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| <p><b>CHAPTER 9: AGENCY MONITORING</b><br/> <i>[7 CFR part 3560, subpart H]</i></p> |
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## 9.1 INTRODUCTION

When borrowers accept Agency loan and grant funds, they agree to operate the property in accordance with program objectives and comply with program requirements established by the Agency. To ensure that borrowers meet these responsibilities, the Agency monitors borrower performance and takes action as needed to see that borrowers fulfill their responsibilities. The previous chapters have described the program requirements for multi-family housing projects and the Agency's procedures for implementing these requirements. This chapter describes the Agency's procedures for monitoring multi-family housing projects to ensure that these requirements are met.

Section 1 of this chapter provides an overview of Agency monitoring activities. Section 2 describes the procedures for Servicing Offices' monitoring activities. Section 3 discusses monitoring farm labor housing projects for compliance with program requirements. Section 4 provides an overview of State Office oversight of servicing activities. Section 5 provides for National Office initiatives and oversight.

## 9.2 AGENCY MONITORING OBJECTIVES AND PRIORITIES

### A. Monitoring Objectives

The Agency will monitor project operations to:

- Ensure the project is managed in accordance with the goals and objectives of the Multi-Family Housing program;
- Preserve the value of the property;
- Ensure that the property is maintained in accordance with Agency requirements for providing housing that is decent, safe, sanitary, and affordable;
- Ensure that the project is operated at actual, necessary, and reasonable costs;
- Detect waste, fraud, and abuse;
- Verify compliance with occupancy requirements; and
- Ensure compliance with affirmative fair housing marketing requirements; Title VI of the Civil Rights Act of 1964; Title VIII of the Civil Rights Act of 1968, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Americans with Disabilities Act of 1990; other applicable Federal, state, and local laws; and Agency requirements related to occupancy and tenant eligibility.

## **B. Monitoring Priorities**

The Agency will monitor the performance of all borrowers. However, to make the best use of its available resources, the Agency will give priority in its monitoring efforts to borrowers with projects that have the greatest risk of poor performance or compliance violations. By focusing more attention on projects experiencing problems, the Agency can maximize the effect of its monitoring activities. Agency monitoring efforts involve three levels of activities:

- **Routine monitoring.** For projects with limited risk of performance or compliance problems, Loan Servicers will conduct routine monitoring. This level of monitoring involves regular checks of project compliance through reviews of regular borrower submissions and periodic on-site visits.
- **Intensive monitoring.** For projects with a higher risk of performance or compliance problems, Loan Servicers will conduct intensive monitoring. This level of monitoring involves not only regular checks of project compliance, but also more frequent borrower reporting and on-site visits by Agency staff.
- **Quality control.** While Loan Servicers conduct routine and intensive monitoring, State Offices are responsible for oversight of Field Office monitoring efforts. The National Office will establish a set of goals for Field Office performance. The State Office must use Multi-Family Housing Information System (MFIS), Automated Multi-Family Housing Accounting System (AMAS), and other monitoring reports to ensure that Field Offices are meeting these goals. Additional State Office oversight of Field Office performance is conducted through the State Internal Review (SIR) process.

### **9.3 BORROWER RESPONSIBILITIES**

Borrowers are responsible for cooperating fully with the Agency staff performing monitoring activities. The Agency will notify borrowers in writing of any deficiencies or compliance violations identified during its review. Borrower must address these deficiencies within the correction period established by the Agency and described in the notice.

## SECTION 1: OVERVIEW OF AGENCY MONITORING

### 9.4 AGENCY MONITORING REVIEWS

#### A. Key Parties in the Monitoring Process

Monitoring involves a range of staff from the Agency and throughout the department. Borrowers, their management agents, and tenants also need to be active participants in the monitoring process. Exhibit 9-1 lists the key parties in the monitoring process.

