

## **CHAPTER 6: PARTICIPATION WITH OTHER FUNDING SOURCES**

### **6.1 INTRODUCTION**

The Agency encourages the use of loans in which it will be a partner with one or more other funding or financing sources. Such loans are referred to as participation loans. The Agency seeks to foster the use of participation loans as a way to stretch limited resources to provide the maximum number of affordable housing units possible. For this reason, loans that leverage other sources of funding receive a priority in project selection.

Because of the multiple funding sources, processing and underwriting a participation loan involves some special efforts on the part of the Loan Processing Staff. The Agency must make sure that its security is protected, that procedures are established to address different program requirements that may apply as a result of multiple financing, and that it provides no more subsidy than is necessary to make the loan feasible.

The Agency will enter into a participation loan only when certain requirements are met. This chapter discusses those requirements, including the special underwriting considerations that will be used, and how the Agency establishes its security interests and sets loan limits in light of the other funding sources. This chapter also outlines procedures for working with the authority that allocates low-income housing tax credits (LIHTCs), the State housing finance agency.

### **6.2 OVERVIEW OF PARTICIPATION LOANS**

Participation loans offer advantages to both the Agency and borrowers. By combining its resources with those of other lenders or grantors, the Agency can stretch its resources to assist more borrowers, thereby maximizing the number of affordable housing units provided.

The Agency may become a partner in a participation loan by contributing loan funds only or by contributing both rental assistance and loan funds. The amount that can be provided will be based on the Agency's funding priorities and rental assistance levels. If Agency rental assistance is provided, the Agency's loan participation must equal at least 25 percent of the total development cost (TDC) unless an exception is granted by the Administrator, and rents may not be higher than what they would have been had the Agency provided full financing of the units.

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## **SECTION 1: REQUIREMENTS FOR PARTICIPATION LOANS**

### ***[7 CFR 3560.66]***

#### **6.3 GENERAL**

Participation loans for new construction of multi-family housing are processed in accordance with regular program requirements through the Notice of Funding Availability (NOFA) process. The processing procedures detailed in Chapters 4 and 5 apply. There are some differences, however, in terms of the need to coordinate with the other funding sources, ensuring the Agency's security position, and allowing some flexibility in the design of mixed-use projects.

The Agency will only consider becoming a partner in a participation loan when the following requirements are met:

- The number of units in the project that will serve Agency income-eligible tenants must equal or exceed the number of units that will be financed by the Agency. This requirement ensures that Agency funds will be used for authorized program purposes. The number of units financed by the Agency is determined by dividing its loan amount by the State's average new per-unit construction costs. If the number of units to be occupied by program-eligible tenants is less than the number of Agency-financed units, the loan applicant must increase the number of units that will serve program-eligible residents or reduce the Rural Housing Service (RHS) loan request. Loan Originators must not approve loans for projects that fail to meet this requirement.
- The Agency must enter into a participation agreement, intercreditor agreement, or Memorandum of Understanding (MOU) with the other participating lenders in the project. This requirement protects the Agency's interests and is further described in Section 2 of this chapter.
- Projects with participation loans may be marketed to a mixed-income population. Consequently, there may be some program-ineligible occupants in a project. Mixing conventional and income-restricted units requires additional management oversight by the Agency and the loan applicant to ensure that those units financed by the Agency meet program requirements. For such projects, the Agency also permits some design flexibility that is not allowed in projects funded solely with Agency financing. Some restrictions apply, and these must be discussed with the loan applicant at the preliminary meeting (see paragraph 6.4).

#### **6.4 DESIGN REQUIREMENTS**

All housing and related facilities funded by a participation loan, as part of a Multi-Family Housing project funded with Agency loans, will be planned and constructed in accordance with RD Instruction 1924-A and RD Instruction 1924-C. However, some differences exist in the flexibility of design features, permitted use of nonessential facilities, and construction documents that are detailed at 7 CFR 3560.66. For example, in some cases a partner agency may require the use of its own contractual forms.

**A. Composition and Quality of Units**

All units in a project built with a participation loan must be equal in quality to those that are built solely with Agency funds. In mixed-income projects, all units must be equal; those units for lower-income residents may not be of a lesser quality than those for higher-income residents. Design features such as patios or balconies, washers and dryers, and garbage disposals may be included in the project if they are customary for the area and needed for marketability.

**B. Nonessential Common Facilities [7 CFR 3560.66(e)]**

Mixed-income complexes may include nonessential common facilities, provided the facility is designed and operated with appropriate safeguards for the resident’s health and safety and the following conditions are met:

- The facilities must not be funded by Agency funds;
- The project must be able to support the facility’s operating and maintenance costs through collection of a user fee from residents who subscribe to the service; and
- A separate parcel and lien are used where appropriate.

**6.5 SECURITY AGREEMENTS**

The Agency will establish its security in a participation loan by:

- Seeking a first or parity lien on the property and project revenues; and
- By entering into a participation agreement, intercreditor agreement, or MOU with the other lenders that clearly defines each party’s relationship and responsibility to the others.

**A. Lien Position**

The Agency will seek a first or parity lien on the property and project revenues. A junior lien position on the property and project revenues may be accepted if the Government’s interests are adequately secured and it is in the best interest of the Agency. There must be adequate security for the Agency to accept a junior lien position. Adequate security means that the value of the property is sufficient, so the Agency is confident that it can recover its loan principle even after the first lien has been satisfied.

**B. Security Agreement**

The Loan Originator must prepare a participation agreement, intercreditor agreement, or MOU to be signed by the Agency and the other lenders at loan closing. The security agreements document the Agency’s lien position on the property and on the project’s revenue. They also define the responsibilities and relationship between the Agency and the lender. The Loan Originator should negotiate the content of this document with the

other financing source(s) during the loan origination process so that the Loan Originator has time to send the negotiated document to USDA Office of General Counsel (OGC) prior to loan closing for its review and concurrence. Exhibit 6-1 outlines the provisions that must be included in this document.

