRICTIVE USE COVENANT - THE LAST EXISTING TENANT
Use if No Impact on Minorities but There is Not an Adequate Supply of Housing
(7 CFR 3560.662(b)(2))

WHEREAS, _____ [insert borrower's name and address] "Owner", or a predecessor in interest, received a loan from the United States of America, acting through the Rural Housing Service in Rural Development (Agency), U.S. Department of Agriculture which was evidenced by a promissory note or assumption agreement dated _____, in the original amount of _____ and secured by a certain Deed of Trust or Mortgage dated _____, and recorded in the land records for the City or County of _____ for the purpose of providing housing in accordance with Section 42 U.S.C. 1484 (Section 514) or 1485 (Section 515), whichever is applicable, and Title V of the Housing Act of 1949, as amended "Program"; and

NOW, THEREFORE, in consideration of the restrictions on the Property as further described in Exhibit A, the sum of Ten Dollars ($10) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, for themselves and for their respective successors and assigns, hereby covenant and agree as follows:

(1) Use Requirement. The Owner, and any successors in interest, agree to use the Property in compliance with 42 U.S.C. § 1484 or § 1485, whichever is applicable, and 7 CFR part 3560, and any other applicable regulations and amendments, for the purpose of housing program eligible very low-, low-, or moderate-income tenants.

(2) Enforcement. The Agency and program eligible tenants or applicants may enforce these restrictions as long as the Agency has not terminated the Restrictive Use Agreement pursuant to paragraph 7 below.

(3) Displacement Prohibition. The Owner agrees not to refuse to lease a dwelling unit offered for rent, or otherwise discriminate in the terms of tenancy, solely because any tenant or prospective tenant is the recipient of housing assistance from the Agency or any other Federal agency.

(4) Owner's Responsibilities. The Owners agrees to: set rents, other charges, and conditions of occupancy in a manner to meet the restrictions required by this Restrictive Use Covenant; post an Agency approved notice of these restriction for the tenants of the property; to adhere to applicable local, State, and Federal laws; and to obtain Agency concurrence for any rental procedures that deviate from those approved at the time of prepayment, prior to implementation.

(5) Civil Rights Requirements. The Owner will comply with the provisions of any applicable Federal, State or local law prohibiting discrimination in housing on the basis of race, color, religion, sex, national origin, handicap or familial status, including but not limited to: Title VI of the Civil Rights Act of 1964 (Public Law 90-284, 82 Stat. 73), the Fair Housing Act, Executive Order 11063, and all requirements imposed by or pursuant to the Agency regulations implementing these authorities, including, but not limited to, 7 CFR 3560.104.

(6) Release of Obligation. The Owner will be released from the obligation under this Restrictive Use Covenant when the Agency has determined that the last existing tenant at the date of prepayment has left or when the Agency determines that there is a no longer a need for the housing or that HUD Section 8 vouchers provided the residents of the housing will no longer be provided due to no fault, action or lack of action on the part of the Owner.

(7) Violations; the Agency's Remedies. The parties further agree that upon any default under this covenant, the Agency may apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against violation of this covenant or for such other equitable relief as may be appropriate, since the injury to the Agency arising from a violation under any of

the terms of this covenant would be irreparable and the amount of damage would be difficult to ascertain.

(8) Covenants to Run with Land. The Owner hereby subjects the Property to the covenants, reservations and restrictions set forth in this covenant. The Owner hereby declares its express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land to the extent permitted by law and shall pass to and be binding upon the successors in title to the Property. Each and every contract, deed, mortgage or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument. The Agency hereby agrees that, upon the request of the Owner made after the release of obligations established in paragraph 7 of this covenant, the Agency shall execute a recordable instrument approved by the Agency for purposes of releasing this covenant of record. All costs and expenses relating to the preparation and recording of such release shall be paid by the Owner.

(9) Superiority. The document hereto constitutes a restrictive covenant that is filed of record, with all other Deeds of Trusts or Mortgages, and that, notwithstanding a foreclosure or transfer of title pursuant to any other instrument or agreement, the restrictive covenants and provisions hereunder shall remain in full force and effect.

(10) Subsequent Modifications and Statutory Amendments. The Agency may implement modifications necessitated by any subsequent statutory amendment without the consent of any other party, including those having the right of enforcement, to require that any third-party obtain prior Agency approval for any enforcement action concerning preexisting or future violations of this covenant.

(11) Other Agreements. The Owner represents and warrants that it has not and will not execute any other agreements with provisions contradictory or in opposition to the provisions of this covenant and that, in any event, the provisions of this covenant are paramount and controlling as to the rights and obligations set forth herein and supersede any other conflicting requirements.

(12) Binding Effect. Upon conveyance of the Property during the term, the Owner shall require its successor or assignee to assume its obligations under this covenant. In any event, this covenant shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and/or assigns.

(13) Amendment. This covenant may not be modified except by an instrument in writing executed by each of the parties that are signatories hereto.

(14) Severability. Notwithstanding anything herein contained, if any one or more of the provisions of this covenant shall for any reason whatsoever be held to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision of this covenant, but this covenant shall be construed as if such illegal, invalid or unenforceable provision had never been contained herein.

(15) Headings. The headings and titles to the sections of this covenant are inserted for convenience only and shall not be deemed a part hereof nor affect the construction or interpretation of any provisions hereof.

(16) Governing Law. This covenant shall be governed by all applicable Federal laws.

IN WITNESS WHEREOF, the parties hereto have caused this Restrictive Use Covenant to be executed and made effective as of the date first above written.

OWNER:_____,

a _____

Date: _____

By:_____

Name:_____

Title:_____

WITNESS/ATTEST:

_____

[[insert appropriate acknowledgment form]]

EXHIBIT A
LEGAL DESCRIPTION

[attached]

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RESTRICTIVE-USE COVENANT - TRANSFEREES ASSUMING AGENCY LOANS
(Including loans approved prior to December 21, 1979) (§3560.662(b)(3))

WHEREAS, _____ [insert borrower's name and address] "Owner", or a predecessor in interest, received a loan from the United States of America, acting through the Rural Housing Service in Rural Development (Agency), U.S. Department of Agriculture which was evidenced by a promissory note or assumption agreement dated _____, in the original amount of _____ and secured by a certain Deed of Trust or Mortgage dated _____, and recorded in the land records for the City or County of _____ for the purpose of providing housing in accordance with Section 42 U.S.C. 1484 (Section 514) or 1485 (Section 515), whichever is applicable, and Title V of the Housing Act of 1949, as amended "Program"; and

NOW, THEREFORE, in consideration of the restrictions on the Property as further described in Exhibit A, the sum of Ten Dollars ($10) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, for themselves and for their respective successors and assigns, hereby covenant and agree as follows:

(1) Term. The period of the restriction will be until [date]. [The date used should be the date agreed to in approving the transfer pursuant to 7 CFR 3560.406, which when an equity loan is being provided, must be 30 years in the future.]

(2) Use Requirement. The Owner, and any successors in interest, agree to use the Property in compliance with 42 U.S.C. § 1484 or § 1485, whichever is applicable, and 7 CFR part 3560, and any other applicable regulations and amendments, for the purpose of housing program eligible very low-, low-, or moderate-income tenants.

(3) Enforcement. The Agency and Program eligible tenants or applicants may enforce these restrictions as long as the Agency has not terminated the Restrictive Use Agreement pursuant to paragraph 7 below.

(4) Displacement Prohibition. The Owner agrees not to refuse to lease a dwelling unit offered for rent, or otherwise discriminate in the terms of tenancy, solely because any tenant or prospective tenant is the recipient of housing assistance from the Agency or any other Federal agency.

(5) Owner's Responsibilities. The Owners agrees to: set rents, other charges, and conditions of occupancy in a manner to meet the restrictions required by this Restrictive Use Covenant; post an Agency approved notice of these restrictions for the tenants of the property; to adhere to applicable local, State, and Federal laws; and to obtain Agency concurrence for any rental procedures that deviate from those approved at the time of prepayment, prior to implementation.

(6) Civil Rights Requirements. The Owner will comply with the provisions of any applicable Federal, State or local law prohibiting discrimination in housing on the basis of race, color, religion, sex, national origin, handicap or familial status, including but not limited to: Title VI of the Civil Rights Act of 1964 (Public Law 90-284, 82 Stat. 73), the Fair Housing Act, Executive Order 11063, and all requirements imposed by or pursuant to Agency regulations implementing these authorities, including, but not limited to, 7 CFR 3560.104.