| <b>Exhibit 9-1</b>   |  |
|--|--|
| <b>Key Participants in the Monitoring Process</b>  |  |
| <b>USDA Staff</b>  | <b>Other Parties</b>   |
| <ul style="list-style-type: none"> <li>• Loan Servicer</li> <li>• Architectural/Engineering staff</li> <li>• Environmental staff</li> <li>• Civil Rights staff</li> <li>• Office of General Counsel (OGC)</li> </ul> | <ul style="list-style-type: none"> <li>• Borrower</li> <li>• Management agent                             <ul style="list-style-type: none"> <li>◊ Manager (On-site or Off-site)</li> <li>◊ Supervisor</li> <li>◊ Project staff (e.g., leasing, maintenance)</li> </ul> </li> <li>• Tenants</li> </ul> |

#### *1. USDA Staff*

Effective monitoring of borrower performance requires a coordinated effort on the part of Agency staff from several areas. While Loan Servicers hold primary responsibility for monitoring borrowers and their projects, staff from other offices will often assist in performing monitoring reviews. For example, the State Architect/Engineer will often need to assist in performing physical inspections when Loan Servicers have specific concerns about a project. When performing reviews of the central office of a management agent with properties in several states, Loan Servicers will need to coordinate with their counterparts from the respective states. Finally, if monitoring activities identify significant deficiencies, Loan Servicers will often need to obtain the advice of staff from OGC.

#### *2. Borrowers, Management Staff, and Tenants*

While the Agency holds responsibility for performing monitoring activities, effective monitoring also requires the cooperation of borrowers and their agents. Their involvement during monitoring reviews is needed to provide access to records and to answer questions about project operations and procedures. Further, when deficiencies are discovered, borrowers, as well as the management agent, need to be informed so that prompt action can be taken to correct the problem. Borrowers notified of deficiencies are responsible for ensuring that the problems are corrected and for keeping the Agency informed about actions taken to address the problems.

Tenants are important participants in the monitoring process because they can provide valuable information about project operations.

**B. Monitoring Methods and Activities**

The Agency uses two basic types of monitoring methods:

- **Desk reviews.** These reviews involve examining project reports submitted by the borrower. Generally, Loan Servicers perform these reviews.
- **On-site reviews.** These reviews are conducted at the project and involve the inspection of both project conditions and records. Loan Servicers will often draw on the technical expertise of other staff to assist in performing these reviews.

The specific reviews that fall into each category are summarized in Exhibit 9-2. Each of these reviews is described in greater detail in subsequent sections of this chapter.

| <b>Exhibit 9-2</b>                |                                       |
|-----------------------------------|---------------------------------------|
| <b>Agency Monitoring Reviews</b>  |                                       |
| <b>Desk Reviews</b>               | <b>On-site Reviews</b>                |
| Quarterly/Monthly reports         | Post-occupancy review                 |
| Annual project financial report   | Annual physical reviews               |
| Occupancy trends/vacancy turnover | Triennial Supervisory Visit includes: |
| Unused rental assistance          | On-Site review                        |
| Agency internal quality control   | Occupancy review                      |
| Tenant subsidy review             | Management review                     |
|                                   | Full Physical Inspection              |
|                                   | Compliance review                     |

**C. Key Documents and Sources of Information**

The Agency relies on a range of sources to perform its monitoring activities. These sources are summarized in Exhibit 9-3.

| <b>Exhibit 9-3</b>                                      |  |  |
|---|--|--|
| <b>Key Sources of Information for Agency Monitoring</b> |  |  |
| <b>Agency Records</b>                                   | <b>Project Records</b>                   | <b>Other Sources</b>   |
| <u>Project Case File</u>                                | Notice of Payment Due Report             | On-site visits by Agency staff   |
| Loan agreement/resolution                               | Project budgets/Utility Allowance        | Reports from other Agency staff  |
| Interest credit agreement                               | Annual financial report                  | Tenant reports/complaints  |
| Rental assistance agreement                             | Financial records                        | Reports/Information from local officials   |
| Affirmative Fair Housing Marketing Plan                 | Tenant files (eligibility documentation) | Reports/Information from community members   |
| Lease   | Marketing records and applications       | Compliance monitoring and inspection reports received from other financing or subsidy sources involved with the property |
| Management certification                                | Waiting lists                            |  |
| Management plan   | Maintenance records                      |  |
| <i>Form RD 3560-52, Promissory Note</i>                 | Occupancy policies                       |  |
| Annual financial statements                             | Occupancy rules                          |  |
| Borrower organizational documents                       | Tenant Certifications                    |  |
| <u>Plans and Specifications</u>                         |  |  |
| <u>Automated Systems</u>                                |  |  |
| AMAS  |  |  |
| MFIS  |  |  |