### **Exhibit 6-1**

#### **Elements of the Participation Agreement, Intercreditor Agreement, or MOU**

- **Lien position and collateral.** The Agency will seek a parity lien except in those cases described in Paragraph 6.5. The lender must agree that any interest it may have in the project revenues will be subordinate to that of the Agency. In the event of project liquidation—meaning voluntary or involuntary sale, condemnation, forfeiture, casualty loss, or other disposition—the net proceeds, except with respect to revenues, must be divided pro rata based on the amounts loaned, but not including protective advances.
- **Cross defaults.** The intercreditor agreement must state that the loan documents used by the lender and the Agency will contain a promise by the borrower that a default under the terms of the lender's loan documents will constitute a default under the terms of the Agency's loan documents and vice versa.
- **Notices.** The lender and the Agency must agree to provide each other notice within 15 days of any loan default. In addition, such notice will specify the nature of the default and what course of action the lender or the Agency plans to take.
- **Application of payments.** The intercreditor agreement must make clear that in the event the borrower is unable to pay the regularly scheduled installments due under the terms of the Promissory Notes given to the lender and the Agency (as adjusted for interest credit and rental assistance), the borrower will pay such funds as are available to the lender and the Agency pro rata, based on the amounts of the respective regularly scheduled installments.
- **Use of loan proceeds during construction.** The lender must agree to not advance funds without first securing the concurrence of a duly authorized officer of the Government.
- **Reserve requirements.** The intercreditor agreement must specify the contribution to reserve requirements and withdrawal procedures.
- **Foreclosure.** The intercreditor agreement must state that neither the lender nor the Agency will foreclose or accept a deed in lieu of foreclosure without consulting with each other.

### **C. Sample Agreements**

**Attachment 6-A** provides a sample intercreditor agreement, a sample parity agreement, and a sample subordination agreement.

## **6.6 SUBSIDY LAYERING**

The Agency has an obligation under law to make sure that the total funds provided to any project by all sources do not exceed the minimum amount necessary to make the project feasible. The Sources and Uses Comprehensive Evaluation (SAUCE) software program allows the Loan Originator to perform the necessary analysis to ensure that the Agency is not providing excess subsidy. Chapter 4 provides the details on how to analyze subsidy.

## **6.7 RENTS, RENTAL ASSISTANCE, AND MANAGEMENT**

### **A. Establishing Rents**

For a project funded by a participation loan, the rent for any unit receiving Agency financing must be established as for any other project financed by the Agency and must comply with 7 CFR part 3560, subpart E (see Chapter 7, HB-2-3560).

### **B. Rental Assistance [7 CFR 3560.66(b)]**

The Agency may consider providing Agency-funded rental assistance to a participation loan for those units which qualify for the rental assistance. The following provisions must be met for the Agency to consider providing Agency-funded rental assistance:

- The Agency's loan must equal at least 25 percent of the project's TDC. The State Director may request an exception to this provision from the Administrator by submitting a complete explanation as to why the exception should be made.
- The rental assistance must be restricted to only those units where the basic rents do not exceed what basic rents would have been had the Agency provided full financing.

### **C. Management**

Multi-Family Housing projects developed with participation loans may serve lower-income households exclusively or may be marketed to households with mixed incomes. In either case, units serving income-eligible tenants must meet the more stringent Agency or lender management requirements. The management plan submitted by the loan applicant must clearly describe the procedures that will be used to ensure that the appropriate management requirements will be met and must identify those areas where Agency requirements will be superseded by the more stringent lender requirements.

## **6.8 RESERVE REQUIREMENTS [7 CFR 3560.65]**

It is Agency policy to establish replacement reserve account funding levels sufficient to meet the major capital needs of a project over its life. For participation loans, Agency reserve requirements will be determined on a case-by-case basis, taking into consideration the reserve requirements of the other participating lenders.

The aggregate, fully funded reserve amount established by the Agency and the other lenders:

- Should, where feasible, equal the replacement cost of capital items based on the life-cycle cost analysis of the project's capital needs over the life of the project, but results in rents that are no higher than Comparable Rents for Conventional Units (CRCU) standard discussed in Chapter 3; and.
- At a minimum, equal at least 10 percent of the project's total Rural Development-eligible development cost or appraised value, whichever is greater. This minimum funding assumes annual contributions of at least 1 percent of eligible TDC. Loan Originators should seek guidance from the National Office about the circumstances when it is advisable to establish reserve funding levels at amounts higher than this minimum.

Rents may only exceed CRCU in limited circumstances, as described in Chapter 3, paragraph 3.20 B.

If a participating lender's reserve requirements meet the above criteria, the Agency will not impose any additional reserve contribution requirements. If, however, the participating lender's reserve requirements are insufficient to meet this requirement, the Agency may require the loan applicant to make additional contributions until the Agency's standards are met. If the applicant borrower is unable to make adjustment to costs to meet the Agency's reserve requirements without rents exceeding the CRCU standard, the application must be rejected as infeasible.

Reserve requirements and procedures for reserve withdrawals must be agreed upon by all lenders and must be included in any participation or intercreditor agreement. **Attachment 6-A** provides a sample intercreditor agreement.

## **SECTION 2: PROCESSING APPLICATIONS INVOLVING PARTICIPATION LOANS**

### **6.9 OVERVIEW**

When processing participation loans, the Loan Originator follows the same basic procedures as presented in Chapters 4 and 5. However, some additional considerations must be made when:

- Underwriting the loan;
- Establishing the Agency's security position;
- Evaluating design and management features; and
- Setting the loan limits.

In processing and evaluating an application involving a participation loan, the Loan Originator will need to work with other funding sources to underwrite the proposed project. These partners might be private lenders, Federal Agencies, and in all likelihood, the State housing finance agency that allocates LIHTCs and HOME Investment Partnership Program funds. The Loan Originator should begin to coordinate efforts with the other proposed partners on the project as soon as the participation loan request is submitted, and determine the likelihood of the additional funding being received. Throughout the loan origination process, the Loan Originator should share information with the State housing finance agency to make sure that there is no excess subsidy in the form of LIHTCs or Agency funds being provided to the project. If any of the proposed funding sources do not become reality, the Loan Originator must reevaluate the financial feasibility of the project and rescore the application. When this occurs, the National Office must be immediately contacted to determine whether the application can be processed further.

## 6.10 UNDERWRITING

The Loan Originator must conduct underwriting for a participation loan as would be done for any other Multi-Family Housing loan application. However, some special considerations apply. The following determinations must be made.

### A. Applicant and Project Eligibility

Applicant and project eligibility requirements for a participation loan are the same as those for a project funded with Agency-only financing. The applicant and project eligibility requirements and procedures detailed in Chapters 4 and 5 apply.

### B. Project Feasibility

#### 1. Project Need

Market feasibility documentation for a participation loan must demonstrate a clear need and demand for the total type and number of units in the project. If the proposed project is a mixed-income project, the market feasibility documentation must show a need and demand from households in all income ranges that are proposed to be served. Loan Originators must follow the procedures presented in Chapters 4 and 5 for analyzing the need for the proposed units.

If LIHTCs are anticipated on a proportion of units higher than the percentage receiving rental assistance from the Agency or similar resident rental subsidy, the Loan Originator must review the market feasibility documentation to make sure that it clearly reflects a need and market for the number of units without deep subsidy. If it does not, the application must be rejected.

#### Underwriting Criteria for Participation Loans

- Is the applicant eligible?
- Is the project eligible?
- Is the project economically feasible?
- Are Rural Development-eligible project costs reasonable?
- Are the Agency's interests secure?