(7) Release of Obligation. The Owner will be released from the obligations under this Restrictive Use covenant before the termination period set in paragraph 1 only when the Agency determines that there is a no longer a need for the housing or that HUD Section 8 vouchers provided the residents of the housing will no longer be provided due to no fault, action or lack of action on the part of the Owner.

(8) Violations; the Agency's Remedies. The parties further agree that upon any default under this covenant, the Agency may apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against violation of this covenant or for such other equitable relief as may be appropriate, since the injury to the Agency arising from a violation under any of the terms of this covenant would be irreparable and the amount of damage would be difficult to ascertain.

(9) Covenants to Run with Land. The Owner hereby subjects the Property to the covenants, reservations and restrictions set forth in this covenant. The Owner hereby declares its express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land to the extent permitted by law and shall pass to and be binding upon the successors in title to the Property throughout the Term. Each and every contract, deed, mortgage or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument. The Agency hereby agrees that, upon the request of the Owner made after the term of this covenant, the Agency shall execute a recordable instrument approved by the Agency for purposes of releasing this covenant of record. All costs and expenses relating to the preparation and recording of such release shall be paid by the Owner.

(10) Superiority. The document hereto constitutes a restrictive covenant that is filed of record, with all other Deeds of Trusts or Mortgages, and that, notwithstanding a foreclosure or transfer of title pursuant to any other instrument or agreement, the restrictive covenants and provisions hereunder shall remain in full force and effect.

(11) Subsequent Modifications and Statutory Amendments. The Agency may implement modifications necessitated by any subsequent statutory amendment without the consent of any other party, including those having the right of enforcement, to require that any third-party obtain prior Agency approval for any enforcement action concerning preexisting or future violations of this covenant.

(12) Other Agreements. The Owner represents and warrants that it has not and will not execute any other agreements with provisions contradictory or in opposition to the provisions of this covenant and that, in any event, the provisions of this covenant are paramount and controlling as to the rights and obligations set forth herein and supersede any other conflicting requirements.

(13) Binding Effect. Upon conveyance of the Property during the term, the Owner shall require its successor or assignee to assume its obligations under this covenant. In any event, this covenant shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and/or assigns.

(14) Amendment. This covenant may not be modified except by an instrument in writing executed by each of the parties that are signatories hereto.

(15) Severability. Notwithstanding anything herein contained, if any one or more of the provisions of this covenant shall for any reason whatsoever be held to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision of this covenant, but this covenant shall be construed as if such illegal, invalid or unenforceable provision had never been contained herein.

(16) Headings. The headings and titles to the sections of this covenant are inserted for convenience only and shall not be deemed a part hereof nor affect the construction or interpretation of any provisions hereof.

(17) Governing Law. This covenant shall be governed by all applicable Federal laws.

IN WITNESS WHEREOF, the parties hereto have caused this Restrictive Use Covenant to be executed and made effective as of the date first above written.

OWNER:_____,

a _____

Date: _____

By:_____

Name:_____

Title:_____

WITNESS/ATTEST:

_____

[[insert appropriate acknowledgment form]]

EXHIBIT A
LEGAL DESCRIPTION

[attached]

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RESTRICTIVE USE COVENANT - AGENCY REQUESTED EXTENSION
Use of Housing is Currently Restricted (7 CFR 3560.662(b)(4))

WHEREAS, _____ [insert borrower's name and address] "Owner", or a predecessor in interest, received a loan from the United States of America, acting through the Rural Housing Service in Rural Development (Agency), U.S. Department of Agriculture which was evidenced by a promissory note or assumption agreement dated _____, in the original amount of _____ and secured by a certain Deed of Trust or Mortgage dated _____, and recorded in the land records for the City or County of _____ for the purpose of providing housing in accordance with Section 42 U.S.C. 1484 (Section 514) or 1485 (Section 515), whichever is applicable, and Title V of the Housing Act of 1949, as amended "Program"; and

NOW, THEREFORE, in consideration of the restrictions on the Property as further described in Exhibit A, the sum of Ten Dollars ($10) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, for themselves and for their respective successors and assigns, hereby covenant and agree as follows:

(1) Term. The period of the restriction will be until [date]. [The date that is inserted is calculated by taking the date the current restrictions expire and adding to that date any agreed upon extension. For instance, if the restrictions expire a year from now [July 1, 2007] and borrower agrees to a 10-year extension, you would insert [July 1, 2017].

(2) Use Requirement. The Owner, and any successors in interest, agree to use the Property in compliance with 42 U.S.C. § 1484 or § 1485, whichever is applicable, and 7 CFR part 3560, and any other applicable regulations and amendments, for the purpose of housing program eligible very low-, low-, or moderate-income tenants.

(3) Enforcement. The Agency and program eligible tenants or applicants may enforce these restrictions as long as the Agency has not terminated the Restrictive Use Agreement pursuant to paragraph 7 below.

(4) Displacement Prohibition. The Owner agrees not to refuse to lease a dwelling unit offered for rent, or otherwise discriminate in the terms of tenancy, solely because any tenant or prospective tenant is the recipient of housing assistance from the Agency or any other Federal agency.

(5) Owner's Responsibilities. The Owners agrees to: set rents, other charges, and conditions of occupancy in a manner to meet the restrictions required in this Restrictive Use Covenant; post an Agency approved notice of these restrictions for the tenants of the property; to adhere to applicable local, State, and Federal laws; and to obtain Agency concurrence for any rental procedures that deviate from those approved at the time of prepayment, prior to implementation.

(6) Civil Rights Requirements. The Owner will comply with the provisions of any applicable Federal, State or local law prohibiting discrimination in housing on the basis of race, color, religion, sex, national origin, handicap or familial status, including but not limited to: Title VI of the Civil Rights Act of 1964 (Public Law 90-284, 82 Stat. 73), the Fair Housing Act, Executive Order 11063, and all requirements imposed by or pursuant to Agency regulations implementing these authorities, including, but not limited to, 7 CFR 3560.104.

(7) Release of Obligation. The Owner will be released from these obligations under the Restrictive Use Covenant before the termination of the period in paragraph 1 only when the Agency determines that there is a no longer a need for the housing or HUD Section 8 vouchers provided the residents of the housing will no longer be provided due to no fault, action or lack of action on the part of the Owner.

(8) Violations; the Agency's Remedies. The parties further agree that upon any default under

this covenant, the Agency may apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against violation of this covenant or for such other equitable relief as may be appropriate, since the injury to the Agency arising from a violation under any of the terms of this covenant would be irreparable and the amount of damage would be difficult to ascertain.

(9) Covenants to Run with Land. The Owner hereby subjects the Property to the covenants, reservations and restrictions set forth in this covenant. The Owner hereby declares its express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land to the extent permitted by law and shall pass to and be binding upon the successors in title to the Property throughout the Term. Each and every contract, deed, mortgage or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument. The Agency hereby agrees that, upon the request of the Owner made after the Term of this covenant, the Agency shall execute a recordable instrument approved by the Agency for purposes of releasing this covenant of record. All costs and expenses relating to the preparation and recording of such release shall be paid by the Owner.

(10) Superiority. The document hereto constitutes a restrictive covenant that is filed of record, with all other Deeds of Trusts or Mortgages, and that, notwithstanding a foreclosure or transfer of title pursuant to any other instrument or agreement, the restrictive covenants and provisions hereunder shall remain in full force and effect.

(11) Subsequent Modifications and Statutory Amendments. The Agency may implement modifications necessitated by any subsequent statutory amendment without the consent of any other party, including those having the right of enforcement, to require that any third-party obtain prior Agency approval for any enforcement action concerning preexisting or future violations of this covenant.

(12) Other Agreements. The Owner represents and warrants that it has not and will not execute any other agreements with provisions contradictory or in opposition to the provisions of this covenant and that, in any event, the provisions of this covenant are paramount and controlling as to the rights and obligations set forth herein and supersede any other conflicting requirements.

(13) Binding Effect. Upon conveyance of the Property during the term, the Owner shall require its successor or assignee to assume its obligations under this covenant. In any event, this covenant shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and/or assigns.

(14) Amendment. This covenant may not be modified except by an instrument in writing executed by each of the parties that are signatories hereto.

(15) Severability. Notwithstanding anything herein contained, if any one or more of the provisions of this covenant shall for any reason whatsoever be held to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision of this covenant, but this covenant shall be construed as if such illegal, invalid or unenforceable provision had never been contained herein.

