

CHAPTER 8: RENTAL SUBSIDIES

8.1 INTRODUCTION

Rental subsidies are deep subsidies that enhance the affordability of rents in a project. Each year, the Agency has available a limited number of Agency-funded rental assistance units that can be allocated to new or existing Agency-financed multi-family housing projects. The Agency also encourages the use of non-Agency rental subsidies in multi-family housing projects as a way to reduce tenants' rents.

Because rental subsidies are limited, it is important that they be allocated to borrowers and distributed to tenants in a fair and equitable manner. Consequently, the Agency has developed rules that must be followed in the distribution and administration of rental subsidies. This chapter presents the program rules and procedures for allocating and administering rental subsidies in multi-family housing projects, including Farm Labor Housing projects. It covers not only Agency-funded rental assistance, but U.S. Department of Housing and Urban Development (HUD) and other types of subsidies as well.

For purposes of this chapter, the term "tenant" also means "member," and "rental assistance" is reserved for use in describing Agency-financed rental subsidy.

8.2 AUTHORIZED RENTAL SUBSIDIES [7 CFR 3560.252]

A. Project-Based Rental Subsidy

The Agency may authorize the use of project-based rental subsidies in addition to interest credit for multi-family housing projects. These rental subsidies may take the form of:

- **Agency-funded rental assistance.** This is a project-based subsidy program available to very low- and low-income tenants in Agency-financed multi-family housing.
- **HUD Section 8 assistance.** This project-based subsidy is administered by HUD and was used extensively with Agency-financed housing from the mid-1970s to the early 1980s.
- **Private rental subsidy.** This is a subsidy program whereby the project owner(s) or others enter into an agreement with the Agency to provide and fund subsidy to tenants of the project on approximately the same basis as the Agency-funded rental assistance program. In some instances, the agreement may include a limit on the number of units and a per-unit ceiling on the amount of assistance.
- **State or local rental subsidy.** Such subsidy is provided and funded by some states and available to borrowers to assist tenants on approximately the same basis as the Agency rental assistance program. The assistance is in the form of a contract between the borrower and the state and has the Agency's concurrence.

- **Operating subsidy for off-farm migrant farmworker projects.** Section 521 Agency rental assistance funds may be used as operating assistance in migrant farmworker projects financed under 514 or 516 to reduce operating costs so that rents may be set at rates affordable to low-income migrant farmworkers.

B. Tenant-Based Rental Subsidies

HUD Section 8 Vouchers may be accepted by borrowers in Agency-funded multi-family housing. These subsidies are administered by HUD or others authorized to administer the program such as a State Housing Finance Agency or the local public housing agency. Projects accepting tenants who use such vouchers assigned by a local public housing agency will also comply with any requirements imposed by that agency.

C. Multiple Subsidies

More than one type of subsidy may be used in a project. The rental subsidy that the tenant is receiving must be less than the full amount of Agency rental assistance for which the tenant would qualify. In such cases, the Agency may provide the difference between the subsidy received by the tenant and the amount of Agency rental assistance for which the tenant qualifies.

There are special tenant codes under Part II, item 6 of the electronic MFIS Tenant Certification to denote what types of subsidy, if any, a tenant is receiving, and whether the tenant is receiving full or partial subsidy from a source other than the Agency.

SECTION 1: ALLOCATION OF AGENCY RENTAL ASSISTANCE

8.3 AGENCY-FUNDED RENTAL ASSISTANCE

The objective of the Agency rental assistance (RA) program is to reduce rents paid by low-income households. RA is the portion of approved shelter cost (rent and utilities) paid by the Agency to the borrower on behalf of a tenant to compensate for the difference between the approved shelter cost and the monthly tenant contribution as calculated on *Form RD 3560-8, Tenant Certification*. When the household's monthly gross tenant contribution is less than the approved utility allowance that is billed directly to and paid by the tenant, the owner will pay the household that difference.

If a prospective tenant with a HUD voucher or other subsidy applies for occupancy and the project has RA or project-based subsidy, the RA or project-based subsidy takes precedence. RA may only be provided to tenants who are income eligible and residing in eligible units. There are four types of RA:

- **Renewal RA** is RA that replaces RA agreements contracts expiring because the obligated funds under the agreement have been fully disbursed. Because the Agency wishes to protect tenants currently benefiting from RA, replacement of RA contracts receive first priority for funding from the Agency.
- **Servicing RA** is RA that increases the number of RA units in a project resulting in an initial RA agreement or an amendment to an existing agreement with a borrower.
- **New construction RA** is RA to accompany new units of multi-family housing.
- **Incentive RA** is RA that is used to help preserve multi-family housing projects as part of the prepayment process. For information about the prepayment process, see HB-3-3560, Chapter 15.

8.4 ALLOCATION AND DISTRIBUTION OF AGENCY RA [7 CFR 3560.257]

A. Allocation of RA to the States by the National Office

RA is allocated to the states on an annual basis by the National Office and in an amount based on Congressional appropriations. The National Office uses RD Instruction 1940-L to allocate the RA and to provide guidance to the states on how to distribute the RA among projects.

Before the beginning of the fiscal year, the National Office sends out a survey to each state requesting summary data on the need for RA in each state. These data are used to allocate replacement and servicing RA. New construction RA is allocated to each state based on a formula.