## **2. *Financial Feasibility***

The Loan Originator must evaluate project income and expenses as described in Chapters 4 and 5 to determine whether the project is financially feasible and whether sources and uses match.

## **3. *Viability of Other Funding/Financing Sources***

The Loan Originator must also assess the likelihood that other proposed financing sources will be realized. To make this determination, the Loan Originator must receive sufficient documentation from the loan applicant to evaluate the status of all funding sources. Copies of loan applications or grant requests must accompany the initial application submitted to the Agency. The Loan Originator must verify with the sources that the loan applicant has actually applied and is eligible for the loan or grant requested. The Loan Originator must again contact the other funding source(s) to reassess the likelihood of funding if a firm commitment has not been made by that time. If the Loan Originator determines that funding is unlikely to become a reality, then the loan request may be rejected. The Loan Originator must immediately notify the National Office of the availability of funds.

## **C. Reasonable Project Costs**

The Loan Originator must use all underwriting tools described in Chapters 4 and 5 to establish that project costs are reasonable as would be done for project applications seeking Agency-only financing.

In a mixed-income project, if there are any nonessential common facilities that would ordinarily not be allowed in a project funded with Agency-only financing, such as a swimming pool, the Loan Originator must review the management plan and budget submitted as part of the final application to ensure that:

- Agency funds are not being used to pay for the construction, operation, or maintenance of such facilities; and
- Adequate measures have been taken to secure tenant health and safety when using the facility.

## **D. Management**

As with any Agency loan, the applicant must show that adequate management systems will be in place to provide for the effective and efficient management of the project and within Agency program requirements for those units to be financed by the Agency.

The Loan Originator must review the management plan to make sure that the loan applicant has included a detailed description on how they ensure that Agency program requirements are met in units occupied by Agency program-eligible tenants. The

management plan must also describe how any user fees will be implemented to pay for the operating and maintenance costs of any nonessential facilities.

## **6.11 ENVIRONMENTAL REQUIREMENTS**

The environmental review process for participation loans is identical to the process for nonparticipation loans. The environmental review will cover the entire project, not just the portion being financed by the Agency. If the financial partner is a State agency, the Loan Originator will promptly consult with the State Environmental Coordinator to facilitate development of a joint environmental review with the State agency. Chapter 3 and RD Instruction 1940-G provide further guidance on environmental reviews.

## **6.12 SUBSIDY REVIEWS**

The Loan Originator will use the SAUCE software program to prepare an analysis of all loan requests prior to loan approval. The Loan Originator will either use the electronic SAUCE data file returned by the loan applicant or will input the required data from *Form RD 1924-13, Estimate and Certificate of Actual Cost* and *Form RD 3560-7, Multiple Family Housing Project Budget/Utility Allowance* provided by the loan applicant. The SAUCE program provides the Loan Originator with the necessary instructions to complete the analysis.

## **6.13 ESTABLISHING LOAN AMOUNT, TERMS, AND CONDITIONS**

### **A. Establishing Loan Amounts**

Agency loans will only be made in an amount that takes into account all proposed funding sources and eligible loan costs. Any grants that are included as part of the project financing up front will not be considered as the borrower's equity contribution. In the event that a borrower procures a grant after the initial loan proposal to pay for disallowed costs and cost overruns, the Agency's loan will not be affected. Exhibit 6-2 presents an example illustrating how to establish the maximum loan amount for participation loans.

**Exhibit 6-2**

**Establishing Agency Loan Amounts — An Example**

Applicant Smith requests a participation loan from the Agency. He intends to put \$250,000 of LIHTCs into the project as leveraged assistance and estimates a \$1.2 million TDC. The Agency appraises the project at \$1 million and calculates the loan amount based on this appraised value since it is lower than the total development cost. The Agency deducts the \$250,000 in tax credits from the appraised value as available funding, leaving a balance of \$750,000. Because the applicant intends to use LIHTCs, the Agency will make a loan of \$712,500, which is equal to 95 percent on the remaining balance of the appraised value. The borrower is required to make a 5 percent contribution of \$37,500 to the project. The applicant wishes to proceed with the project as proposed, so the applicant must obtain the additional \$200,000 to meet total development costs. The borrower obtains a \$200,000 grant. The Agency does not change its point score since the borrower had not received any credit for the additional grant funds in prioritizing the loan.

|             |  |
|-------------|--|
| \$1,200,000 | Total development cost                   |
| \$1,000,000 | Appraised value                          |
| \$250,000   | Proposed tax credits                     |
| \$712,500   | Agency funds                             |
| \$37,500    | Borrower equity contribution requirement |
| \$200,000   | Grant                                    |

**B. Borrower Contribution Requirement**

The minimum required borrower contribution will be based on the Agency loan amount and determined in accordance with the guidelines provided in Chapter 5.

For limited profit borrowers, additional funds exceeding the minimum required contribution that are provided from the borrower’s own resources (not loans or grants from other sources) may be included in the borrower’s initial investment, for purposes of determining return on investment within the guidance provided in Paragraph 5.12.

A loan from the borrower may be considered, provided that the loan to the project is from the borrower’s own resources and that when added to all financing sources for the project, rents do not exceed the CRCU standard, except under limited circumstances as described in Chapter 3, paragraph 3.20 B. LIHTC proceeds may be considered the borrower’s own resources subject to the conditions described in Paragraph 5.12.

**6.14 WORKING WITH STATE HOUSING FINANCE AGENCIES**

As participation loans have increasingly become the norm for producing affordable rental housing, the Agency is working to develop explicit partnerships with other financing sources. The State housing finance agency (or that agency that allocates the LIHTCs in a State), as the primary coordinator of affordable housing funding in a State, is probably the most common potential partner. To facilitate processing of participation loans, Field Offices must develop and

negotiate procedures for working with their State housing finance agency to coordinate resources and exchange information.

### **A. Coordinating Resources**

The State Director or a designee should participate with the State housing finance agency in the development of the State's Consolidated Plan to ensure that the Agency resources available from the Rural Development mission area are coordinated, to the extent possible, with the Consolidated Plan to efficiently maximize the number of affordable housing units to be produced. The cooperation should include, but is not limited to, the sharing of the loan request and application information from Agency applicants, the analysis tool and the results of any evaluation conducted using this tool, funding levels, and rural area designations. State Offices should attempt to obtain preference for RHS applicants in the allocations of the LIHTC, for example, through a set aside for Agency projects or a priority for Agency applications in the award of LIHTCs.

In all likelihood as part of its financing package, a project proposal will have LIHTCs and perhaps other financing that comes from the State housing finance agency as well. The State Office will need to work with the State agency on two major levels:

- During the loan application review to share information about project financing and costs to make sure that no excess Government assistance is being provided to the project; and
- During asset management to share information about occupancy, tenant incomes, and rents to make sure that owners are in compliance with the tax credit program rules.