(16) Headings. The headings and titles to the sections of this covenant are inserted for convenience only and shall not be deemed a part hereof nor affect the construction or interpretation of any provisions hereof.

(17) Governing Law. This covenant shall be governed by all applicable Federal laws.

IN WITNESS WHEREOF, the parties hereto have caused this Restrictive Use Covenant to be executed and made effective as of the date first above written.

OWNER:_____,

a _____

Date: _____

By:_____

Name:_____

Title:_____

WITNESS/ATTEST:

_____

[[insert appropriate acknowledgment form]]

EXHIBIT A
LEGAL DESCRIPTION

[attached]

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RESTRICTIVE USE COVENANT - THE REMAINING USEFUL LIFE
Use if Restrictions are not in Place (7 CFR 3560.662(b)(5))

WHEREAS, _____ [insert borrower's name and address] "Owner", or a predecessor in interest, received a loan from the United States of America, acting through the Rural Housing Service in Rural Development (Agency), U.S. Department of Agriculture which was evidenced by a promissory note or assumption agreement dated _____, in the original amount of _____ and secured by a certain Deed of Trust or Mortgage dated _____, and recorded in the land records for the City or County of _____ for the purpose of providing housing in accordance with Section 42 U.S.C. 1484 (Section 514) or 1485 (Section 515), whichever is applicable, and Title V of the Housing Act of 1949, as amended "Program"; and

NOW, THEREFORE, in consideration of the restrictions on the Property as further described in Exhibit A, the sum of Ten Dollars ($10) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, for themselves and for their respective successors and assigns, hereby covenant and agree as follows:

(1) Use Requirement. The Owner, and any successors in interest, agree to use the Property in compliance with 42 U.S.C §1484 or §1485, whichever is applicable, and 7 CFR 3560, and any other applicable regulations and amendments, for the purpose of housing program eligible very low-, low-, or moderate-income tenants.

(2) Enforcement. The Agency and program eligible tenants or applicants may enforce these restrictions as long as the Agency has not terminated the Restrictive Use Agreement pursuant to paragraph 7 below.

(3) Displacement Prohibition. The Owner agrees not to refuse to lease a dwelling unit offered for rent, or otherwise discriminate in the terms of tenancy, solely because any tenant or prospective tenant is the recipient of housing assistance from the Agency or any other Federal agency.

(4) Owner's Responsibilities. The Owners agrees to: set rents, other charges, and conditions of occupancy in a manner to meet the restrictions required in this Restrictive Use Covenant; post an Agency approved notice of these restrictions for the tenants of the property; to adhere to applicable local, State, and Federal laws; and to obtain Agency concurrence for any rental procedures that deviate from those approved at the time of prepayment, prior to implementation.

(5) Civil Rights Requirements. The Owner will comply with the provisions of any applicable Federal, State or local law prohibiting discrimination in housing on the basis of race, color, religion, sex, national origin, handicap or familial status, including but not limited to: Title VI of the Civil Rights Act of 1964 (Public Law 90-284, 82 Stat. 73), the Fair Housing Act, Executive Order 11063, and all requirements imposed by or pursuant to Agency regulations implementing these authorities, including, but not limited to, 7 CFR 3560.104.

(6) Release of Obligation. The Owner will be released from these obligations only when the Agency determines that the useful life of the housing and related facilities has passed, there is no longer a need for the housing, or that HUD Section 8 vouchers provided the residents of the housing will no longer be provided due to no fault, action or lack of action on the part of the Owner. If the Agency determines the useful life of the housing and related facilities has passed, in accordance with 7 CFR § 3560.658(a)(1) or (a)(2), the undersign agrees that the Property will be offered for sale to a qualified non-profit organization or public body, in accordance with previously cited statues and regulations.

(7) Violations; the Agency's Remedies. The parties further agree that upon any default under this covenant, the Agency may apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against violation of this covenant or for such other equitable relief as may be appropriate, since the injury to the Agency arising from a violation under any of the terms of this covenant would be irreparable and the amount of damage would be difficult to ascertain.

(8) Covenants to Run with Land. The Owner hereby subjects the Property to the covenants, reservations and restrictions set forth in this covenant. The Owner hereby declares its express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land to the extent permitted by law and shall pass to and be binding upon the successors in title to the Property. Each and every contract, deed, mortgage or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument. The Agency hereby agrees that, upon the request of the Owner made after the release of obligations established in paragraph 7 of this covenant, the Agency shall execute a recordable instrument approved by the Agency for purposes of releasing this covenant of record. All costs and expenses relating to the preparation and recording of such release shall be paid by the Owner.

(9) Superiority. The document hereto constitutes a restrictive covenant that is filed of record, with all other Deeds of Trusts or Mortgages, and that, notwithstanding a foreclosure or transfer of title pursuant to any other instrument or agreement, the restrictive covenants and provisions hereunder shall remain in full force and effect.

(10) Subsequent Modifications and Statutory Amendments. The Agency may implement modifications necessitated by any subsequent statutory amendment without the consent of any other party, including those having the right of enforcement, to require that any third-party obtain prior Agency approval for any enforcement action concerning preexisting or future violations of this covenant.

(11) Other Agreements. The Owner represents and warrants that it has not and will not execute any other agreements with provisions contradictory or in opposition to the provisions of this covenant and that, in any event, the provisions of this covenant are paramount and controlling as to the rights and obligations set forth herein and supersede any other conflicting requirements.

(12) Binding Effect. Upon conveyance of the Property during the Term, the Owner shall require its successor or assignee to assume its obligations under this covenant. In any event, this covenant shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and/or assigns.

(13) Amendment. This covenant may not be modified except by an instrument in writing executed by each of the parties that are signatories hereto.

(14) Severability. Notwithstanding anything herein contained, if any one or more of the provisions of this covenant shall for any reason whatsoever be held to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision of this covenant, but this covenant shall be construed as if such illegal, invalid or unenforceable provision had never been contained herein.

(15) Headings. The headings and titles to the sections of this covenant are inserted for convenience only and shall not be deemed a part hereof nor affect the construction or interpretation of any provisions hereof.

(16) Governing Law. This covenant shall be governed by all applicable Federal laws.

IN WITNESS WHEREOF, the parties hereto have caused this Restrictive Use Covenant to be executed and made effective as of the date first above written.

OWNER:_____,

a _____

Date: _____

By:_____

Name:_____

Title:_____

WITNESS/ATTEST: _____

[[insert appropriate acknowledgment form]]

EXHIBIT A
LEGAL DESCRIPTION

[attached]

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RESTRICTIVE USE COVENANT - 20-YEAR
Use in all Other Cases (7 CFR 3560.662(b)(6))

WHEREAS, _____ [insert borrower's name and address] "Owner", or a predecessor in interest, received a loan from the United States of America, acting through the Rural Housing Service in Rural Development (Agency), U.S. Department of Agriculture which was evidenced by a promissory note or assumption agreement dated _____, in the original amount of _____ and secured by a certain Deed of Trust or Mortgage dated _____, and recorded in the land records for the City or County of _____ for the purpose of providing housing in accordance with Section 42 U.S.C. 1484 (Section 514) or 1485 (Section 515), whichever is applicable, and Title V of the Housing Act of 1949, as amended "Program"; and

NOW, THEREFORE, in consideration of the restrictions on the Property as further described in Exhibit A, the sum of Ten Dollars ($10) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, for themselves and for their respective successors and assigns, hereby covenant and agree as follows:

(1) Term. The period of the restriction will be for 20 years, from the date this Restrictive Use Covenant was signed.

(2) Use Requirement. The Owner, and any successors in interest, agree to use the Property in compliance with 42 U.S.C. § 1484 or § 1485, whichever is applicable, and 7 CFR part 3560, and any other applicable regulations and amendments, for the purpose of housing program eligible very low-, low-, or moderate-income tenants.

(3) Enforcement. The Agency and program eligible tenants or applicants may enforce these restrictions as long as the Agency has not terminated the Restrictive Use Agreement pursuant to paragraph 7 below.

(4) Displacement Prohibition. The Owner agrees not to refuse to lease a dwelling unit offered for rent, or otherwise discriminate in the terms of tenancy, solely because any tenant or prospective tenant is the recipient of housing assistance from the Agency or any other Federal agency.