**1. Agency Records**

The project case file and other Agency records provide information about the specific responsibilities of the borrower and also the operation of the project. As discussed in previous chapters, program requirements vary depending on the type of project and the type of financing the borrower received. The case file documents indicate the type of project and the specific terms of the Agency’s financing. For example, these documents specify the replacement reserve requirements and the owner’s return on investment. The case file also contains the management certification and management plan, which provide key information about project operations.

Agency records include the automated systems used to administer the program. AMAS and MFIS contain information that aid in monitoring projects.

Official records contain legal evidence of all transactions between the Agency and the persons with whom it conducts business. For information about the required contents and organization of the borrower case file, see RD Instruction 2033-A.

**2. Project Records**

Project records are documents that provide information about the on-going operation of the project. Notice of Payment Due Report (*Form RD 3560-29*), Multiple Family Housing Project Budget/Utility Allowance (*Form RD 3560-7*), and Tenant Certification (*Form RD 3560-8*) are examples. Loan Servicers examine these records during monitoring reviews to evaluate project performance and compliance.

### **3. *Other Sources***

In addition to site visits conducted by Loan Servicers or other staff to observe project operations, the Agency also draws on other sources to inform monitoring activities. Substantiated reports by tenants or community members noting inadequate conditions or improper practices are examples. Reports of performance problems in other states involving the same borrower or agent are also a source of concern. This type of information does not necessarily confirm that a problem is present, but indicates a need for further review of a project's operations.

## **9.5 PLANNING MONITORING ACTIVITIES**

Planning monitoring activities involves scheduling routine reviews and determining the extent to which in-depth monitoring needs to be conducted. Loan Servicers and State Office staff should review annually their plan to monitor their portfolio. Exhibit 9-2 indicates the reviews that are performed routinely and those classified as in-depth reviews.

### **A. Routine Monitoring**

Each year, Loan Servicers must schedule routine monitoring reviews and designate the staff that will perform these functions. These activities—together with the regular program administration activities performed by Loan Servicers—ensure that all projects receive a basic level of oversight each year to check for evidence of deficiencies or potential problems.

In scheduling these activities, Loan Servicers need to ensure that the appropriate staff is available to perform these reviews. Annual physical reviews should be planned to coincide wherever possible with other activities that take staff to the vicinity of the projects. In cases where access to individual units is required for inspection, the borrower will be required to provide adequate notice to the tenants.

### **B. In-Depth Monitoring**

When planning monitoring activities for the year, Loan Servicers must determine which projects warrant in-depth reviews and the types of reviews needed. In-depth reviews are done periodically to check for continued project compliance. These reviews are also performed more frequently for projects experiencing distress or when there is clear evidence of compliance concerns.

Loan Servicers may schedule these reviews to take place at any time during the year. They may also need to be scheduled on short notice during the year in response to evidence of problems. When scheduling these reviews, Loan Servicers will need to coordinate with the other staff participating in the review (e.g., architectural staff).

## 9.6 PERFORMING MONITORING REVIEWS

### A. Desk Reviews

Desk reviews are usually performed solely by the Loan Servicer and require little coordination with other staff. Performing these reviews generally involves three basic steps:

- **Preparing and reviewing background material.** Loan Servicers should gather the project case file and assemble past reports and other relevant records. In addition to reviewing these documents, Loan Servicers should review the relevant screens in AMAS and MFIS to gain an up-to-date understanding of the project's status and potential concerns.
- **Examining the borrower's monthly and quarterly reports.** Loan Servicers then review the borrower's monthly or quarterly reports following the specific instructions in Section 2 of this chapter or using the instructions that accompany the Agency's review form. Loan Servicers must make every effort to complete the review within the established time period. If additional information is needed to complete the review, Loan Servicers should promptly contact the borrower to request additional information.
- **Notifying borrower of any findings.** If the review reveals deficiencies or compliance violations, the borrower must be promptly notified. The notice must describe the deficiencies and a period for corrective action. If a third party is involved in financing or providing subsidy to the property and a formal arrangement exists with this third party, the Agency will provide a copy of the notice to the third party source to share information concerning the Agency's findings.