The earlier that State Offices begin to work with the State housing finance agency on a particular project, the better. This section discusses working with the State agency during the loan origination process.

### **B. Entering into a Memorandum of Understanding**

All State Offices are required to establish a working relationship with the State housing finance agency. This relationship includes entering into a Memorandum of Understanding (MOU) that defines that relationship and clearly describes when and how information will be exchanged. This information stage is critical to performing the required subsidy review (see Paragraph 6.12). **Attachment 6-B** provides a sample of an MOU; Exhibit 6-3 outlines the contents of an MOU.

### C. Working with the State Agency

The Loan Originator will contact the State housing finance agency upon receipt of a loan request to verify that application for the LIHTC or other funding source has been made. The Agency will establish contact with the State agency during the loan origination process to provide the State agency with the information specified in Exhibit 6-3. The information obtained from the Agency in accordance with the MOU will be analyzed and compared with the information provided to the Agency by the loan applicant for consistency.

#### **Exhibit 6-3** **Contents of the Memorandum of Understanding** **with State Housing Finance Agencies**

##### A. Agreement by both parties:

1. To the fee norms to be used in evaluating participation loans, including the fees for builder's profit; builder's overhead; builder's general requirements; and developer's profit for new construction, rehabilitation, and acquisition cost of an acquisition rehabilitation request and the fact that these will be reviewed by both parties annually.
2. To the process for deviation for a fee over the fee norm.
3. To the definitions and formulas for the determination of costs and amounts of assistance.
4. On how the Agency defines excess assistance.
5. That the Agency will reduce the equity contribution through reduction of the loan to ensure that Agency assistance provided is not more than is necessary if excess assistance is not reduced through other means.
6. That the Agency is not certifying to the accuracy of the tax credit applicant's eligibility or compliance with Section 42 of the Internal Revenue Code.
7. That information shared under the MOU is for internal analysis and will not be disclosed to outside sources.

##### B. Agreement by the Agency to provide to the State agency information on Multi-Family Housing projects being considered and receiving funding decisions on a regular basis. Specifically, the Agency may provide:

1. A list of Multi-Family Housing loan requests and their status;
2. For each loan request on the list, the most recent *Form RD 1924-13* or other cost estimation documents;
3. A copy of *Form RD 1944-37*, *Previous Participation Certification*, and any identity-of-interest (IOI) disclosure information that has been provided to the Agency;
4. A copy of any notification of selection for further processing issued to applicants;
5. When the construction is completed, the actual *Form RD 1924-13*, including any cost analysis prepared by the Agency; and
6. The results of any analysis on necessary assistance to the loan applicant and the State agency.

*continued*

**Exhibit 6-3 (cont.)**

**Contents of the Memorandum of Understanding  
with State Housing Finance Agencies**

- C. The State agency should agree to inform any loan applicants seeking both tax credits and Agency Multi-Family Housing assistance that the MOU will be applied to the processing of their loan requests. The State agency should also agree to provide the Agency with the following data:
1. The list of tax credit loan requests received from applicants that indicate they are seeking financing from the Agency;
  2. For each loan request, a copy of the tax credit application with the detailed cost breakdown used to estimate the amount of tax credits for which the developer would be eligible;
  3. When the development is complete and the final sources and uses of funds in projects receiving both Agency funds and tax credits are made, the *IRS Form 8609, Low-Income Housing Credit Allocation Certification*, with a copy of the cost data used to determine the development cost of the project; and
  4. So as to coordinate the use of limited resources and to ensure that no existing projects are adversely affected a list of all allocation requests to the Agency for comment.

**ATTACHMENT 6-A  
SAMPLE #1**

**SAMPLE INTERCREDITOR AGREEMENT**

This Intercreditor Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the (name of bank), with a principal address of \_\_\_\_\_ (the Bank), the United States of America acting through the Rural Housing Service, U.S. Department of Agriculture, with an address at \_\_\_\_\_ (the Government), and \_\_\_\_\_, a (State name) limited partnership (the Borrower) with an address at \_\_\_\_\_.

The Bank has agreed to make a loan to the Borrower in the amount of \$ \_\_\_\_\_ pursuant to a certain commitment dated \_\_\_\_\_, 20\_\_, which is hereby incorporated by reference, to finance the construction of a \_\_-unit apartment project to be located in (town and state) (the Project) that is to be secured by a first mortgage on the Project; and

The Government intends to make a loan to the Borrower in the amount of \$ \_\_\_\_\_ to finance the Project pursuant to the terms of a Letter of Conditions dated \_\_\_\_\_, 20\_\_, which is hereby incorporated by reference that is also to be secured by a first mortgage on the Project together with a first security interest in the revenue of the Project; and

The Bank, the Government, and the Borrower desire to further define and determine their relationship with respect to their security interests in the Project and its revenue.

NOW, THEREFORE, in consideration of the covenants contained herein and for other good and valuable consideration, the receipt of which the parties hereby acknowledge, the Bank, the Government, and the Borrower hereby agree as follows:

1. Collateral and Priorities. The lien of the mortgages of the Bank and the Government shall be co-equal regardless of the order in which their respective mortgages may be recorded. The Bank agrees that if any interest it may have in the Project is liquidated, the net proceeds, except with respect to revenues, shall be divided pro rata based on the amounts loaned, but not including protective advances. For the purposes of this Agreement, the term "liquidation" means voluntary or involuntary sale, condemnation, forfeiture, casualty loss, or other disposition.
2. Cross Defaults Required. The loan documents used by the Bank and the Government will contain a promise by the Borrower that a default under the terms of the Bank's loan documents will be a default under the terms of the Government's loan documents and that a default under the terms of the Government's loan documents (including any agreements providing for subsidy or assistance to the Borrower or tenants) will constitute a default under the terms of the Bank's loan documents.

3. Notices. The Bank shall give notice in writing to the Government at the address set out above, or such other place as the Government may designate in writing from time to time, within 15 days of the occurrence of a default under the terms of its loan documents. Such notice shall specify the nature of the default and state what action, if any, the Bank intends to take. The Government shall give the Bank notice in writing at the address set out above, or such other place as the Bank may designate in writing from time to time, within 15 days of the occurrence of a default under the terms of its loan documents. Such notice shall specify the nature of the default and state what action, if any, the Government intends to take. Each party shall promptly send the other a copy of any notice or demand that it sends to the Borrower.
4. Application of Payments. In the event that the Borrower shall not have sufficient funds available to pay the regularly scheduled installment due under the terms of the Promissory Notes given to the Bank and the Government (adjusted for interest credit and rental assistance), the Borrower agrees to pay such funds as are available to the Bank and the Government, pro rata, based on the amounts of the respective regularly scheduled installments.
5. Use of Loan Proceeds During Construction. The Bank agrees to advance funds in accordance with the terms of its agreement with the Borrower, except that it will not disburse any funds without first securing the concurrence of a duly authorized officer of the Government.
6. Foreclosure. Neither the Bank nor the Government will foreclose or accept a deed in lieu of foreclosure without consulting with each other. In the event that either the Bank or the Government elects to foreclose, the mortgage of the other lender shall be deemed to be subordinate to that of the foreclosing lender so that the property can be sold free and clear of all liens. The proceeds from any foreclosure sale shall be used: (a) to pay the costs of the foreclosure, including legal fees; (b) protective advances to preserve the Project or the lien of the mortgage of the foreclosing lender; (c) to the Bank and the Government, pro rata, as provided in Paragraph 1, above; and (d) as provided by law.