B. Prioritization of RA

In the absence of other guidance from the National Office, states will use the following priorities to allocate RA within the state:

- **Replacements units.** First priority will be for replacing RA units that are expiring.
- **New construction.** Second priority will be for RA to accompany new construction.
 - ◇ RA units will be allocated to those projects that are selected for funding under the Notice of Funding Availability (NOFA) system and in accordance with the scoring and ranking system described in Chapter 4 of HB-1-3560.
 - ◇ For farm labor housing projects, RA units will be allocated by the National Office from the National Office reserve on a case-by-case basis at the time the projects are considered for funding at the National Office level.
- **Servicing assistance.** Third priority is for RA for existing multi-family housing projects that have requested servicing RA by checking the appropriate box on the budget *Form RD 3560-7, Multiple Family Housing Project Budget/Utility Allowance*.

Incentive RA is not allocated by priority. The National Office allocates incentive RA from a special set-aside of funds.

8.5 PROJECT ELIGIBILITY FOR AGENCY RA [7 CFR 3560.254]

To be eligible for RA, a project must be designated as one of the following types according to the loan agreement:

- A Plan II interest credit project. If a project is not currently a Plan II project, it may be possible to change to Plan II and thereby become eligible. Exhibit 8-1 lists which types of projects may switch to Plan II and which may not.
- An off-farm labor housing project. Off-farm labor housing projects that are financed with grants only are not eligible.
- A project financed with a direct or insured Rural Rental Housing Loan approved prior to August 1, 1968. To be eligible, the project must be operated under an interest credit agreement that identifies the housing project as a Plan RA project.
- A project funded by multiple sources, including Agency financing, for which the loan must be a Plan II interest credit loan.

Exhibit 8-1			
Project Eligibility for Rental Assistance			
Project Type	Eligible	Not Eligible	Can Convert to Plan II
On-Farm Labor Housing		X	NO
Off-Farm Labor Housing	X		
For Profit		X	YES
Plan I		X	YES
Plan II	X		
Section 8/515 with no interest credit		X	YES
Section 8/515 with interest credit reduced by 1%		X	YES
Section 8/515 with interest credit reduced by 2%		X	YES
Section 8/515 with full interest credit	X		

8.6 PROCESSING RA OBLIGATIONS [7 CFR 3560.255]

The State Director or a delegated member of the staff approves or disapproves RA requests. *Form RD 3560-51, Obligation Fund Analysis*, is the form that obligates the RA.

When reviewing RA requests, the Loan Servicer must consider the following questions:

- Is the project/unit eligible for RA? The project must meet the requirements specified in Section 8.5.
- Does the project need the RA? The supporting documentation from the borrower must show that there are tenants or applicants who are eligible for the RA.
- Is the RA available for distribution? The state must have the RA units available.

How an RA request gets processed depends upon whether the assistance is for replacement RA, servicing RA, or new construction RA.

A. Renewal and Servicing Rental Assistance

1. Tracking Usage of Agency-Funded RA

The Loan Servicer inputs the information provided by the borrower on *Form RD 3560-29, Notice of Payment Due Report* into the Multi-Family Housing Information System (MFIS). Quarterly and annually, a report is issued by the Office of the Deputy Chief Financial Office (ODCFO) that provides the Loan Servicer with an RA payment and obligation status report for each project. The Loan Servicers should use these reports, in conjunction with the Automated Multi-Family Housing Accounting System (AMAS) to closely monitor their borrower’s accounts to ensure maximum utilization of existing RA obligations. If it is determined that RA units are not being used, the procedures in Section 8.8 should be followed to transfer the units.

The Field Office must monitor statewide RA usage so that it can be reported as expiring and needing replacement when the annual survey is sent out from the National Office ascertaining the need for replacement RA.

2. Processing Renewal RA

Renewal RA must not be awarded in an amount that is more than necessary to cover existing expiring contracts. For example, if a 24-unit project has only 18 units of RA that are expiring, the State Director may not award the project more than 18 units of RA.

To the extent that sufficient Federal funds are available, the Agency will automatically renew expiring RA agreements at the existing number of units.

If there is no renewal RA available to give to the borrower due to a lack of Congressional appropriations, the Loan Servicer will inform the borrowers that they must notify the affected tenants of their increased rents and give them the option of terminating their leases with no penalties.

3. HUD Section 8 Housing Assistance Payments

For properties that receive project-based HUD Section 8 assistance, borrowers must provide copies of their Housing Assistance Payments (HAP) contracts to the Loan Servicer. The Loan Servicer must monitor these contracts, particularly their expiration dates.

4. Servicing RA

Borrowers apply for servicing RA by checking a box on the project budget *Form RD 3560-7*, indicating a need for servicing units and certifying that they have looked elsewhere for other rental subsidies. To allocate servicing units to a project, the Loan Servicer must verify that the project is eligible and:

- Existing tenants are paying more than 30 percent of their incomes in rent; or
- There are vacancies in the project and evidence that shows that there are very low-income tenants who would occupy the housing if there were RA units available. Such evidence must be in the form of market data and/or waiting lists.