(5) Owner's Responsibilities. The Owners agrees to: set rents, other charges, and conditions of occupancy in a manner to meet the restrictions required in this Restrictive Use Covenant; post an Agency approved notice of these restrictions for the tenants of the property; to adhere to applicable local, State, and Federal laws; and to obtain Agency concurrence for any rental procedures that deviate from those approved at the time of prepayment, prior to implementation.

(6) Civil Rights Requirements. The Owner will comply with the provisions of any applicable Federal, State or local law prohibiting discrimination in housing on the basis of race, color, religion, sex, national origin, handicap or familial status, including but not limited to: Title VI of the Civil Rights Act of 1964 (Public Law 90-284, 82 Stat. 73), the Fair Housing Act, Executive Order 11063, and all requirements imposed by or pursuant to Agency regulations implementing these authorities, including, but not limited to, 7 CFR 3560.10.4.

(7) Release of Obligation. The Owner will be released from these obligations before the termination period set in paragraph 1 only when the Agency determines that there is a no longer a need for the housing or that HUD Section 8 vouchers provided the residents of the housing will no longer be provided due to no fault, action or lack of action on the part of the Owner.

(8) Violations; the Agency's Remedies. The parties further agree that upon any default under this covenant, the Agency may apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against violation of this covenant or for such other equitable relief as may be appropriate, since the injury to the Agency arising from a violation under any of the terms of this covenant would be irreparable and the amount of damage would be difficult to

ascertain.

(9) Covenants to Run with Land. The Owner hereby subjects the Property to the covenants, reservations and restrictions set forth in this covenant. The Owner hereby declares its express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land to the extent permitted by law and shall pass to and be binding upon the successors in title to the Property throughout the term. Each and every contract, deed, mortgage or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument. The Agency hereby agrees that, upon the request of the Owner made on or after the term of this covenant, the Agency shall execute a recordable instrument approved by the Agency for purposes of releasing this covenant of record. All costs and expenses relating to the preparation and recording of such release shall be paid by the Owner.

(10) Superiority. The document hereto constitutes a restrictive covenant that is filed of record, with all other Deeds of Trusts or Mortgages, and that, notwithstanding a foreclosure or transfer of title pursuant to any other instrument or agreement, the restrictive covenants and provisions hereunder shall remain in full force and effect.

(11) Subsequent Modifications and Statutory Amendments. The Agency may implement modifications necessitated by any subsequent statutory amendment without the consent of any other party, including those having the right of enforcement, to require that any third-party obtain prior Agency approval for any enforcement action concerning preexisting or future violations of this covenant.

(12) Other Agreements. The Owner represents and warrants that it has not and will not execute any other agreements with provisions contradictory or in opposition to the provisions of this covenant and that, in any event, the provisions of this covenant are paramount and controlling as to the rights and obligations set forth herein and supersede any other conflicting requirements.

(13) Binding Effect. Upon conveyance of the Property during the term, the Owner shall require its successor or assignee to assume its obligations under this covenant. In any event, this covenant shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and/or assigns.

(14) Amendment. This covenant may not be modified except by an instrument in writing executed by each of the parties that are signatories hereto.

(15) Severability. Notwithstanding anything herein contained, if any one or more of the provisions of this covenant shall for any reason whatsoever be held to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision of this covenant, but this covenant shall be construed as if such illegal, invalid or unenforceable provision had never been contained herein.

(16) Headings. The headings and titles to the sections of this covenant are inserted for convenience only and shall not be deemed a part hereof nor affect the construction or interpretation of any provisions hereof.

(17) Governing Law. This covenant shall be governed by all applicable Federal laws.

IN WITNESS WHEREOF, the parties hereto have caused this Restrictive Use Covenant to be executed and made effective as of the date first above written.

OWNER:_____,

a _____

Date: _____

By:_____

Name:_____

Title:_____

WITNESS/ATTEST:

_____

[[insert appropriate acknowledgment form]]

EXHIBIT A
LEGAL DESCRIPTION

[attached]

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BORROWER PREPAYMENT APPLICATION CHECKLIST

Borrowers seeking to prepay an Agency loan must submit a written prepayment request to the Agency at least 180 days in advance of the anticipated prepayment date and must obtain Agency approval before the Agency will accept prepayment.

Prior to submitting a prepayment request, borrowers must take whatever actions necessary to provide the following items.

Name of Borrower _____

Name of Project _____

Case and Project Number _____

1. **A clear description of the loan to be prepaid, the housing project covered by the loan being prepaid, and the requested date of prepayment.**

2. **A statement documenting the borrower's ability to prepay under the terms specified. If applicable, a refinancing letter from a financial institution detailing proposed rates and terms, sales agreement, or financial statement.**

3. **A certification that the borrower will comply with any Federal, State, or local laws or regulations that may relate to the prepayment request and a statement of actions needed to assure such compliance.**

4. **A copy of lease language to be used during the period between the submission date and the final resolution of the prepayment request notifying tenant applicants that the owner of the housing project has submitted a prepayment request to the Agency and explaining the potential effect of the request on the lease.**

5. **Borrowers are required to submit a signed release of information consent letter along with the prepayment request. The Agency will notify non-profit organizations and public bodies involved in providing affordable housing or financial assistance to tenants of the receipt of a borrower's request to prepay their MFH loan(s). Additionally, the Agency is to notify non-profit organizations and public bodies whenever a borrower, who has requested prepayment, is required or elects to offer their property for sale to a non-profit or public body.**

6. **A certification that the borrower has notified all Governmental entities involved in providing affordable housing or financial assistance to tenants in the project and a statement specifying how long financial assistance from such parties will be provided to tenant after prepayment.**

7. **A statement affirming that units in the property applying for prepayment will continue to be available for rent by eligible residents during the prepayment process.**

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LEASE ADDENDUM

1. Properties that have had their application to prepay accepted by the Agency. The following language needs to be added or attached to the lease of any tenants coming into the property between the initial submission of the prepayment application and the final resolution of the prepayment application:

a. Properties with no existing RUP:

"The mortgage on this project may be repaid to the Federal Government on or after _____. At that time, your rent may be raised to comparable market rate rents in the area, or you may be asked to move from the project."

b. Properties with an existing RUP not yet expired:

"Although prepayment of the loan to the U.S. Department of Agriculture, Rural Development, may occur on or after _____, you are protected under 42 U.S.C. 1485. Rents, other charges, and conditions of occupancy will not differ from what would have been had the project remained in the Rural Development program. This protection continues until you voluntarily vacate your apartment or the expiration of the exiting restriction which will occur on _____ (expiration of existing RUP), whichever occurs first."

2. Properties that prepay with new RUPs (Attachment 15-E-2), the following language will be attached to the lease of each tenant in occupancy at the time of prepayment as an addendum:

"Although prepayment of the loan to the U.S. Department of Agriculture, Rural Development, occurred on _____, you are protected under 42 U.S.C. 1485. Rents, other charges, and conditions of occupancy will not differ from what would have been had the project remained in the Rural Development program. This protection continues until you voluntarily vacate your apartment."

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PREPAYMENT AND DISPLACEMENT PREVENTION GRANT AGREEMENT

THIS GRANT AGREEMENT (Agreement) dated _____, 20__, between **[Insert Borrower Name]** which is organized and doing business [insert State] as **[Insert Legal Entity Name]** "Grantee", and the United States of America, acting through the Rural Development, U.S. Department of Agriculture, "Grantor", WITNESSETH:
WHEREAS:
Grantee has determined to undertake acquisition of a multi-family housing project financed by the Grantor to house rural residents located at _____ _____ and more specifically described in Exhibit A and duly authorized the undertaking of such a project.

Grantee wishes to obtain grant funds to assist in the costs of acquisition of such property in accordance with Section 502~~(~~c~~)~~ (5)~~(~~ C~~)~~ (i) of the Housing Act of 1949, as amended, and 7 CFR 3560.659(h).

Grantor has agreed to grant the Grantee a sum not to exceed $ _____ subject to the terms and conditions established in this Agreement. Provided, however; that any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in parts, at any time, if it is determined that the Grantee has failed to comply with the conditions of the grant or 7 CFR parts 3015, 3016, and 3019, as applicable.

NOW, THEREFORE, in consideration of this grant, to be made pursuant to Section 502 of the Housing Act of 1949, to cover any direct costs (other than the purchase price) incurred by the Grantee in purchasing and assuming responsibility for the housing and related facilities involved as explained in 7 CFR 3560.659. Such costs may include, among other things, written estimates for legal, architectural, engineering fees, and closing costs.