*[NAME OF BANK]*  
By: \_\_\_\_\_  
*[Name, title]*

*UNITED STATES OF AMERICA*  
By: \_\_\_\_\_  
*[Name, title]*  
*[NAME OF BORROWER]*

By: \_\_\_\_\_  
*[Name, title]*



## Sample #2

### SAMPLE PARITY AGREEMENT

THIS AGREEMENT dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ hereinafter referred to as "Bank", the United States of America, acting through Rural Development, U.S. Department of Agriculture, hereinafter referred to as "the agency", and \_\_\_\_\_, hereinafter referred to as "\_\_\_\_\_" is made for the primary purpose of setting out an agreement to share in the pledge of assets as security for loans made and to be made by the Bank and the agency to \_\_\_\_\_.

WHEREAS, the Bank has made or will be making a loan to \_\_\_\_\_ in an amount not to exceed \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the purpose of \_\_\_\_\_ in \_\_\_\_\_ County, \_\_\_\_\_; and

WHEREAS, the agency has made or will be making a loan \_\_\_\_\_ in an amount not to exceed \_\_\_\_\_ (The amount stated should be the total of the loans made and contemplated to be made, if any, and not just the unpaid balances. Use original amounts as would appear on the promissory notes.) for the purposes of \_\_\_\_\_ in \_\_\_\_\_ County, \_\_\_\_\_; and

WHEREAS, both the Bank and the agency desire to establish by this Parity Agreement the sharing of priorities of the liens and security interests of the Bank and the agency in all of the revenues, real and personal property, and the proceeds therefrom of \_\_\_\_\_ in \_\_\_\_\_ County; and

WHEREAS, the parties agree that all such loans will be secured by perfected security interests as shall be hereinafter provided.

NOW, THEREFORE, in consideration of the above and other good and valuable consideration, the parties agree that:

1. The Bank will record a mortgage perfecting a lien on real property of \_\_\_\_\_ in \_\_\_\_\_ County and will file a financing statement perfecting a security interest on revenues earned and personal property of \_\_\_\_\_ located in \_\_\_\_\_ County.
2. The agency will or has recorded a mortgage perfecting a lien on real property of \_\_\_\_\_ in \_\_\_\_\_ County and has or will file a financing statement perfecting a security interest on revenues earned and personal property of \_\_\_\_\_ located in \_\_\_\_\_ County.
3. The agency may perfect a lien and security interest inferior to the lien and security interest of the Bank covering the above referred to property and the revenues in \_\_\_\_\_ County and the Bank may perfect a lien and security interest inferior to the lien and security interest of Rural Development covering the above referred to property and revenues in \_\_\_\_\_ County depending upon the order in which said documents are recorded and filed.

4. (a) In the event of default under any of the loan agreements, promissory notes, mortgages, pledges of revenue, or security agreements of either the Bank or the agency, the Bank and the agency will be affected on a proportionate basis regardless of the time and/or order of recording, attachment, or perfection of the security interest as follows:
  - (1) In the event adequate funds are not available to meet regular installments in their entirety, the funds available will be apportioned pro rata to the agency and the Bank based upon respective current installments of principal and interest due. Such apportionment shall not prevent the agency or the Bank from seeking any other remedy provided by its agreements with \_\_\_\_\_ or otherwise provided by law, and shall not be deemed a waiver of default.
  - (2) All funds obtained by the agency or the Bank from foreclosure, sale, liquidation or any enforcement of other remedies against \_\_\_\_\_ will be apportioned to the agency and the Bank based upon the pro rata amount loaned but not to exceed the respective outstanding balances of principal and interest.
  - (3) Reimbursement of protective advances, as defined in 7 CFR 3560.455(b)(3)(ii), made by the agency and/or the Bank for the mutual protection of both the agency and the Bank shall receive first priority in the pro rata apportionment of funds between the agency and the Bank provided both the agency and the Bank concurred in the making of each such protective advance given first priority status notwithstanding the provisions of paragraphs (1) and (2) above.

(b) In any event other than an event of default which results in money or other proceeds to be paid to the agency and the Bank, including without limitation recoveries pursuant to construction contracts or surety bonds, insurance proceeds, condemnation proceeds, disposition of property, releases of secured property, or otherwise, said money or other proceeds shall be shared in the absence of the agreement between the agency and the Bank pro rata by the agency and the Bank in proportion to the unpaid balances of principal interest (reduced by any reserve funds held for such indebtedness) existing at the time such money or proceeds are available.
5. The agency and its successors and assigns, and the Bank, and its successors and assigns, shall each notify the other promptly upon the occurrence of any of the following: an event of default; material and substantial alterations to the loan agreement; advances, extension, reamortizations, renewals, and extensions of additional credit. Such notice shall be immediate and in writing, and if made by United States Mail, shall be deemed received three (3) days after being deposited with the postal service. Failure to give notice shall not affect \_\_\_\_\_ obligation to the agency or the Bank nor shall it affect the priority of either party.
6. Such notice sent due to the occurrence of an event of default shall fix the time and date upon which the pro rata shares shall be determined as 4:00 p.m. of the date of the notice. Any advances or loans made by either the Bank or the agency thereafter shall not have been made in accordance with the terms of this Agreement, except insofar as said

advances represent expenses incurred to maintain and enforce Mortgage and security instruments and maintain the mortgaged and secured property in connection herewith.

7. If either the Bank or the agency accelerates its indebtedness or proposes to commence proceedings to dispose of all or security agreements with \_\_\_\_\_ (other than a declaration of bankruptcy or insolvency by \_\_\_\_\_), that party shall give at least five (5) days notice by United States Mail to the other.

All such notices of default shall be addressed as provided below:

To the Bank:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To the agency:

Rural Development

To \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Or to such other address as the party concerned, and its successors and assigns, shall from time to time designate in writing.