B. New Construction Rental Assistance

New construction RA is requested with the initial application. The following requirements must be met for the Agency to consider awarding new construction RA:

- The number of RA units requested must be based on the market data for the area, the proposed rental rates as reflected in a budget for the project, and the income levels of the prospective tenants; and
- If the RA is going to be part of a project funded by a participation loan, the Agency participation rate needs to be at least 25 percent of the total development cost.

Chapter 4 of HB-1-3560 provides further details on processing new construction RA.

C. Special Language for FY 2004, 2005 & 2006 RA Obligations.

The FY 2004, 2005 and 2006 appropriation language has established a set term of four years for RA Obligations, only. Therefore, the following instructions should be used for completing Form RD 3560-27, "Rental Assistance Agreement" regarding **ALL** FY 2004, 2005 and 2006 RA obligations.

1. All FY 2004, 2005 and 2006 obligations will ALWAYS need to have a separate Form RD 3560-27.

2. Changes to the form:

a. Above title: "Rental Assistance Agreement" add "FOUR YEAR"

b. Section 8 (a) - cross out "...automatically upon total disbursement or credit rental assistance to the borrower's account" and insert - "four (4) years from _____* _____, unless the funds are fully expended prior to that time."

*If agreement is for the original obligation, enter the date the agreement is prepared.

*If the agreement is for units transferred, enter the date of the agreement from the original *Form RD 3560-27*.

For example, renewal obligation for Borrower A is obligated on April 6, 2006, and the Form RD 3560-27 is signed on April 10, 2006. The expiration of the obligation will be April 10, 2010. If one unit of RA (from the FY 2006 obligation) is transferred to Borrower B on August 15, 2007, then the Form RD 3560-27 for Borrower B will have an expiration date of April 10, 2010, even though the borrower received the unit on August 15, 2007.

For new construction RA obligations, Form RD 3560-27 must be signed during the Fiscal Year of the RA obligation.

A servicing effort tracking item "FY __ RA Obligations" has been established in MFIS to assist in the monitoring of FY 2004, 2005 and 2006 obligations. The National Office will be monitoring this tracking item to assure that funds are being properly monitored.

D. General Approval and Processing Actions

When it has been determined that RA can be obligated, the Loan Servicer will prepare and distribute part III of *Form RD 3560-51* according to the instructions. The State Office will verify the obligation or transfer via the computer terminal on the day following the request. Upon verification that the obligation or transfer has processed in AMAS, the State Office will complete the RA Review process in MFIS. Refer to the MFIS Phase 4 Training Manual for guidance for the RA Review process.

When the State Office verifies that RA units have been obligated, it will forward a copy of *Form RD 3560-51* to the Loan Servicer. The Loan Servicer will complete *Form*

RD 3560-27 and attach the copy of *Form RD 3560-51* according to the instructions on the form. The *Form RD 3560-27* is then filed in the borrower's active case file, and a copy is sent to the borrower.

If RA funds are available but cannot be provided due to a determination of ineligibility, the State Director will inform the borrower in writing of the reasons and provide the borrower information on appeal rights in accordance with 7 CFR Part 11. See paragraph 1.8 of Chapter 1 for an overview of the appeals process.

Loan applicants or borrowers determined to be eligible for RA as a result of an appeal or funding review will receive RA, if RA funding is available. If the funding is available, the applicant or borrower will receive it beginning with the month following the date of the appeal or funding review decision. If the funding is not available, the applicant or borrower will receive it beginning in the first month that RA funding becomes available.

When an RA request is denied because funds are not available from the state's allocation or the National Office reserve, the decision is not appealable.

E. RA Obligation Numbers

AMAS uses obligation numbers to track RA obligations and undisbursed balances. See the AMAS manual for information on tracking RA obligations.

1. Current Obligations

When RA is approved, each RA obligation is assigned a six-digit RA obligation number as follows:

- First two digits represent the fiscal year in which the funds are obligated (e.g., 04, 05, 06, etc.);
- Second two digits represent the number of the RA obligation for each project in sequential order for each fiscal year starting with 01 (e.g., 04-01, 04-02, 04-03, etc.); and
- Third two digits are coded 00 for all obligations.

For example, the fifth RA obligation made in fiscal year 2005 would be coded 05-05-00.

2. Pre-1985 Obligations

RA obligations obligated before 1985 were coded as follows:

- First two digits represent the fiscal year in which the initial obligation was made on the project (i.e., 78, 79, 80, etc.);

- Second two digits relate to the pre-Automated Multi-housing Accounting System conversion loan number to which the RA obligation was processed; and
- Third two digits indicate the number of modifications plus 1. (*Form RD 3560-27*, with two modifications on September 30, 1984, would be designated “03”).

8.7 TERMS OF AGREEMENT [7 CFR 3560.258]

Form RD 3560-27 is the document that sets out the terms of RA agreement between the Agency and the borrower.

A. Terms of Agreement

Each *Form RD 3560-27* will be effective the first day of the month in which it is executed. If assistance is granted to a project under an appeal, the amount of the assistance will cover what is needed for an effective date retroactive to the first day of the month in which the assistance was denied, provided the borrower agrees to make any appropriate refunds to tenants who would have been entitled to RA during the retroactive term.