I. GRANTEE AGREES THAT GRANTEE WILL:

A. Acquire said project in accordance with the Grantor's regulations. If said property is not acquired within 60 days from the date of this Agreement, the money shall be returned by Grantee to Grantor.
B. Contract, manage, operate, and maintain the project continuously in an efficient and economic manner.
C. Make services of said project available to all eligible rural residents in compliance with Executive Order 12898, the Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973.
D. Provide Grantor with such periodic reports as it may require in accordance with 7 CFR 3015 and 3016, and permit periodic inspections of its operations by a representative of the Grantor.

E. To execute the following:

- Form Rural Development 400-1, "*U.S. Department of Agriculture Equal Opportunity Agreement*,"
- Form Rural Development 400-4, "*Assurance Agreement*," and
- To execute any other agreements required by the Grantor which the Grantee is legally authorized to execute.

F. Upon any violation of Grantee's agreements set forth in this instrument, Grantor may seek enforcement of the Grant pursuant to 7 CFR parts 3015, subparts N, 7 CFR 3016.43 and 7 CFR 3019.62, as applicable, as may be deemed necessary by the Grantor to assure compliance with the provisions of this grant Agreement and the laws and regulations under which this grant is made.

G. Return immediately to the Grantor, as required, by the regulations of the Grantor, any grant funds advanced and not needed by the Grantee for approved purposes.

H. Provide Financial Management Systems, as more specifically provided in 7 CFR parts 3015.61, 3016.20 and 3019.21, which will include:

- Accurate, current and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.
- Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.
- Effective control over and accountability for all funds. Grantee shall adequately safeguard all such funds and shall assure that they are used solely for authorized purposes.
- Accounting records supported by source documentation.

I. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after grant closing except that the records shall be retained beyond the 3-year period if audit findings have not been resolved. Microfilm copies or other electronic media (i.e., Compact Disks) may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts, and transcripts.

J. Provide an audit report pursuant to 7 CFR parts 3016.26, 3019.26 and 3052, as applicable, prepared in sufficient detail to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this Agreement.

K. Account for and return to the Grantor interest earned on grant funds pending their disbursements for program purposes when the Grantee is a unit of local Government. States and agencies or instrumentalities of States shall not be held accountable for interest earned on grant funds pending their disbursement.

L. Except as specifically provided in this Agreement, comply with the applicable provisions of USDA's general grant regulations set out in 7 CFR 3015, 3016, 3019, and 3052, as applicable.
M. Comply with the requirements of 7 CFR part 3021, relating to drug-free workplace requirements, and 7 CFR part 3018 relating to restrictions on lobbying.

II. GRANTOR AGREES THAT IT WILL:

A. Make available to Grantee for the purpose of this Agreement not to exceed $_____ which it will advance to the Grantee in accordance with the actual needs of the Grantee as determined by the Grantor.
B. At its sole discretion and at any time may give consent to defer, release, satisfy, or terminate any or all of the Grantee's grant obligations, with or without available consideration, upon such terms and conditions as the Grantor may determine to be (1) advisable to further the purpose of the grant or to protect the Grantor's financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

III. TERMINATION OF THIS AGREEMENT:

This Agreement may be terminated for cause in the event of default on the part of the Grantee as provided in paragraph 1 of the Agreement or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the grant will not produce beneficial results commensurate with the further expenditure of funds.

IN WITNESS WHEREOF: Grantee on the date first above written has caused this Agreement to be executed:

ATTEST:

_____

BY: _____ BY: _____

_____ _____
Title Title

UNITED STATES OF AMERICA
RURAL HOUSING SERVICE
RURAL DEVELOPMENT

BY: _____

_____
Title

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT is entered into this _____ day of _____, ____ by and among _____(insert Lender Name) _____, ("Senior Lender"), Rural Development, acting through the Rural Housing Service, U. S. Department of Agriculture, United States of America or successor Agency**,** _____(Insert Borrower Name).

Recitals

A. Rural Development previously made a loan to, or permitted the assumption of a loan by, the Borrower in the original principal amount of $_____ (the "Rural Development Loan") which loan is currently secured by a mortgage (the "Rural Development Mortgage") on a multifamily housing project located in (Insert City or County and State)(the "Property"). The Property is more fully described in the attached Exhibit A.

B. The Senior Lender is about to make a loan (the "First Mortgage Loan") to the Borrower in the original principal amount of $_____. The First Mortgage Loan will be secured by a first mortgage lien (the "First Mortgage") on the Property. The Borrower's obligation to repay the First Mortgage Loan is evidenced by a Promissory Note dated _____, _____ (the "First Mortgage Note").

C. The Borrower has requested Rural Development, and Rural Development has agreed, to subordinate the Rural Development Mortgage to the First Mortgage.

NOW, THEREFORE, in order to induce Rural Development to subordinate its Rural Development Mortgage to the First Mortgage Lien, and in consideration thereof, the Senior Lender, Rural Development and the Borrower agree as follows:

Subordination

Rural Development hereby subordinates its Rural Development Loan and the lien of its Rural Development Mortgage on the Property to the First Mortgage Loan and the lien of the First Mortgage in an amount not to exceed $_____ ("Subordination Cap") subject to the terms and conditions set forth herein.

1. Status of Rural Development Mortgage.

The Senior Lender understands that the Property is subject to the lien of the Rural Development Mortgage. The existence of the Rural Development Mortgage shall not constitute an event of default under the first Mortgage Loan Documents**.**

2. Terms of Subordination.

a. **Agreement to Rural Development**. The Senior Lender and Rural Development agree that: (i) the indebtedness evidenced by the Rural Development Loan Documents is and shall be subordinate in right of payment, to the extent and in the manner provided in the Subordination Cap and in the manner set forth in this Agreement, to the prior payment in full of the indebtedness secured by the First Mortgage, and (ii) the Rural Development Mortgage and the other Rural Development Loan Documents are and

shall be subject in all respects to the liens, terms, covenants and conditions of the First Mortgage and such other sums which may hereafter be made pursuant to the First Mortgage for the purposes of protecting the lien of the First Mortgage, curing defaults by the Borrower under the First Mortgage or for any other purpose expressly permitted by the First Mortgage.

b. Loan Payments and Servicing. Rural Development and the Senior Lender shall each service and collect payments on their respective loans.

3. Default under Rural Development Loan Documents.

a. Notice of Default and Cure Rights. Rural Development shall deliver to the Senior Lender a notice of Rural Development Loan Default within five Business Days in each case where Rural Development has given a notice of Rural Development Loan Default to the Borrower. The Senior Lender shall have the right, but not the obligation, to cure any Rural Development Loan Default within 60 days following the date of such notice; provided, however that Rural Development shall be entitled, during such 60-day period, to continue to pursue its rights and remedies under the Rural Development Loan Documents. All amounts paid by the Senior Lender in accordance with the First Mortgage Loan Documents to cure a Rural Development Loan Default shall be deemed to have been advanced by the Senior Lender pursuant to, and shall be

secured by the lien of, the First Mortgage. Failure of Rural Development to send a notice of Rural Development Loan Default to the Senior Lender shall not prevent the exercise of

Rural Development's rights and remedies under the Rural Development Loan Documents, subject to the provisions of this Agreement.

b. Rural Development's Exercise of Remedies After Notice to Senior Lender. If an Rural Development Loan Default occurs and is continuing, Rural Development agrees to notify the Senior Lender, in writing, of its intent to commence foreclosure proceedings with respect to the Property under Rural Development Loan Documents or exercise any other rights or remedies it may have under Rural Development Loan Documents, including, but not limited to accelerating the Rural Development Loan, collecting rents, appointing (or seeking the appointment of) a receiver or exercising any other rights or remedies thereunder unless and until it has given the Senior Lender at least 60 days' prior written notice; during such 60 day period, however, Rural Development shall be entitled to exercise and enforce all other rights and remedies available to Rural Development under Rural Development Loan Documents and/or under applicable laws, including without limitation, rights to enforce covenants and agreements of the Borrower relating to income, rent, or affordability restrictions including the imposition of civil monetary penalties.

4. Default under First Mortgage Loan Documents.

Notice of Default and Cure Rights. The Senior Lender shall deliver to Rural Development a default notice within five business days in each case where the Senior Lender has given a notice of First Mortgage Loan Default to the Borrower. Rural Development shall have the right, but not the obligation, to cure any such monetary First Mortgage Loan Default within

60 days following the date of such notice; provided, however, that the Senior Lender shall be entitled during such 60-day period to continue to pursue its remedies under the First Mortgage Loan Documents. Rural Development may have up to 90 days from the date of the notice of First Mortgage Loan default to cure a non-monetary default. In the event the Senior Mortgagee commences an enforcement action under the Senior Loan Documents following the occurrence of a Senior Mortgage Default the Subordinate Mortgagee agrees to cooperate with the Senior Mortgagee in maintaining the rental assistance agreements as permitted by the applicable regulatory and statutory requirements.