Refer to Chapter 4 of this Handbook for details concerning financial reports.

### B. On-site Reviews

On-site reviews take more preparation and planning than desk reviews. Loan Servicers must follow the four steps below when performing on-site reviews. The actions at each step will vary depending on the type of review. The specific actions for individual reviews are discussed in Section 2 of this chapter.

#### *1. Preparing for the Visit*

Loan Servicers should notify the borrower at least 2 weeks prior to a visit. The notice should specify the types of preparations (if any) that the borrower must complete to assist with the review. The Agency retains the authority to visit the project without prior notice to observe conditions and operations and to conduct on-site reviews without the presence of the borrower or the borrower's agent.

The Loan Servicer should also coordinate with other staff who will participate in the review to clarify assignments and responsibilities. In cases where access to individual

units is required for inspection, the borrower will be required to provide adequate notice to the tenants.

The Loan Servicer should also review the relevant Agency records and project reports to learn the project's current status and identify potential issues that should receive special attention during the review. Finally, the Loan Servicer should fill in the background information items on the monitoring instrument or reporting form.

## ***2. Conducting the Visit***

When conducting an on-site visit, Loan Servicers should conduct an entrance interview with the manager and borrower, if available. During this meeting, the Loan Servicers should explain the purpose of the review, describe the major activities, and indicate the type of cooperation that will be needed from project staff.

When conducting the review, Loan Servicers should follow the procedures described in Section 2 of this chapter and the instructions that accompany the monitoring tool. Loan Servicers must carefully record their observations to ensure that problems are not missed or incorrectly identified.

Upon completing the review, the Loan Servicers should briefly consolidate their results and meet with the manager or borrower to present the initial findings from the review. The Loan Servicer should highlight any findings and/or violations at this meeting.

## ***3. Notifying the Borrower***

The Loan Servicers must prepare a written description of the review results for the project case file. They must also issue a letter to the borrower summarizing the conclusions of the review and indicate any follow-up actions the borrower is required to take.

This letter is sent to the borrower within 30 days of the site visit or inspection. This letter requests the borrower to respond with procedures and time frames for correcting the noted deficiencies within 30 days. The purpose of the letter is to:

- Notify the borrower of review findings; and
- Provide time frames for resolving deficiencies.

As is the case with desk reviews, if a third party is involved in financing or providing subsidy to the property and a formal arrangement exists with this third party, the Agency will provide a copy of the notice to the third party source to share information concerning the Agency's findings.

#### ***4. Follow-Up Activities***

If a review identifies deficiencies that require borrower action, the Agency needs to conduct follow-up actions as appropriate to ensure that the deficiencies are corrected. For information about findings and default situations, see HB-3-3560, Chapter 10. A copy of the letter is placed in the borrower's case file and must be entered on MFIS.

### **9.7 PROJECT CLASSIFICATION**

The project classification system allows the Agency to focus on those projects that Loan Servicers consider truly at risk. The following paragraphs provide a brief description of how the Agency views the classification of the portfolio.

Loans may be reclassified in MFIS as findings and violations are determined or as project conditions improve.

#### **CLASS D PROJECTS**

Class D projects are in default and may be taken into inventory, be lost to the program, or cause the displacement of tenants. Defaults can be monetary or non-monetary. For information about monetary and non-monetary defaults, please refer to HB-3-3560, Chapter 10.

Projects in non-monetary default are those where a Loan Servicer has notified the borrower of a violation using the Agency's three processing letter process, as described in this chapter, and the borrower has not addressed the violation to the Loan Servicer's satisfaction within 60 days of the first servicing letter. The Loan Servicer, State Office, and National Office should be aware that the project is in jeopardy and should be available to provide further servicing assistance.