Starting in 2004, RA is obligated for 4-year terms. Previously, the Agency issued 5-year RA agreements. The agreement for RA obligations prior to FY 04, expires when the funds obligated for the RA units described in Section 10 of *Form RD 3560-27* are fully disbursed. This can be any time before or after the end of the agreement period. The Agency has in the past issued 20-year and 5-year RA agreements. If and when these are renewed, they are done so for 5-year or 4-year terms.

B. When Agreements May Be Amended

Loan Servicers may amend RA agreements to:

- Add replacement units for the project to the agreement;
- Add or subtract servicing units assigned to the project through obligation, through transfer from another RA obligation, or as an incentive to avert prepayment;
- Reinstate a suspended RA obligation(s) to a new borrower in the same project after a voluntary conveyance or a foreclosure and a credit sale within the Multi-Family Housing program; or
- Transfer a suspended RA obligation(s) to a new borrower and a different project after liquidation of the project assets or after the loan is paid in full.

C. Procedures for Amending Agreements

The following steps are taken to amend agreements.

- Any existing RA obligation executed prior to February 15, 1983, which will have a remaining obligation balance at the end of the expiration date stated in section 9 of the RA agreement, “Term of the Agreement,” may be amended. The amended agreement will expire when the obligated funds are fully disbursed.
- For every replacement or modification of an RA agreement that occurs on or after May 1, 1985, the original and all copies of the affected RA agreement will be noted, assembled, and distributed by the Loan Servicer according to the form’s instructions. When a *Form RD 444-27A, Amendment to RA Agreement* initiated prior to May 1, 1985, is replaced or modified, a new *Form RD 3560-27* will be prepared and distributed according to the form’s instructions.
- The Loan Servicer must use the new form so that eventually all borrowers will be using the new form.

D. Consolidating Agreements

Consolidation of RA agreements is allowed, if the fiscal year and the type of RA are the same.

E. Replacing Expiring Obligations

The Agency will renew all expiring obligations with obligations to the extent funds are appropriated. Expiring 20-year obligations will be replaced with current funding levels.

Expiring RA obligations and replacement RA obligations may run concurrently for a period of 30 to 60 days so any undisbursed obligation balance on the expiring RA agreement can be liquidated.

8.8 TRANSFERRING RA [7 CFR 3560.259]

A. Cases in which RA May Be Transferred

The State Director may transfer RA in the following instances:

1. At Project Transfer

When a project is transferred to an eligible borrower, the transferee may assume the transferor’s unliquidated RA obligation(s).

2. Following Voluntary Conveyance or Foreclosure Sale

When a project with RA is voluntarily conveyed to the Agency or acquired by foreclosure sale, the RA obligation will be automatically suspended under the borrower’s name when the St. Louis Office processes *Form RD 3560-19, Status of REO Property*. The RA for these units will be held in suspension until the final disposition of the acquired property has been determined, at which time the RA will be transferred to a

different Agency-financed project in accordance with paragraph C of this section. During the inventory period, tenants will pay 30 percent of their incomes for rent. Tenants entitled to reimbursement for utilities will be paid from project income.

3. Following Liquidation or Prepayment

The Fiscal Year 2006 appropriations language requires that units from prepaid projects be used for other Section 542 (Vouchers) and Section 502 (Preservation/ Incentives) purposes. Therefore, RA from prepaid projects is not available for transfer and will be held outside of the Administrator's Reserve. These units cannot be moved to other properties.

4. When Not Being Used After Initial Rent-Up

RA that is not being used may be transferred with or without the borrower's consent or request. When RA is unused after initial rent-up (following the construction period) and not needed because of a lack of eligible potential tenants in the area, all or a portion of it may be transferred by the State Director under the following conditions:

- The Loan Servicer recommends the RA transfer after reviewing documentation submitted by the borrower; and
- Available RA units remain unused after a one-year period since initial availability.

5. When Not Being Used 6 Months or Later After the Initial Year of the Agreement

If, after the end of the initial year of an RA agreement, the borrower has not used a portion of the RA units for any ensuing consecutive 6-month period, the State Director may transfer the number of unused units to another project without the borrower's request. If the remaining unit(s) remains unused after an additional 6-month period, the State Director may authorize its transfer to another project. This would apply only if the current agreement is on *Form RD 3560-27*, and when:

- The Loan Servicer has reviewed the project occupancy list and verified that there is no apparent RA need in the project;
- The State Director has notified the borrower at least 30 days in advance of the Agency's intent to transfer the RA units and has given the borrower appropriate appeal rights;
- If the borrower appeals the decision, the appeal is resolved in accordance with 7 CFR Part 11 before any transfer action is taken; and
- The transfer will take place in accordance with transfer procedures described in subparagraph D below.

6. Due to an Unclosable Loan

When RA will be unused because the loan to which it was obligated will not be closed or the RA agreement is not signed, the RA obligation may not be transferred except when the circumstances allow for the funds to finance the project to be transferred as well. However, if this situation occurs during the same fiscal year of obligation, the obligation must be canceled and reallocated immediately using current authorities. Obligations from prior fiscal years must be canceled and will be lost unless the conditions allow the financing for the project to be transferred, in which case the RA may be transferred as well.