5. Conflict.

The Borrower, the Senior Lender and Rural Development each agrees that, in the event of any conflict or inconsistency between the terms of the First Mortgage Loan Documents, Rural Development Loan Documents and the terms of this Agreement, the Agreement shall govern and control solely as to the following: (a) the relative priority of the security interests of the Senior Lender and Rural Development in the Property; (b) the timing of the exercise of remedies by the Senior Lender and Rural Development under the First Mortgage and Rural Development Mortgage, respectively; and (c) solely as between the Senior Lender and Rural Development, the notice requirements, cure rights, and the other rights and obligations which the Senior Lender and Rural Development have agreed to as expressly provided in this Agreement. Borrower acknowledges that the terms and

provisions of this Agreement shall not, and shall not be deemed to extend time to cure any First Mortgage Loan Default or Rural Development Loan Default, as the case may be**,** give the Borrower the right to notice of any First Mortgage Loan Default or Rural Development Loan Default, as the case may be other than that, if any, provided, under the First Mortgage Loan Documents or Rural Development Loan Documents; or create any other right or benefit for Borrower as against Senior Lender or Rural Development.

6. Rights and Obligations of Rural Development under Rural Development Loan Documents and of the Senior Lender under the First Mortgage Loan Documents.

Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of Rural Development Loan Documents covering the same subject matter:

a. Insurance; Condemnation or Casualty. (i) The Senior Lender agrees that, in addition to the Senior Lender, Rural Development shall be listed as loss payee as its interest appears on all insurance policies maintained on the Property; (ii) In the event of a taking or threatened taking by condemnation or other exercise of eminent domain of all or a portion of the Property or the occurrence of a fire or other casualty resulting in damage to all or a portion of the Property (collectively, a "Casualty"), at any time or times when the First Mortgage remains a lien on the Property the following provisions shall apply:

i. The Rural Development hereby agrees that its rights (under the Rural Development Loan Documents or otherwise) to participate in any proceeding or action relating to a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Casualty shall be and remain subordinate in all respects to the Senior Lender's rights under the First Mortgage Loan Documents with respect thereto; provided, however, this subsection or anything contained in this Agreement shall not limit the rights of the Rural Development to file any pleadings, documents, claims or notices with the appropriate court with jurisdiction over the proposed Casualty;

ii. All proceeds received or to be received on account of Casualty, shall be applied (either to payment of the costs and expenses of repair and restoration or to payment on the First Mortgage Loan) in the manner determined by the Senior Lender; provided, however, that if the Senior Lender elects to apply such proceeds to payment on the principal of, interest on and other amounts payable under the First Mortgage Loan, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the First Mortgage Loan shall be paid to, and may be applied by, Rural Development in accordance with the applicable provisions of the Rural Development Loan Documents.

7. Interference with Rural Development Loan Obligations.

The Senior Lender will take no action that would preclude Borrower from being able to comply with applicable government statutes, regulations, instructions and terms of Rural Development's loan documents.

8. Notices.

Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as "notices" and referred to singly as a "notice") which the Senior Lender or Rural Development is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating early morning delivery (any notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier); or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be based upon the date of actual receipt), addressed to the respective parties as follows:

SENIOR LENDER:

(LENDER NAME)

_____

_____

_____

Attention: _____

With a copy to:

SENIOR LENDER

Insert Name of Senior Lender

RURAL DEVELOPMENT:

UNITED STATES OF AMERICA, acting through the

RURAL DEVELOPMENT

RURAL HOUSING SERVICE,

U. S. DEPARTMENT OF AGRICULTURE

_____

_____

_____

Attention: _____

Either party may, by notice given pursuant to this Section, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses for its notices, but notice of a change of address shall only be effective upon receipt.

9. General.

a. Assignment/Successors. This Agreement shall be binding upon and inure to the heirs, executors, administrators, successors and assigns of the respective parties.

b. No Partnership or Joint Venture. The Senior Lender's permission for the subordination of Rural Development Loan Documents does not constitute the Senior Lender as a joint venturer or partner of Rural Development. Neither party hereto shall hold itself out as a partner, agent or affiliate of the other party hereto.

c. Senior Lender's and Rural Development's Consent. Wherever the Senior Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by the Senior Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement. Wherever Rural Development 's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by Rural Development in its sole and absolute discretion, unless otherwise expressly provided in this Agreement.

d. Further Assurances. Rural Development, the Senior Lender and the Borrower each agree, at the Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence that the Rural Development Mortgage is subordinate to the lien, covenants and conditions of the First Mortgage, or to further evidence the intent of this Agreement.

e. Amendment. This Agreement shall not be amended or terminated except by written instrument signed by all parties hereto.

f. Governing Law. This Agreement shall be governed by federal law and disputes will be resolved in Federal Court.

g. Severable Provisions. If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

h. Term. The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (i) the payment of all of the principal of, interest on and other amounts payable under the First Mortgage Loan Documents; (ii) the payment of all of the principal of, interest on and other amounts payable under Rural Development Loan Documents, other than by reason of payments which Rural Development is obligated to remit to the Senior Lender pursuant to Section 4 hereof; (iii) the acquisition by the Senior Lender of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of,

or the exercise of a power of sale contained in, the First Mortgage; or (iv) the acquisition by Rural Development of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, Rural Development Mortgage, but only if such acquisition of title does not violate any of the terms of this Agreement.

i. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

SENIOR LENDER:

(LENDER NAME)

By: _____

Name: _____

Title: _____

RURAL DEVELOPMENT:

UNITED STATES OF AMERICA, acting through the RURAL DEVELOPMENT

RURAL HOUSING SERVICE,

U. S. DEPARTMENT OF AGRICULTURE

By: _____

Name: _____

Title: _____

BORROWER:

(BORROWER NAME)

By: _____

Name: _____

Title: _____

[Jurats to be added]

EXHIBIT A

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.

APPENDIX 2

7 CFR Part 11—NATIONAL APPEALS DIVISION

Subpart A – National Appeals Division Rules of Procedure

Sec.

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.

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.

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);
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;
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 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 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.

§ 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:

A. 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

B. 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 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.

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.

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;

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.

§ 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.

(d) Determination of Director.

0. 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.

1. 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.

2. 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.

§ 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.

§ 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.

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 AD 343, Cancellation of Administrative Offset
Form AD 1047 Certification Regarding Debarment
Form ASTM Standard E-1528 (TSQ), Transaction Screen Questionnaire
Form FEMA 81-93, Standard Flood Hazard Determination
Form HUD 935.2, Affirmative Fair Housing Marketing Plan
Form HUD 2530, Previous Participation Certification
Form HUD 9832, Management Entity Profile
Form RD 140-4, Transmittal of Documents
Form RD 400-1, Equal Opportunity Agreement
Form RD 400-4, Assurance Agreement
Form RD 402-2, Statement of Deposits and Withdrawals
Form RD 440-34, Option to Purchase Real Estate Property
Form RD 1910-11, Applicant Certification Federal Collection Policies for Consumer or Commercial Debts
Form RD 1924-13, Estimate and Certificate of Actual Cost
Form RD 1944-37, Previous Participation Certification
Form RD 1955-40, Notice of Real Property for Sale
Form RD 1955-45, Standard Sales Contract, Sale of Real Property of the United States
Form RD 1955-46, Invitation, Bid, and Acceptance, Sale of Real Property of the United States
Form RD 1955-47, Bill of Sale 'A'
Form RD 1955-49, Quitclaim Deed
Form RD 1955-62, Request for Contract Services for Custodial/Inventory Property or Program Services
Form RD 1962-20, Notice of Judgment
Form RD 3560-1, Application for Partial Release, Subordination, or Consent
Form RD 3560-7, Multiple Family Housing 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 3560-15, Reamortization Request
Form RD 3560-16, Reamortization Agreement
Form RD 3560-17, MFH Note Consolidation
Form RD 3560-17A, MFH Consolidation of Projects/Loan Agreements/Resolutions
Form RD 3560-19, MFH Advice of Mortgaged Real Estate Sold
Form RD 3560-20, Multi-Family Housing Transfer and Assumption Review and Recommendation
Form RD 3560-21, Assumption Agreement