8. Provisions herein concerning priority shall be controlling, notwithstanding the terms of any agreement between the agency or the Bank and \_\_\_\_\_; the time at which the lien or security interest attaches to or is perfected; the order in which financing statements may be filed or continued; the order in which mortgages may be recorded; or any provisions in any other agreement to the contrary, whether or not in bankruptcy, receivership, or other insolvency proceedings have been commenced.
9. All terms used but not defined herein which are defined in the Uniform Commercial Code as adopted by the State of \_\_\_\_\_ shall have the same meaning as in such code.
10. This Agreement is solely for the benefit of the parties hereto, and their respective successors, and no other person or persons shall obtain any right, priority, or interest pursuant to this Agreement. (It is anticipated and specifically consented to by the agency that the mortgages, security agreements, and financing statements executed by \_\_\_\_\_ and recorded or filed by the Bank may be assigned.) This Agreement and the rights granted to the parties by this Agreement shall not be further assigned without written notice to the agency, or its successors and assigns, or the Bank, or its successors and assigns. Any such assignment shall not require notice to or the consent of \_\_\_\_\_. Nothing herein contained shall be deemed to obligate the Bank or the agency to offer or extend any credit to \_\_\_\_\_ or to forbear in any effort to collect indebtedness owed by \_\_\_\_\_.
11. So long as any loan obligation of \_\_\_\_\_ is held or insured by the agency, this Agreement is subject to the following additional restrictions.

- a. The loan(s) made by the Bank to \_\_\_\_\_ may not be redeemed and paid prior to their stated maturity; and
  - b. The loan(s) made by the Bank to \_\_\_\_\_ may not be refunded without simultaneously paying the loans made by the agency to \_\_\_\_\_, without the written consent of the agency; and
  - c. The loan(s) made by the Bank to \_\_\_\_\_ and the execution of this Agreement do not impose legal restrictions that will prevent \_\_\_\_\_ from complying with 7 U.S.C. § 1983(3) with respect to any loan obligations held or insured by the agency.
12. This Agreement shall be governed by and interpreted in accordance with the laws of the State of \_\_\_\_\_ except to the extent governed by federal statutes, rules, and regulations.
13. The invalidity or unenforceability of any portion of this Agreement shall not affect the remaining portions hereof; in the case of such invalidity or unenforceability, this Agreement shall be construed as if such invalid or unenforceable portion had not been included herein.
14. This Agreement constitutes the entire contract among the parties and may not be modified or amended except in writing signed by the parties.
15. This Agreement may be simultaneously executed in counterparts and all such counterparts shall constitute but one and the same instrument.
16. This Agreement shall remain in effect until or unless terminated by agreement in writing or the parties or until such time as the indebtedness of \_\_\_\_\_ to the Bank and the agency is paid in full.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on the day and year above written.

The United States of America, acting through  
Rural Development, U.S. Department of  
Agriculture.

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

ATTEST:

\_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, who declared \_\_\_\_\_self to be the \_\_\_\_\_ of Rural Development, U.S. Department of Agriculture, and acknowledged that \_\_\_\_\_ he executed the foregoing instrument in behalf of said United States of America agency.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in \_\_\_\_\_, the day and year above written.

\_\_\_\_\_  
Notary Public

My Commission Expires:

### SAMPLE #3

## SAMPLE SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT, by and between NEW BANK, having its principal office at \_\_\_\_\_ (hereinafter referred to as the "BANK"), ABC LIMITED PARTNERSHIP, a Limited Partnership, having its principal office at \_\_\_\_\_ (hereinafter referred to as "BORROWER"), and the United States of America, acting through RURAL DEVELOPMENT, whose principal office is located in Washington, DC (hereinafter referred to as "RURAL DEVELOPMENT"),

#### WITNESSETH:

WHEREAS, on \_\_\_\_\_, BORROWER executed that certain Mortgage (or deed of trust) (hereinafter referred to as the "RURAL DEVELOPMENT Mortgage") recorded in \_\_\_\_\_ in favor of RURAL DEVELOPMENT, encumbering that certain real property described in Exhibit "A" of the RURAL DEVELOPMENT Mortgage, attached hereto and by this reference made a part hereof (hereinafter referred to as the "Property"); and

WHEREAS, RURAL DEVELOPMENT has offered to subordinate its lien in accordance with 7 CFR 3560.409, so that the BORROWER can obtain a loan from the BANK and so that the BORROWER will continue to subject the real property described in Exhibit "A" to restrictive use provisions more particularly set forth herein, RURAL DEVELOPMENT has agreed to execute and deliver this Subordination Agreement; and

WHEREAS, the BANK has made a loan to BORROWER in the amount of \$ \_\_\_\_\_ as evidenced by that certain Real Estate Note (the "Note") dated \_\_\_\_\_, which loan is secured by a lien of mortgage (or deed of trust) as evidenced by that certain Mortgage and Security Agreement (hereinafter referred to as the "BANK'S Mortgage") in favor of BANK, its successors and assigns, duly executed and delivered by BORROWER and constituting a lien upon the Property; and

WHEREAS, the BANK requires, the specific terms of Paragraph (12) of the RURAL DEVELOPMENT Mortgage permit, and RURAL DEVELOPMENT agrees to allow, the subordination of the lien of the RURAL DEVELOPMENT Mortgage to the loan from the BANK to the BORROWER in the principal amount of \$ \_\_\_\_\_, but in no greater principal amount, and the subordination of the lien of the RURAL DEVELOPMENT Mortgage to the lien of the BANK'S Mortgage;

NOW, THEREFORE, in consideration of the above and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the BANK, RURAL DEVELOPMENT, and the BORROWER agree as follows:

1. RURAL DEVELOPMENT hereby subordinates the lien of RURAL DEVELOPMENT on the Property to the loan from the BANK to BORROWER as evidenced by

the Note in the principal amount of \$\_\_\_\_\_, and subordinates the lien of the RURAL DEVELOPMENT Mortgage to the lien of the BANK'S Mortgage on the Property. RURAL DEVELOPMENT hereby expressly agrees that the lien of the BANK'S Mortgage is superior to and prior in dignity to the lien of the RURAL DEVELOPMENT Mortgage.

2. The amount of this subordination will not exceed \$\_\_\_\_\_ unless agreed to by RURAL DEVELOPMENT in writing. Further, the Subordination Agreement shall not include future advances made to the BORROWER except those advances necessary for the preservation of the Property, such as payment of taxes and insurance.

3. The BANK agrees that, in addition to the BANK, RURAL DEVELOPMENT shall be listed as loss payee as its interest appears on all insurance policies maintained on the Property.