7. In Response to a Disaster

If a disaster renders a project temporarily or permanently uninhabitable, the RA may be transferred.

8. Due to a Servicing Action

The State Director will suspend RA in a project where the loan has been accelerated to the extent that no payments will be credited to the project's account. Interest credit will be credited to the project's account until the appeal period for the acceleration has expired. After the expiration of the appeal period, if it is determined that foreclosure will proceed, the interest credit will be canceled as of the last day of the month in which the appeal period expired. RA will be automatically suspended by the interest credit cancellation.

That portion of the monthly RA not needed to pay the project monthly installment and other charges, including any delinquencies, overage, and late fees may be processed and returned to the project operating account to maintain project operation. RA agreements expiring during the acceleration and appeal process may be renewed in order to continue payment of RA for this purpose, but only if a third party is managing the project to ensure the proper use of project funds.

After final disposition of the acceleration, expiration of the appeal and redemption period of the defaulting borrower, the RA will be either transferred with a credit sale, transferred to a different project when the defaulting project is sold outside the program, or reinstated to the same project as follows:

- **Transferred with a credit sale.** If the project is sold through a credit sale to an eligible borrower within the program, the suspended RA should be transferred from the previous borrower's case number and project number to the new case number and project number. *Form RD 3560-55, Multi-Family Housing Transfer of RA*, will be attached to *Form RD 3560-19*.
- **Transferred to a different project.** If a defaulting project is sold outside the program, the RA must be transferred to a different project.

- **Reinstated to the same project.** When defaults are corrected, the State Director may reinstate the RA to the borrower's account.

The State Director will apprise the borrowers of their appeal rights under 7 CFR Part 11 upon notification of the pending suspension. The suspension will not be effective until these appeal rights have been exhausted.

B. Eligible Units

In order to be eligible for RA, units must be eligible for interest credit in terms of habitability. Should a fire, natural cause, or other damage render a unit uninhabitable, the RA may be suspended during rehabilitation or it may move with a tenant to a temporary location in another project financed by the Agency.

C. Transferring RA for Displaced Tenants

The State Director may transfer RA from one project to another eligible multi-family housing project to which a tenant is moving due to displacement as a result of prepayment, liquidation, or a natural disaster for that tenant's initial use.

The displaced tenant will be given first priority for an RA unit, regardless of other priorities for the RA, if all of the following conditions are met:

- The borrower is eligible to receive and administer RA.
- The tenant is eligible to occupy the project and to receive RA.
- The tenant has taken all of the following steps to ensure eligibility to receive priority for the unit of RA:
 - ◇ Placed on at least one waiting list for an Agency-financed project with a *Handbook Letter 201 (3560), Letter of Priority Entitlement (LOPE)*.
 - ◇ Moved to the project as soon as the name was reached on a waiting list, even if it meant temporarily occupying an ineligible unit. The ineligible unit may not differ from the one for which the tenant is eligible by more than one bedroom.
 - ◇ Moved to an eligible unit as soon as one was available.
- The RA has not previously been transferred for the tenant's current displacement.

D. Process for Transferring

Only the State Director may approve an RA transfer. RA may be transferred to any borrower with an RA eligible project according to the priorities established in this handbook or by the National Office. All or any portion of the units in an RA agreement with an undisbursed balance may be transferred from one project to another.

When the State Director approves an RA transfer, the Loan Servicer uses *Form RD 3560-55*, completed according to the instructions, to notify the St. Louis Office.

AMAS determines the per-unit value of the RA obligation being transferred by dividing the undisbursed balance of the RA obligation on the date the transfer is processed by the number of RA units in the agreement. The number of units being transferred times the per-unit value equals the total amount transferred. After the transfer processes, the Loan Servicer must enter the dollar amount of the transfer in the remarks area of *Form RD 3560-55*.

RA units identified by different RA obligation numbers may be transferred. New RA obligation numbers should be assigned according to the instructions for *Form RD 3560-55* and as described in paragraph 8.6 E.

The Loan Servicer will complete *Form RD 3560-27* with *Form RD 3560-55* attached. These will be completed according to the instructions for each transferee. The transferee may use the transferred units effective the first day of the month in which the transfer is approved. Borrowers must assign the rental assistance units, in accordance with the established priorities identified in Exhibit 8-2, as soon as they become available.

The Loan Servicer will amend the transferor's *Form RD 3560-27* by attaching a copy of *Form RD 3560-55* according to the instructions to indicate that a portion of the agreement has been transferred. When all RA units on a RA agreement have been transferred, the transferor's present agreement will be so documented.

SECTION 2: ADMINISTRATION OF RENTAL ASSISTANCE

8.9 CORRECTIONS TO RENTAL ASSISTANCE PAYMENTS

A. Administrative Errors

The borrower is responsible for correcting any errors made in the administration of the RA program that are made by the borrower or the borrower's authorized management agent. Errors in computation or other unauthorized use of RA will require, at a minimum, the repayment of incorrectly advanced RA funds. Agency requirements regarding unauthorized assistance as established under 7 CFR part 3560, subpart O, apply whenever any RA has been incorrectly advanced.

If the error or unauthorized use of RA appears to be deliberate or intentional, the State Director will refer the case to the OGC. For more information on unauthorized assistance, see HB-3-3560, Chapter 9.