Form RD 3560-22, Offer to Convey Security
Form RD 3560-27, Rental Assistance Agreement
Form RD 3560-28, MFH Exception to Late Fees
Form RD 3560-29, Notice of Payment Due Report
Form RD 3560-29A, Multiple Family Housing Statement of Payment Due
Form RD 3560-30, Certification of No Identity of Interest (IOI)
Form RD 3560-31, Identity of Interest Disclosure/Qualification Certificate
Form RD 3560-33, Loan Agreement
Form RD 3560-33A, Consolidated Loan Agreement
Form RD 3560-34, Loan Agreement
Form RD 3560-34A, Consolidated RRH Loan Agreement
Form RD 3560-35, Loan Resolution
Form RD 3560-35A, Consolidated Loan Resolution
Form RD 3560-50, Conversion Agreement
Form RD 3560-51, Obligation – Fund Analysis
Form RD 3560-52, Promissory Note
Form RD 3560-55, MFH Transfer of RA
Form RD 3560-56, Report on Real Estate Problem Case
Form RD 3560-57, Application for Settlement of Indebtedness
Form RD 3560-58, Satisfaction
Form RD 3560-64, Online Payment Certification Monitoring Log
Form RD 3560-65, MFH Miscellaneous Receivable Notification/Repayment Agreement
Form SF 424, Application for Federal Assistance
SF 424 C, Budget Information – Construction Programs
SF 424 D, Assurances – Construction Programs
SF - LLL, Disclosure of Lobbying Activities
IRS Form 990, Return of Organization Exempt from Income Tax

APPENDIX 4

HANDBOOK LETTERS REFERENCED IN THIS HANDBOOK

Handbook Letter 301 (3560), Servicing Letter #1
Handbook Letter 302 (3560), Servicing Letter #2
Handbook Letter 303 (3560), Servicing Letter #3
Handbook Letter 303-A (3560), Servicing Letter #3 for CMP
Handbook Letter 304 (3560), Preliminary Determination Notice
Handbook Letter 304-A (3560), Borrower Preliminary Determination Notice
Handbook Letter 305 (3560), Final Determination Notice/Demand Letter
Handbook Letter 305-A (3560), Borrower Sent Final Determination Notice/Demand Letter

Handbook Letter 301 (3560)

REFERENCE: HB-3-3560 Chapter 9

PURPOSE: Servicing Letter #1

ROUTINE NOTICE OF SERVICING RESULTS/CONCERNS

[*insert date*]

Dear [*insert name of borrower*]:

We are writing to inform you of the results of a recent review of certain selected aspects of your operations. A copy of the results of our review is attached [*Attach copy of supervisory visit report, physical inspection report, compliance review, reserve records, notice of payment due, etc.*].

Please review the attached material and note the areas of concern listed. [*if necessary, insert* "We want to especially bring to your attention the following items:"]

We are asking that you contact this office within 15 days of the date of this letter to inform us of the corrective actions you have taken, or plan to take, to correct the concerns listed. Our office address and telephone number are: [*insert address and telephone number*]

Sincerely,

[*Signature and title of Official*]

Attachment

Handbook Letter 302 (3560)

REFERENCE: HB-3-3560 Chapter 9

PURPOSE: Servicing Letter #2

NOTIFICATION OF SERIOUS SERVICING CONCERNS

[*insert date*]

Dear [*insert name of borrower*]:

We are writing to inform you that certain aspects of your project operations are of serious concern to the Agency.

A brief description of the items of concern which warrant attention is [*insert either*: "provided below:" *or* "attached."]

We would like to arrange a meeting to discuss these concerns. [*insert either*: "Please contact our office to confirm if you can make the tentatively scheduled meeting at the following time, date, and location:" *or* "Please contact our office within 15 days of the date of this letter to make the necessary arrangements"]. Our address and telephone number are [*insert address and telephone number*].

Please be prepared to discuss the matters of concern identified. [*insert*: "In particular, you may want to bring the following information to the meeting:"]

We look forward to hearing from you.

Sincerely,

_____

[*Signature and title of Official*]

Attachment

Handbook Letter 303 (3560)

REFERENCE: HB-3-3560 Chapter 9

PURPOSE: Servicing Letter #3

NOTIFICATION OF INTENT TO PURSUE MORE FORCEFUL SERVICING ACTIONS

[*insert date*]

Dear [*insert name of borrower*]:

We regret that earlier attempts to resolve [*state the problems*] have not been successful. We are writing to inform you that Rural Development intends to take further action unless alternative arrangements are promptly made with this office. If you have not contacted us within 15 days, we intend to pursue the [*insert either*: "following actions:" *or* "attached actions."]

[*List actions, e.g., Forward a problem case report to the Leadership Designee, recommend an investigation by the Office of the Inspector General, demand a change in project management, place a recoverable cost charge on the account, forward a recommendation to the Leadership Designee to issue a Notice of Acceleration, etc.*]

We are hopeful we can avoid the necessity of taking the steps outlined above. Unfortunately, we will be forced to do so unless we hear from you within 15 days from the date of this letter.

Please contact our office immediately if you wish to avoid the actions described above.

Sincerely,

_____
[*Signature and title of Official*]

Attachment

Handbook Letter 303-A (3560)

REFERENCE: HB-3-3560 Chapter 9

PURPOSE: Servicing Letter #3-A

NOTIFICATION OF INTENT TO PURSUE CIVIL MONETARY PENALTY ACTION

[*insert date*]

Dear [*insert name of borrower*]:

We regret that earlier attempts to resolve [*state the problems*] have not been successful. We are writing to inform you that Rural Development will be taking further action unless alternative arrangements are promptly made with this office. If you have not contacted us within 15 days, we intend to forward a recommendation to the RHS Administrator to pursue Civil Monetary Penalty action in an effort to bring about program compliance. The open violations resulting in this action as of the date of this letter are:

1. [list the violations]
2.
3.

The maximum civil money penalty that may be imposed per violation shall be in accordance with 7 CFR 3.91(b)(8)(iii) and 543(b)(3)(A) of the Housing Act of 1949.

Upon receipt of this letter, you should become familiar with the rules governing the Agency's adjudicatory hearing proceedings set forth in 7 CFR part 1, subpart H. You will be given the opportunity to settle with the Leadership Designee prior to the hearing. Failure to respond adequately to the Agency within the 15-day period may result in issuance of a complaint under 7 CFR 3560.461 without consideration of information that you may wish to provide.

We are hopeful we can avoid the necessity of taking the steps outlined above.

Please contact our office immediately if you wish to avoid the actions described above.

Sincerely,

_____

[*Signature and title of Official*]

Handbook Letter 304 (3560)

REFERENCE: HB-3-3560, Chapter 9

PURPOSE: Preliminary Determination Notice for Initial Letter to Recipients of Unauthorized Assistance

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PRELIMINARY DETERMINATION NOTICE

[*insert date*]

Dear [*insert name of borrower or tenant*]:

Rural Development has determined that (*you)(name of tenant*) (*have, has*) received unauthorized financial assistance in the form of a (loan, grant, subsidy) amounting to $_____which must be repaid.

(Insert a paragraph briefly describing the circumstances under which the unauthorized assistance was extended, including the reason(s) as provided in 7 CFR part 3560 (Subpart O).

***If unauthorized assistance due from tenant:**

You must notify the tenant in writing that a determination has been made that $ in unauthorized assistance was received. Please provide a copy of this notice to our office within seven (7) business days.

The unauthorized assistance determination notice is a preliminary notice, not a demand letter. The unauthorized assistance determination will:

(1) Specify the reasons the assistance was determined to be unauthorized;
(2) State the amount of unauthorized assistance to be repaid and specify the parties responsible for repayment of the unauthorized assistance;
(3) Establish a place and time when the persons receiving the unauthorized assistance determination notice may meet with you to discuss issues related to the unauthorized assistance notice such as the establishment of a repayment schedule; and,
(4) Advise the tenants they may present facts, figures, written records, or other information within a specified period of time which might alter the determination that the assistance received was unauthorized.

Upon request by the tenants, you will grant additional time for discussions related to an unauthorized assistance determination notice. You must notify this office of schedule revisions when additional time is granted to the tenants in this unauthorized assistance claim.