#### **CLASS C PROJECTS**

Class C projects are projects with identified findings or violations, which are not associated to a workout plan and/or transition plan. They include projects with violations where *Handbook Letter 301 (3560)* has been issued but 60 days have not passed. It is important to note that while the presence of a finding or violation is a normal occurrence in portfolio management, Loan Servicers will be concerned when findings and violations are carried for an extended period of time with no indication of resolution efforts. Projects under this classification for an extended period of time will alert Loan Servicers to one or more of the following:

1. There may be workload or staffing issues related to resolving problems;
2. Findings may need to be elevated to violations to facilitate effective servicing; and
3. Assistance from the State Office or the National Office may be necessary to address the problem

#### **CLASS B PROJECTS**

A Class B designation indicates that the Agency has taken servicing steps and the borrower is cooperating to resolve identified findings or violations by associating a work-out plan and/or transition plan.

**CLASS A PROJECTS**

Class A projects have no unresolved findings or violations.

## SECTION 2: SERVICE OFFICE MONITORING

### 9.8 POST-OCCUPANCY REVIEW (90-DAY VISIT)

#### A. Purpose of the Review

The post-occupancy review verifies borrower compliance with program requirements for project occupancy during initial lease-up and looks at whether the procedures described in the Management Plan and Affirmative Fair Housing Marketing Plan are being followed. Specifically, the review examines how borrowers:

- Seek eligible tenants;
- Determine tenant eligibility;
- Determine the appropriate rent;
- Set up appropriate accounts; and
- Use initial operating capital

#### B. Key Areas Examined

The Loan Servicer examines the borrower's rent-up activities as detailed below.

- **Project records.** These include the actions that the borrower takes to attract qualified tenants, determine tenant eligibility, and determine correct rental rate. The project's management plan and Affirmative Fair Housing Market Plan contain the borrower's procedures for tenant selection and for determining the rental rate.
- **Tenant files.** The borrower must maintain files for each tenant. Tenant files must include such information as income verification, the lease, and documentation showing how tenant eligibility was established and how the rental rate was determined.

To complete the review, the Loan Servicer will also need the project's waiting list (if applicable) and budget. These documents will be used to determine if the borrower is in compliance with the occupancy requirements set forth in Chapter 6 and the approved unit rental rates established in the project budget.

#### C. Timing

The post-occupancy review is conducted within 90 days after project operations begin or a transfer closes.

#### D. Key Staff

Loan Servicers perform the post-occupancy review.

### **E. Preparing for the Review**

The Loan Servicer should complete the following steps before going to the project site to perform the review:

- **Step 1.** Determine if outstanding issues, areas of concern, or indicators of noncompliance exist by reviewing the borrower case file and MFIS.
- **Step 2.** Notify borrower, in writing, of upcoming review. The borrower should receive *Handbook Letter 202 (3560)*, *Notification Letter for Supervisory Visit* at least 2 weeks prior to the review date to ensure that the necessary records and staff are available. Modify the letter as needed for the Post Occupancy Review. The borrower will, in turn, notify the tenants of the scheduled inspection.
- **Step 3.** Obtain the Multi-Family Housing Project Supervisory Visit form from MFIS.

### **F. Completing the Review**

The Loan Servicer should use the worksheet for the Multi-Family Housing On-Site Review and the Worksheet for MFH Individual Tenant File Review portions of the Multi-Family Housing Project Supervisory Visit form for guidance. The borrower will have available the documentation requested by the staff member. The borrower may choose to be present during the review. The borrower's choice not to be present does not preclude the staff person from performing the review.

To complete the Post-Occupancy Review, the Loan Servicer must complete the following steps:

- Review the Management Plan and Affirmative Fair Housing Marketing Plan. This documentation is evidence that the borrower was aware of the procedures that were to be followed during initial rent-up.

Review tenant files, waiting lists (if applicable), and budget. The tenant files reviewed should include a sample of accepted and rejected applicants.

The reviewer must determine the following:

- ◇ If requested documentation is present and adequate to perform the review;
  - ◇ Borrower's compliance with established procedures for marketing the project, qualifying tenants, determining rents, using waiting lists, and rejecting applicants.
- Summarize the occupancy review by completing the On-Site section of Part III of the Multi-Family Housing Project Supervisory Visit form.

**G. Exit Conference**

Conduct an exit interview with the borrower to discuss the results of the review, possible cause of deficiencies, and required solutions.