B. Canceling an RA Check

When an RA check needs to be canceled, such as when it is returned, or if the borrower must return an RA payment, an MS2 transaction must be entered directly into the AMAS. Specific instructions for completing this transaction can be found in the AMAS On-Line Manual. This transaction will not be processed until the funds have been received by the Agency through one of the following methods:

- The original U.S. Treasury check covering the RA is returned.
- The borrower submits a check made payable to the Agency to the Field Office for all or a portion of the monthly RA payment that needs to be returned.

8.10 ASSIGNING RENTAL ASSISTANCE TO TENANTS AND APPLICANTS [7 CFR 3560.257]

Because RA is limited, the Agency has established procedures to ensure that it is distributed consistently and to the most needy households.

A. Eligible Households

Households which are eligible for RA are those:

- With very low or low incomes who are eligible to live in multi-family housing projects;
- With net tenant contribution determined in accordance with 7 CFR 3560.203(a)(2) that is less than the current basic rent for the unit; and

- Who have a signed an unexpired *Form RD 3560-8* on file with the borrower.

To determine priority for assigning an available RA unit in an operational project, the borrower must update the latest *Form RD 3560-29* for the project as of the date the unit is available.

B. Priorities in Existing Projects

When assigning available RA, borrowers must use the priorities identified in Exhibit 8-2.

<p>Exhibit 8-2</p> <p>Five Priorities for Assigning Rental Assistance</p> <ul style="list-style-type: none">• First priority is always to eligible very low-income tenants paying the highest percentage of their adjusted annual income in shelter costs.• Second priority is to very low-income applicants on the waiting list, considering the applicant's unit size and type needed.• Third priority is to eligible low-income tenants paying the highest percentage of their adjusted annual income in shelter costs.• Fourth priority is to eligible low-income applicants on the waiting list.• Final priority is to households that are residing in a rental unit for which they do not qualify on the basis of an occupancy waiver or other special approval situations
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In order to provide RA to the third, fourth, and final priority categories, a borrower must fully document that either there are no very low-income households on the waiting list or fully document that occupancy by low-income households is limited as follows:

- For projects occupied on or after November 30, 1983, no more than 5 percent of the units in the project are occupied by low-income households; or
- For projects occupied before November 30, 1983, no more than 25 percent of the units in the project are occupied by low-income households.

Borrower documentation of these circumstances must be kept in the borrower's files and made available to the Loan Servicer upon request.

C. Assigning RA in Newly Constructed Units

A borrower with RA units for a newly constructed project should accept applications for occupancy during the construction phase of the project, after the preconstruction conference has been held. The names of the applicants should be placed on a waiting list. During the initial rent-up period, the following priorities will apply:

- Until all the RA units have been assigned, a number of apartment units in the project equal to the number of RA units will be initially reserved for eligible tenants who qualify for RA, even if there are applications on other lists that applied earlier. Applications qualifying for RA will be considered according to the priority established for existing projects, by passing those applicants on the waiting list whose income is above the low-income limits for the area. The remaining units equal to the number of units that will not be subsidized with RA can be rented simultaneously to other applicants.
- If a substantial number of apartment units reserved to be used with RA units remain vacant after initial rent-up and the borrower could rent those units to applicants ineligible for RA, the borrower may request a transfer of unused RA units. However, applicants ineligible for RA cannot be selected to occupy units initially reserved to be used with RA until the unused RA units are transferred.
- If there are still vacant units, those applicants bypassed because they did not qualify for RA will be considered for occupancy on a first-come, first-served basis.

D. Continued Eligibility

Eligible tenants receiving the benefits of RA may continue receiving such benefits as long as they remain eligible for occupancy, are eligible for RA under 7 CFR 3560.254(c)(2), and RA units are available.

E. Timing of RA Assignment

Rental assistance is paid to the borrower on the first of the month based on the prior month's occupancy.

When a tenant who has been receiving RA vacates the project, the borrower must immediately assign that unit of RA to the next existing eligible tenant or applicant on the waiting list.

When a tenant receiving RA vacates before the end of the month and the borrower reassigns the RA, the Agency will provide RA for the newly designated tenant starting on the first day of the following month.

When an RA unit is assigned to an eligible existing tenant on a day other than the first day of a month, the Agency will not provide rental assistance for the newly assigned existing tenant and the tenant will not pay reduced rental charges until the first day of the month following the assignment of the rental assistance.

F. Incorrectly Assigned RA

Incorrectly assigned RA is viewed as unauthorized assistance and handled in accordance with the requirements established under 7 CFR part 3560, subpart O.

When the tenant has correctly reported income and household size but RA was assigned to a household in error, that tenant’s RA benefit should be canceled and reassigned. Incidents involving incorrect reporting are handled in accordance with the unauthorized assistance requirements established under 7 CFR part 3560, subpart O.