After you have met with the tenants please 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. Complete Form RD 3560-65 and have the tenant sign the form as their agreement to repay. ***Please provide this office the explanation within 10 days of the date of the meeting with the tenant, along with the signed Form RD 3560-65****.*

Should recovery of improper payments be required, Agency regulations require collection be made by lump sum cash payment, or payment over a reasonable period of time.

If the tenant fails to respond to the unauthorized assistance determination notice or fails to agree to a repayment schedule, please send Handbook Letter 305, Final Determination/Demand Letter to the tenant and a copy to this office. If you receive no response to this letter, please return the Form RD 3560-65 to this office, unsigned.

***If unauthorized assistance due from borrower**:

We have scheduled an appointment at_____(a.m.;p.m.) on_____date_____for you to come into this office to discuss the basis for the Agency's claim. You may provide facts, figures, written records, or other information you have which might alter the Agency's determination that the assistance you have received was unauthorized. Necessary servicing actions will also be discussed.

If you are unable to keep this appointment, please telephone this office at (telephone number) to change the appointment. It is urgent that you respond to this request.
Failure to do so within 15 days may result in the Agency initiating appropriate action to effect collection. If you agree with our claim of unauthorized assistance, Agency regulations require collection be made by lump sum cash payment, or payment over a reasonable period of time.

If you have any questions concerning the subject matter, please contact this office.

Sincerely,

[*Signature and title of Official*]

Attachment – Form RD 3560-65 (if needed)
Handbook Letter 305, Final Determination/Demand Letter (if needed)

Handbook Letter 304-A (3560)

REFERENCE: HB-3-3560, Chapter 9

PURPOSE: Preliminary Determination Notice for Borrower or Management Agent Initial Letter to Recipients of Unauthorized Assistance

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PRELIMINARY DETERMINATION NOTICE

[*insert date*]

Dear [*insert name of borrower or tenant*]:

[Borrower and/or Management Agent name] has determined that (*you)(name of tenant*) (*have, has*) received unauthorized financial assistance in the form of a (loan, grant, subsidy) amounting to $____which must be repaid.

(Insert a paragraph briefly describing the circumstances under which the unauthorized assistance was extended, including the reason(s) as provided in 7 CFR part 3560 (Subpart O).

You must notify the tenant in writing that a determination has been made that $ in unauthorized assistance was received. Please provide a copy of this notice to the Rural Development office within seven (7) business days.

The unauthorized assistance determination notice is a preliminary notice, not a demand letter. The unauthorized assistance determination will:

(1) Specify the reasons the assistance was determined to be unauthorized;
(2) State the amount of unauthorized assistance to be repaid and specify the parties responsible for repayment of the unauthorized assistance;
(3) Establish a place and time when the persons receiving the unauthorized assistance determination notice may meet with you to discuss issues related to the unauthorized assistance notice such as the establishment of a repayment schedule; and,
(4) Advise the tenants they may present facts, figures, written records, or other information within a specified period of time which might alter the determination that the assistance received was unauthorized.

Upon request by the tenants, you will grant additional time for discussions related to an unauthorized assistance determination notice. You must notify the Rural Development office of schedule revisions when additional time is granted to the tenants in this unauthorized assistance claim.

After you have met with the tenants please 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. Complete Form RD 3560-65 and have the tenant sign the form as their agreement to repay. ***Please provide the Rural Development office the explanation within 10 days of the date of the meeting with the tenant, along with the signed Form RD 3560-65****.*

Should recovery of improper payments be required, Agency regulations require collection be made by lump sum cash payment, or payment over a reasonable period of time.

If the tenant fails to respond to the unauthorized assistance determination notice or fails to agree to a repayment schedule, please send Handbook Letter 305-A, Final Determination/Demand Letter to the tenant and a copy to the Rural Development Servicing office. If you receive no response to this letter, please return the Form RD 3560-65 to the Rural Development office, unsigned.

If you disagree with the decision or facts used in making the decision, you may file a Tenant Grievance under the provisions of 7 CFR 356.160. To initiate the Tenant Grievance procedures, you will need to write to this office within 10 calendar days of the receipt of this letter and explain why the decision was wrong or to request a meeting with us. You can present any new information or evidence with the letter or at the meeting.

*See attachment Tenant Grievance Procedures, 7 CFR 3560.160.

If you have any questions concerning the subject matter, please contact [Borrower and/or Management Agent name].

Sincerely,

[*Signature and title of Official*]

Attachment – Form RD 3560-65 (if needed)
Handbook Letter 305-A, Final Determination/Demand Letter (if needed)

Handbook Letter 305 (3560)

REFERENCE: HB-3-3560 Chapter 9

PURPOSE: Final Determination Notice/Demand Letter to recipient of unauthorized assistance to state final determination. Send if borrower or tenant fails to respond to an unauthorized assistance determination notice or fails to agree to a repayment schedule.

FINAL DETERMINATION NOTICE/DEMAND LETTER

[*insert date*]

Dear [*insert name of borrower or tenant*]:

After careful consideration of all information available, Rural Development has determined that you have received unauthorized financial assistance as outlined below.

[Insert a paragraph to:
(a) Describe the unauthorized assistance;
(b) State the amount of unauthorized assistance which must be repaid (same as the amount stated in Handbook Letter 304 unless subsequent information provided by the recipient caused this amount to be changed); and
(c) State what further action is to be taken by the Agency. (See 7 CFR 3560, 3560.709, including termination of tenancy if applicable.)
(d) Attach Form RD 3560-65 to this letter which describes the amount owed and payment agreement. This form should be signed and returned to our office.]

If you disagree with the decision or facts used in making the decision, you may file a Tenant Grievance under the provisions of 7 CFR 356.160. To initiate the Tenant Grievance procedures, you will need to write to this office within 10 calendar days of the receipt of this letter and explain why the decision was wrong or to request a meeting with us. You can present any new information or evidence with the letter or at the meeting.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit recipients on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the recipient has the capacity to enter into a binding contract), because all or part of the recipient's income derives from any public assistance

program. Department of Agriculture regulations provide that no agency, officer, or employee of the United States Department of Agriculture shall exclude from participation in, deny the benefits of, or subject to discrimination any person based on race, color, religion, sex, age, handicap, or national origin under any program or activity administered by such agency, officer, or employee. The Fair Housing Act prohibits discrimination in real estate-related transactions, or in the terms and conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin. If an applicant or borrower believes he or she has been discriminated against for any of these reasons, that person can write the Secretary of Agriculture, Washington, D.C. 20250.
Applicants also cannot be denied a loan because the applicant has in good faith exercised his or her rights under the Consumer Credit Protection Act. If an applicant believes he or she was denied a loan for this reason, the applicant should contact the Federal Trade Commission, Washington, D.C. 20580.

*See attachment Tenant Grievance Procedures, 7 CFR 3560.160.

If you do not cooperate in effecting the necessary adjustments to your account, we will have no alternative but to initiate appropriate action to collect the unauthorized amount.

Sincerely,

[*Signature and title of Official*]

Attachment

REFERENCE: HB-3-3560 Chapter 9

PURPOSE: Final Determination Notice/Demand Letter to recipient of unauthorized assistance to state final determination. Borrower or Management Agent to send if borrower identified unauthorized assistance, when tenant fails to respond to an unauthorized assistance determination notice or fails to agree to a repayment schedule.

FINAL DETERMINATION NOTICE/DEMAND LETTER

[*insert date*]

Dear [*insert name of tenant*]:

After careful consideration of all information available, [Borrower and/or Management Agent name] has determined that you have received unauthorized financial assistance as outlined below. [Insert a paragraph to:

(a) Describe the unauthorized assistance;
(b) State the amount of unauthorized assistance which must be repaid (same as the amount stated in Handbook Letter 304 unless subsequent information provided by the recipient caused this amount to be changed); and
(c) Attach Form RD 3560-65 to this letter which describes the amount owed and payment agreement. This form should be signed by the Agency and returned to our Rural Development.]

If you disagree with the decision or facts used in making the decision, you may file a Tenant Grievance under the provisions of 7 CFR 356.160. To initiate the Tenant Grievance procedures, you will need to write to this office within 10 calendar days of the receipt of this letter and explain why the decision was wrong or to request a meeting with us. You can present any new information or evidence with the letter or at the meeting.

*See attachment Tenant Grievance Procedures, 7 CFR 3560.160.

If you do not cooperate in effecting the necessary adjustments to your account, we will have no alternative but to initiate appropriate action to collect the unauthorized amount.

Sincerely,

_____

[Signature and title of Official]

Attachment