**H. MFIS**

Enter the results of the post-occupancy review in MFIS.

**I. Follow-Up**

If the review reveals deficiencies and/or compliance violations, prepare a letter to the borrower describing the deficiencies and a period for corrective action. If the borrower does not respond within the established timeframes, *Handbook Letter 301 (3560)*, as described in Chapter 10 of HB-3-3560, is to be sent within 15 days from the deadline initially given.

**9.9 ANNUAL PHYSICAL INSPECTION****A. Purpose**

Maintaining the physical condition of the secured property is the borrower's responsibility. The Agency Loan Servicers monitor the physical condition of the project to ensure that the property maintains its value and that tenants have housing that is decent, safe, and sanitary.

**B. Key Areas Examined**

The Loan Servicer will inspect the project's grounds, exteriors, common areas, and occupied and vacant units following the methodology described in Section 9.9 F. A full physical inspection must be performed when the results of this review indicate that the project is not being maintained in accordance with the physical standards for the program.

**C. Timing**

Annual inspections are required for all properties with outstanding physical findings identified in MFIS unless a full physical inspection and supervisory visit are due. However, the Loan Servicer may schedule an annual inspection at any time if warranted.

**D. Key Staff**

Trained and experienced Loan Servicing staff, assisted by the State Architect as needed performs the annual physical inspection. An experienced Loan Servicer should accompany inexperienced staff during their first two visits to the property.

State Officials are authorized at their discretion to accept third party inspection results for annual inspections. The borrower or the borrower’s representatives (including tax credit syndicators) are not considered a third party for this purpose. Examples of acceptable third parties are Department of Housing and Urban Development (HUD), Freddie Mac, Fannie Mae, tax credit agencies and housing finance agencies. Loan Servicers must continue to populate MFIS with this inspection data.

**E. Preparing for the Review**

The Loan Servicer should complete the following steps before going to the project site to perform the review:

- **Step 1.** Determine if outstanding issues, areas of concern, or indicators of noncompliance with Agency requirements exist by reviewing the borrower case file, previous physical reviews, most recent inspection report, tenant complaints (if applicable), and MFIS.
- **Step 2.** Notify borrower, in writing, of up-coming inspection. The borrower must receive *Handbook Letter 202 (3560), Notification Letter for Supervisory Visit* at least 2 weeks prior to the review date to ensure that the necessary records and staff are available. Modify the letter as needed for the annual physical inspection. The borrower will, in turn, notify the tenants of the scheduled inspection.
- **Step 3.** Obtain the Multi-Family Housing Project Supervisory Visit form from MFIS.

**F. Completing the Review**

The Loan Servicer should use the Worksheet for MFH Exterior Physical Standards and the Worksheet for MFH Interior Physical Standards. The Loan Servicer will complete the following steps:

- Examine the project's grounds, exteriors, and common areas. The number of occupied units to be examined is the greater of 5 percent of all occupied units or at least two units. If the project has vacancies, the greater of 5 percent of vacant units or at least 2 vacant units must also be inspected. For example, a 48 unit project with 3 vacant units would require 2 occupied units and 2 vacant units to be inspected for a total of 4 units.

|                               |                   |
|-------------------------------|-------------------|
| No. of Units to be Inspected  |                   |
| Occupied Units + Vacant Units |                   |
| Occupied Units                | Vacant Units      |
| >5% or at least 2             | >5% or at least 2 |

- Review the extent of borrower compliance with the physical accessibility requirements. Review the ability of the project's current budgeting and capital planning to implement any improvements identified by the borrower's transition plan. For information on transition plans, see Chapter 3.
- Complete all parts of *Form RD 3560-11, Multi-Family Housing Physical Inspection Report*.
- Photograph any deficiencies noted during the examination.

Findings and Violations: The reviewer reports a finding or violation on *Form RD 3560-11* as those items that were previously identified as a deficiency or a weakness.

A "finding" is a failure to meet physical standards that indicate a widespread occurrence or pattern of a physical problem that should be corrected through routine procedures.