Before the borrower notifies the tenant, the borrower or management agent shall review the case with the Loan Servicer. If the Loan Servicer verifies that an error has been made based on information available at the time the unit was assigned, the tenant will be given 30 days’ written notice that the unit was assigned in error and that the RA benefit will be canceled effective on the next monthly rental payment due date after the end of the 30-day notice period. It should be noted that some states require a 60-day notice of rent increases, in which case the written notice must be extended to 60 days. The borrower will also notify the tenant in writing that:

- The tenant has the right to cancel the lease based on the error made by the borrower and the loss of benefit to the tenant;
- The RA granted in error will not be recaptured from the tenant; and
- The tenant may meet with management to discuss the cancellation and the facts on which the decision was based. If the facts are accurate and the tenant cannot produce further evidence proving eligibility for RA, there will be no appeal for the decision. If the tenant feels there is justification for further review, the borrower must give the tenant appeal rights under 7 CFR 3560.160.

The RA unit will be reassigned 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 RA will not be retroactive unless the reassignment was based on an appeal by the tenant. Retroactive RA may not exceed the project’s remaining RA obligation balance.

Tenants may appeal determination of ineligibility for available RA under 7 CFR 3560.160. See paragraph 1.8 of Chapter 1 for information on the appeals process.

G. Dealing with Tenants Who Attempt to Receive RA Simultaneously in Two Different Projects

A tenant may not receive RA in two different multi-family housing projects at the same time. If part of the household is occupying a unit and the tenant attempts to occupy a seasonal unit in another project, MFIS will identify the duplicate tenancy through the tenant’s Social Security Number.

8.11 TENANT PAYMENTS [7 CFR 3560.256(d)]

A. Rents

Tenants receiving RA must pay the net tenant contribution toward rent, which will not exceed the higher of:

- 30 percent of monthly adjusted income, with an adjustment for any utility allowance; or
- 10 percent of gross monthly income, with an adjustment for any utility allowance.

B. Utilities

The utility allowance for a project with RA is determined as it is for any other project. As for non-RA projects, the utility allowance is reviewed annually for accuracy and changes are made when necessary.

When the tenant is billed directly for utilities, rent paid by the tenant receiving RA will be the difference between the established utility allowance and the net tenant contribution as determined by 7 CFR 3560.203.

- Example: Assume a basic rent of \$250 and a utility allowance of \$50. Patty Duke's adjusted monthly income is \$400. Thirty percent of her adjusted income is \$120. Fifty dollars is deducted from the \$120 to allow her to pay her utilities, leaving her a net tenant contribution of \$70 for rent to the borrower. The Agency pays RA to the borrower on behalf of Patty Duke in an amount of \$180 to total the \$250 basic rent.

When utilities are paid by the household receiving RA and the net tenant contribution is less than the allowance for utilities, the borrower will pay the household the difference between the utility allowance and net tenant contribution.

- Example: Assume a basic rent of \$250 and a utility allowance of \$50. Jane Ronda's adjusted monthly income is \$160. Thirty percent of her adjusted monthly income is \$48, which is less than the utility allowance. The Agency will pay \$252 in RA to the borrower to cover the \$250 basic rent and the extra \$2 that the borrower must provide to the tenant to allow her to meet the \$50 utility allowance.

In a project where the borrower pays all utilities, the tenant rent will be the net tenant contribution as per 7 CFR 3560.203 up to the approved rent for the rental unit being occupied.

- Example: In a project where the basic rent is \$300 and there is no utility allowance, RHS would pay the borrower \$180 for Patty Duke, who would pay the whole \$120 in rent, totaling the required rent payment of \$300. For Jane Ronda, the Agency would pay \$252 to the borrower in RA and Ms. Ronda would contribute her \$48 to make the total \$300 rent payment.

SECTION 3: OTHER RENTAL SUBSIDIES

8.12 HUD RENTAL SUBSIDY [7 CFR 3560.260]

The Agency encourages the use of HUD Section 8 vouchers.

A. Project-Based Assistance

Tenants in Section 8/515 units must pay rents and utility allowances in accordance with HUD requirements.

B. Tenant-Based Assistance

Families using vouchers must be initially eligible as per program rules [7 CFR 3560.152]. The public housing authority issuing the vouchers will be responsible for an annual examination of household income and family composition. The public housing authority will adjust the housing assistance payments made on behalf of the family to reflect any changes in the family's monthly adjusted income, size, or composition.

For tenants with HUD vouchers, the borrower must set the rent for each unit occupied by a voucher holder at the basic rent or the rent standard set by the public housing agency, whichever is higher. The borrower must remit the value of the voucher exceeding the basic rent up to the note rate rent to the Agency. The public housing agency distributing the HUD Section 8 subsidy may set the utility allowance.

Once a HUD assistance contract expires, recertification responsibility reverts to the borrower, and Agency form and income verification and certification requirements apply.

8.13 OTHER SOURCES OF RENTAL SUBSIDY [7 CFR 3560.260]

The Agency may authorize other types of rental subsidies to be used in new or existing projects but will make no commitment to providing RA at the expiration of the project-based rental subsidy agreement from other sources.

A. Agency Requirements for New Construction Projects Proposed with Non-Agency Rental Subsidy

For the Agency to consider a new project with non-Agency rental subsidy, the applicants must demonstrate that:

- A market exists for the assistance and at income levels that would benefit from the subsidy being provided;
- Once the rental subsidy is no longer available, an adequate rental market exists for the project without assistance; and
- Tenants will not be displaced at the end of the subsidy agreement.