4. Neither the BANK nor RURAL DEVELOPMENT shall foreclose its respective mortgage, or accept a deed in lieu of foreclosure, without first providing no less than 45 days written prior notice to the other lender. The proceeds from any foreclosure sale shall be applied as follows: (a) to pay the costs of foreclosure, including legal fees; (b) to reimburse the lender or lenders for any protective advance made to preserve the Property or the mortgage lien of the foreclosing lender; (c) to the BANK, until paid in full; and (d) to RURAL DEVELOPMENT, with the balance to be distributed in accordance with law.

5. All notices to be sent to RURAL DEVELOPMENT will be sent to the following address:

State Director, Rural Development  
(Address)

RURAL DEVELOPMENT may, by written notice to the BANK, change the above address.

All notices to be sent to the BANK will be sent to the following address:

Bank  
(Address)

The BANK may, by written notice to RURAL DEVELOPMENT, change the above address.

6. (a) BORROWER, its successors and assigns in interest, shall use the improvements located on the Property for the purpose of those people eligible for occupancy as provided in Section 515 of Title V of the Housing Act of 1949, as amended, and RURAL DEVELOPMENT regulations during the twenty (20) year term of the Mortgage beginning \_\_\_\_\_, 2000. Until \_\_\_\_\_, 2020, no eligible person occupying the housing shall be required to vacate without cause and no eligible person wishing to occupy shall be denied occupancy without cause. BORROWER shall be released from the obligations of this paragraph before \_\_\_\_\_, 2020, only when the United States of America determines that there is no longer a need for housing on the Property under Section 515 of Title V of the Housing Act of 1949, as amended, or that financial assistance for such housing will no longer be provided due to no fault, action or lack of action on the part of BORROWER. A tenant of the Property, an

individual wishing to become a tenant of the Property, or the United States of America may seek enforcement of this paragraph.

(b) It is understood and agreed that, in the event of (1) a determination by RURAL DEVELOPMENT that housing under Section 515 of Title V of the Housing Act of 1949, as amended, is no longer needed, then neither the BANK nor any other title holders after judicial foreclosure, shall in any way be restricted in its use of the Property under this or any other agreement or document between RURAL DEVELOPMENT, the BANK, the partnership (the BORROWERS), and their successors.

7. RURAL DEVELOPMENT will monitor the Property in accordance with RD Instruction 1930-C or successor regulations. RURAL DEVELOPMENT will furnish to the BANK copies of all reports received pursuant to RD Instruction 1930-C at the request of the BANK. RURAL DEVELOPMENT shall also notify the BANK of any matter or circumstance that may jeopardize the financial viability of the Property within 5 business days of RURAL DEVELOPMENT'S discovery of the matter or circumstance. The BANK reserves the right to monitor the Property at any time. RURAL DEVELOPMENT will manage the escrow accounts for the Property and approve disbursements from the escrow accounts.

8. RURAL DEVELOPMENT will require the BORROWER to submit an annual audit report for the Property, the expense of which shall be deemed a project expense. If the BORROWER provides a written consent, RURAL DEVELOPMENT will furnish a copy of the audit to the BANK. The BANK shall have the right to request additional financial information from the BORROWER.

9. RURAL DEVELOPMENT and the BANK shall each service and collect payments on their respective loans.

10. The BANK and RURAL DEVELOPMENT shall each provide written notice to the other lender of the occurrence of a default, which written notice shall be sent no later than 15 days after the BANK or RURAL DEVELOPMENT has made a determination that a default has occurred and which written notice shall specify the nature of the default and what action, if any, the sending party intends to take. Each lender shall promptly send to the other a copy of any notice or demand that it sends to the BORROWER.

11. In the event collections received from the operation of the Property, whether prior to or after the occurrence of a default or the institution of foreclosure proceedings, are insufficient to pay both the payments then due under the RURAL DEVELOPMENT loan and the payments then due under the BANK'S loan, the collections shall be applied first, to the amount then due on the BANK'S loan, with the balance, if any, to the amount then due on RURAL DEVELOPMENT'S loan.

12. The BANK 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 instruments with the BORROWER.



13. The BANK'S loan may be prepaid in part or in whole subject to prepayment premiums as defined in the note, respecting the provisions of paragraph 14 below. Prepayment in no event shall effect, modify or terminate the provisions of paragraph 6(a) herein prior to \_\_\_\_\_, 2020.

14. The BANK'S Note and Mortgage will not be refinanced or assigned without the prior written approval of RURAL DEVELOPMENT. Also, prior written approval of RURAL DEVELOPMENT must be obtained before protective advances can be made on the BANK'S Note and Mortgage.

15. Rental payments received from the Property may be assigned to the BANK by the BORROWER, but the assignment cannot exceed the amount due on the Note as it comes due. The BORROWER'S assignment of the rental payments to the BANK cannot be assigned to a subsequent assignee unless the Note and Mortgage are also assigned with RURAL DEVELOPMENT'S approval.

16. This SUBORDINATION AGREEMENT and the rights and obligations of the parties hereunder shall be governed by, and construed and interpreted in accordance with, applicable federal law.

17. This SUBORDINATION AGREEMENT shall be binding upon and inure to the heirs, executors, administrators, successors and assigns of the respective parties.

18. This SUBORDINATION AGREEMENT may only be waived, discharged, modified, amended or terminated by mutual consent of the parties in writing.

19. This AGREEMENT may be executed in several counterparts, all or any of which shall be regarded for all purposes as duplicate originals and shall constitute and be but one and the same instrument.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have caused these presents to executed this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WITNESSES:

**BANK**

\_\_\_\_\_  
Print name:

By: \_\_\_\_\_ (Seal)  
Title: \_\_\_\_\_

**BORROWER**

**ABC Limited Partnership**

\_\_\_\_\_  
Print name:

By: \_\_\_\_\_ (Seal)  
Title: \_\_\_\_\_

**UNITED STATES OF AMERICA,  
RURAL DEVELOPMENT, U.S.  
DEPARTMENT OF AGRICULTURE.**

\_\_\_\_\_  
Print name:

By: \_\_\_\_\_ (Seal)  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

PERSONALLY appeared before me the undersigned witness, who, being duly sworn,  
says that (s)he saw \_\_\_\_\_, \_\_\_\_\_ President of an unnamed Bank, N.A., sign  
the foregoing instrument, and that (s)he with the other witness named above witnessed the  
execution and delivery thereof as the act and deed of the said unnamed Bank, N.A.

\_\_\_\_\_  
(Signature of Witness)

SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

[Notary Seal]

\_\_\_\_\_  
Notary Public,  
State of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**ATTACHMENT 6-B**  
**SAMPLE PROCESSING**  
**MEMORANDUM OF UNDERSTANDING**

Between the  
Rural Housing Service (State)  
and  
[State Housing Credit Agency]

**INTRODUCTION**

The Rural Housing Service of the Rural Development mission area in (name of applicable State), an Agency of the U.S. Department of Agriculture and hereinafter referred to as “RHS,” and (Name of applicable State Agency), hereinafter referred to as “State Agency,” wish to enter into the following Memorandum of Understanding (MOU) regarding the sources and uses of funds in projects receiving low-income housing tax credits.

