United States Department of Agriculture

Rural Development

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TO: All RHS MFH National Office Directors
Rural Development

ATTN: Leadership Designees
All Multifamily Housing Program Staff
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FROM: Joaquin Altoro
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Date: 2023.12.11 13:39:54 -05'00'

SUBJECT: Set-Aside Unit Preferences at Properties with Other Funding Sources

PURPOSE

This Unnumbered Letter (UL) provides guidance for the allowance of set-aside unit preferences as they pertain to Rural Developments (RD) Multi-Family Housing (MFH) Section 514, 515, 516, and 521 housing programs, specifically those properties that have recapitalized with locally awarded funding sources and/or other third-party funding sources.

BACKGROUND

The U.S. Department of Agriculture (USDA) has previous guidance on set-asides and preferences in MFH properties in Handbook 2-3560, Chapter 6, Section 6.22 – Priorities for Units. However, the Agency acknowledges that recapitalization and rehabilitation for an aging affordable housing property often requires locally awarded funding sources such as Low-Income Housing Tax Credits (LIHTC). To receive consideration for these funding sources, owners must often commit to setting aside a small number of units with a preference for a certain population, for example, residents with disabilities or residents coming from homelessness. Some such preferences have been instituted by states as part of a settlement with the Department of Justice on *Olmstead vs. L.C.*, and other priorities may be due to state or local priorities for the funding of affordable housing.

EXPIRATION DATE:
December 31, 2024

FILING INSTRUCTIONS:
Housing Programs

IMPLEMENTATION

Given the prevalence of set-asides and preferences in state and locally awarded funding, RD will allow owners and management agents to include a set-aside or preference for a specific population in their occupancy policy and management plan, under the following conditions:

- The set-aside or preference must be part of the owner's effort to recapitalize and perform needed rehabilitation with the goal of long-term preservation of affordable housing in rural communities, either as part of a state's Qualified Allocation Plan (QAP) so the property can compete and receive a LIHTC award, or as a requirement imposed by other third-party funding sources.
- The set-aside or preference must not violate any provisions of the Fair Housing Act and must not violate any state or local discrimination laws.
- The set-aside or preference units shall consist of no more than 20% of the units at the property.
- The set-aside or preference must not result in unreasonable vacancies at the project. If set-aside units are vacant for longer than 90 days, owners must request an exception to rent the units to Agency qualified tenants, if allowed by third-party funding sources.
- The set-aside or preference must be clearly documented in the property's management plan and occupancy policy, the edits to which must be approved by the Agency.
- With prior RD review and concurrence, a Use Agreement that restricts a certain number of units may be executed.
- A separate waiting list may be utilized for the set-aside or preferences, in accordance with the third-party funding source or the set-aside governing Agency.
- The Housing and Urban Development (HUD) lease may be used for the set-aside or preference units/tenants if required by the third-party funding source or set-aside governing Agency. The HUD lease cannot be used for non-set-aside or non-preference units/tenants.
- Owners must continue to meet all RD reporting requirements.
- Participants must continue to use the RD budget-based rent structure on ALL units. Borrowers are responsible for funding any gap between basic rent and any restricted set-aside or preference rent collected from the tenant when basic rent exceeds the restricted rent.

If the number of set-asides or preferences change, the owner must advise the RD servicing specialist of the change.

This UL is effective immediately upon publication. All other provisions and procedures contained in Chapter 6 of HB 2-3560 remain unchanged. Guidance will be updated to contain the changes in this UL.

If you have any questions regarding this UL, you should contact Deb Reed, Finance & Loan Analyst, Asset Management Division, Policy and Budget at deb.reed@usda.gov or (712) 254-4365.