Applicants will specify how they intend to meet the above requirements through two documents: the memorandum of understanding with the provider of the RA and the Project-Based Rental Subsidy Agreement.

B. Formalizing the Project-Based Rental Subsidy

Rental subsidy for new and existing projects is formalized through two main documents: the memorandum of understanding, which is between the Agency and the provider of the rental subsidy, and the Project-Based Rental Subsidy Agreement, which is the instrument agreement involving the tenant, borrower, and provider of assistance.

1. Memorandum of Understanding

The Agency must enter into a memorandum of understanding with the provider of the rental subsidy to make sure that the Government's interests are secure. This memorandum of understanding must include the following provisions:

- The reason for providing the project-based rental subsidy and its intended purpose;
- The length of time the project-based rental subsidy will be provided;
- Actions to be taken at the end of the project-based rental subsidy agreement to minimize the effect on tenants losing the rental subsidy and to avoid displacement; and
- A copy of the proposed project-based rental subsidy agreement.

2. The Project-Based Rental Subsidy Agreement

The Project-Based Rental Subsidy Agreement is the instrument of agreement involving the tenant, borrower, and provider of assistance.

The Agency will not be a party to the Project-Based Rental Subsidy Agreement nor have any responsibilities under the agreement. However, the Loan Servicer must ensure that the Project-Based Rental Subsidy Agreement provides that:

- The rental subsidy payments will be paid directly to the tenants or deposited to a separate project operating account established for this purpose. The tenants must be advised of the amount and source of the subsidy through the lease or supplement to the lease.
- The life of the Project-Based Rental Subsidy Agreement must be similar to existing or current Agency RA funding levels, and sufficient funds must be set aside in a way that ensures availability of project-based rental subsidy for this term. The method of supplying the funds must be clearly set forth and acceptable to the Agency.
- During the term of the Project-Based Rental Subsidy Agreement, the provider must make available the subsidy amounts required at least annually.

C. Low-Income Housing Tax Credit Projects

For projects with low-income housing tax credits (LIHTCs), if the project-based rental subsidy term is less than the LIHTC compliance period, the borrower must demonstrate the marketability of the project-based rental subsidy units by either:

- Demonstrating that there are sufficient households within the LIHTC income limits to support the units without rent overburden; or
- Certifying that the targeted percentage of LIHTC units (not the minimum set-aside option) does not include the project-based rental subsidy units, so that the units will be marketable to households in all Agency program eligible income ranges.

SECTION 4: LABOR HOUSING REQUIREMENTS FOR RENTAL ASSISTANCE

8.14 USING RENTAL ASSISTANCE AS OPERATING ASSISTANCE *[7 CFR 3560.574]*

The Agency's rental assistance program, which provides assistance based on each household's income, can be difficult to administer in housing for migrant workers because of frequent tenant turnover and short periods of occupancy.

Borrowers of section 514 or 516 funds for Off-Farm Labor Housing projects may use Agency rental assistance funds for operating assistance rather than for providing rental assistance to individual households. By using operating assistance to reduce operating costs, rental rates can remain lower so that they are affordable to tenants based on the average wages of migrant farmworkers in the area. Tenants in Off-Farm Labor Housing projects that are receiving operating subsidy are still required to provide income verification and household income must be within the very-low or low-income limits to qualify for reduced operating assistance rents. Borrowers must provide documentation of tenant incomes to the Agency.

8.15 PROJECT ELIGIBILITY FOR OPERATING ASSISTANCE

Only Off-Farm Labor Housing project units that are designated for migrant farmworkers are eligible to receive operating subsidy. The property must be eligible to receive rental assistance.

8.16 OPERATING SUBSIDY LIMITS

The amount of operating assistance requested by the owner must be based on the project's actual income and expenses and must be approved by the Agency. For projects with both migrant and year round farmworkers, the amount of operating assistance is based on the portion of actual income and expenses attributable to the units that are for migrant farmworkers. In no instance may the annual amount of operating assistance exceed 90 percent of the annual operating costs that are attributable to the migrant units.

8.17 OWNER RESPONSIBILITIES.

A. Requesting for operating assistance program

Owners of Off-Farm Labor Housing projects with units for migrant farmworkers may request operating assistance by submitting a request to the Agency, which must include a budget. The budget must include:

- Estimated operating costs for the migrant units, including authorized expenditures such as reserve deposits;
- Proposed rental rates for the migrant units to generate sufficient funds for operating costs of those units, taking into consideration all other sources of project income; and

- Estimated rental income from tenants, based on a tenant contribution of 30 percent of the average adjusted monthly income of migrant farmworker households in the area.

B. Requesting operating assistance payments

Each month, the owner will submit a request for operating assistance to the Agency.

C. Verifying tenant income eligibility

Owners are responsible for verifying tenant income eligibility. Only very low or low-income households are eligible for the operating assistance rents. Households with incomes above the low-income limits must pay the full rent.

D. Reporting requirements

Owners will complete and submit to the Agency tenant certifications to document tenant income and eligibility.

Owners will complete and submit monthly to the Agency a project worksheet for operating assistance.

Owners must submit an annual planning budget to the Agency prior to the project's fiscal year.