RHS administers a loan program authorized by Section 515 of the Housing Act of 1949, which provides financing for housing for very low- and low-income tenants in rural areas. The Section 515 program, and all programs administered by RHS, comply with all applicable civil rights laws. The Internal Revenue Service (IRS), through Section 42 of the Internal Revenue Code, provides tax credits to encourage the development of housing for very low- and low-income tenants that are administered through State or local housing credit agencies.

**SCOPE OF THE AGREEMENT**

Under this agreement, RHS, through its State Director for Rural Development (herein referred to as “State Director”) and the State Agency agree to engage in cooperative efforts to enable RHS to assure that only the necessary assistance is provided through the Section 515 program and to enable the State Agency to effectively evaluate tax credit requests of RHS applicants, as provided in Section 42 of the IRS Code.

**PURPOSE**

The purpose of this document is to establish the general conditions under which the State Director and State Agency agree to cooperate.

**BOTH PARTIES AGREE:**

- (a) To share information on project costs.
- (b) To use the following fee norms:
  - (1) Builder’s profit: Up to (10 percent) of the construction contract.
  - (2) General overhead: Up to (4 percent) of the construction contract.

- (3) General requirements: Up to (7 percent) of the construction contract.
  - (4) Developer's fee: Up to (15 percent) of the total development costs for tax credit purposes for new construction and rehabilitation costs; up to (8 percent) of the acquisition costs only for the acquisition rehabilitation costs.
- (c) As appropriate, both parties agree on the following process for deviation for a fee over the fee norm for an individual state. Alternative fee norms may be included in the MOU with approval of the National Office.
- (d) As appropriate, both parties agree to the definitions and formulas for the determination of costs and amounts of assistance.
- (e) The above fee norms will be used in the Agency's analysis of the amount of assistance that is necessary for a proposal. RHS will prepare an analysis spreadsheet on all loan requests:
- (1) When accepted as a loan request;
  - (2) Just prior to approval; and
  - (3) When the cost certification is completed and prior to issuance of *IRS Form 8609*, indicating the amount of tax credits.
- (f) In all cases where the results of an analysis indicate that there will be excess assistance (defined as more than the lesser of \$25,000 or one percent of the total development cost as authorized by the State Agency), RHS will consult with the applicant as well as the State Agency, to strive to reach an agreement for reducing the excess assistance. The following alternatives are examples of actions that can be taken:
- (1) Reducing the amount of tax credit units required;
  - (2) Reducing the level of assistance provided by one or more of the sources of funds;  
or
  - (3) Revising the uses to include eligible costs for any funding participants, provided the project enhancement is consistent with the intent of the RRH program and will assist the resident population being served by the housing.
- (g) Parties to this agreement understand that, in the event that excess assistance is not reduced through other means, RHS will adjust the amount of equity contribution (through the reduction of the loan) to ensure that RHS assistance provided is not more than is necessary to provide affordable housing after taking account of assistance from all Federal, State, and local sources. Approval of any reduction will require formal notification to the applicant and the State Agency and the RHS National Office.

- (h) Parties to this agreement understand that RHS does not certify accuracy of the tax credit applicant's eligibility, nor does it certify the applicant's compliance with requirements of Section 42 of the Internal Revenue Code. The State Agency understands that the owner certifies the information to RHS as being true and correct representations and that RHS carries out periodic reviews and analysis of the data to verify compliance with its requirements.
- (i) It is further understood that the general information shared under this MOU is for internal analysis and will not be disclosed to other than the appropriate RHS and State Agency employees and that specific information on a proposal may be shared with the applicant and other providers of funds on the respective proposals as appropriate.
- (j) The State Director and the State Agency will review, at least annually, the fee norms on builder or general contractor charges (builder's profit, builder's overhead, and general requirements) established by this MOU relative to the State Agency's allocation plan or other regulations. The developer's fee or any other fees allowed will also be reviewed. Any revised fee norms will be added as an amendment to this agreement and be used in subsequent analyses of loan requests.
- (k) The State Director and the State Agency will prepare joint environmental assessments whenever possible on jointly funded projects. The State Environmental Coordinator will work with the State Agency's environmental coordinator to facilitate the development of an orderly process for accomplishing this objective.

**RHS IN (STATE) AGREES:**

- (a) To provide to the State Agency information on Section 515 projects being considered and receiving Section 515 funding decisions as follows:
  - (1) A list of Section 515 loan applications and their status;
  - (2) For each loan request on the list, the most recent *Form RD 1924-13* or other cost estimation documents;
  - (3) A copy of *Form RD 1944-37* and any identity-of-interest (IOI) disclosure information that has been provided to RHS;
  - (4) A copy of any notification of selection for further processing issued to applicants;
  - (5) When the construction is completed, the final *Form RD 1924-13* including any cost analysis prepared by RHS;
  - (6) On an annual basis, a copy of the AMAS generated report on the Rural Rental Housing Section 515 program called "Construction Cost Analysis" for the prior year; and

- (7) RHS will provide the results of any analysis on necessary assistance to the applicant and the State Agency.

**THE STATE AGENCY AGREES:**

- (a) The State Agency agrees to inform any applicants seeking both tax credit and RHS loan assistance that the MOU will be applied to the processing of their request for tax credits. A copy of the MOU will be provided to applicants for their guidance when combining the assistance provided by both agencies.
- (b) To provide to RHS in (State) the following data:
- (1) The list of tax credit loan requests received from applicants that indicate they are seeking financing from RHS;
  - (2) For each loan request, a copy of the Tax Credit Application with the detailed cost breakdown used to estimate the amount of tax credits for which the developer would be eligible;
  - (3) *IRS Form 8609* and a copy of the cost data used to determine the development cost of the project after the development is complete and the final sources and uses of funds for projects receiving both RHS funds and tax credits is made;
  - (4) A list of all allocation requests to RHS for comment in an effort to coordinate the use of limited resources and to ensure that no existing projects are adversely affected.
- (c) Information (quarterly), (at the end of its funding cycle on (date)) or (by (date)).

**PERIOD OF AGREEMENT**

This agreement will remain in effect until terminated by written notification of either party.

**MODIFICATION OF AMENDMENT PROVISION**

This agreement will be modified or amended by written agreement of RHS and the State Agency. Requests for amendments to the agreement will be initiated by either of the two parties through written notification.

**ACCEPTANCE AND SIGNATURE OF EACH PROVIDING PARTY**

\_\_\_\_\_  
[State Director] (State)  
Rural Development

\_\_\_\_\_  
[State Agency Head]  
[State Housing Credit Agency]

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date