A "violation" is a finding that is elevated either by its severity or the Agency's inability to obtain a resolution from routine servicing methods. A violation should be recorded only if the Loan Servicer intends to pursue the problem through the three-servicing-letter process. Elevating a finding to a violation will have an effect on the classification.

- Conduct an exit conference with the borrower. The exit conference allows the borrower to ask questions and to prepare an appropriate response to the findings and/or violations noted in the report. In this meeting the Loan Servicer and the borrower can discuss the requirements and time frames for resolving each finding and/or violation. Identify any Health and Safety Issues, which must be resolved within 10 days.

## **G. MFIS**

Enter the results of the annual physical inspection into MFIS.

## **H. Follow-Up**

If the inspection reveals deficiencies or compliance violations, prepare a letter to the borrower describing the deficiencies and a period for corrective action. Issues of health and safety are to be resolved within 10 days. If the borrower does not respond within the established time frames, *Handbook Letter 301 (3560)* is to be sent within 15 days from the deadline initially given. The letter requires that health and safety issues be resolved within 10 days.

## **9.10 TRIENNIAL SUPERVISORY VISIT**

### **A. Purpose**

A Supervisory Visit consists of three components – a full physical inspection, an on-site review and a compliance review.

Adequate maintenance is a crucial element in providing housing that is decent, safe, and sanitary, and ensuring that environmental and accessibility requirements are met. The Agency regularly conducts full physical inspections of its properties to ensure that they meet established program standards.

The purpose of the on-site review component is to determine the borrower's continued compliance with the management requirements, financial requirements and occupancy requirements for the project. This review also includes an examination of unit rents to ensure that they are being charged in accordance with the approved budget.

The purpose of the compliance review is for Agency staff to review the borrower's compliance with the Affirmative Fair Housing Marketing Plan and/or the Equal Opportunity requirements of Title VI of the Civil Rights Act of 1964, the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

### **B. Key Areas Examined**

The Loan Servicer will inspect the project's grounds, exteriors, common areas, and a sample of dwelling units following the methodology described in Section 9.10 F.

The Loan Servicer reviews the borrower's occupancy procedures, rent charge calculations, the project's financial systems and controls, along with its maintenance and preventive maintenance programs.

When conducting a compliance review at a project and at the office of the borrower or management agent office, the Loan Servicer will focus on the following areas:

- Marketing procedures;
- Rental policies;
- Waiting list;
- Project and unit accessibility;
- Eviction policy; and
- Other operating policies, as relevant.

### C. Timing

Supervisory Visits must be conducted at least once every 3 years, after the initial Post Occupancy Review, completed prior to the end of the fiscal year and should be conducted more frequently for projects with management that is unfamiliar with Agency requirements, or for projects experiencing occupancy or operational difficulties.

### D. Key Staff

Trained and experienced field staff, assisted by the State Architect as needed, perform supervisory visits. An experienced Loan Servicer should accompany inexperienced staff during their first two visits to the property.

To conduct a compliance review, the Loan Servicer must go through training and obtain a special certification; therefore, only certified State Office or Field Office Loan Servicers can complete the Civil Rights and Fair Housing review requirements.

### E. Preparing for the Supervisory Visit

The Loan Servicer should complete the following steps before going to the project site, or the office of the borrower or management agent to perform the Supervisory Visit:

- **Step 1.** Notify the borrower, in writing, of the upcoming Supervisory Visit. The borrower should receive Handbook Letter 202 (3560) “Notification Letter for Supervisory Visit,” within 2 weeks of the visit to ensure the necessary records and staff is available. Since access to individual units will be required for inspection, the borrower or management agent must provide adequate notice to the tenants. If the Servicing Office chooses to do the tenant file review prior to the visit, request the files be sent at this time.
- **Step 2.** Obtain Multi-Family Housing Project Supervisory Visit form from MFIS.
- **Step 3.** Desk Review. Review MFIS and the borrower’s case file to determine if outstanding issues, areas of concern, or indicators of noncompliance with Agency requirements and Civil Rights laws exist. The following documents should be included in this review:
  - ◇ Physical inspection reports
  - ◇ Tenants complaints (if applicable)
  - ◇ Current Management Plan
  - ◇ Borrower’s operating regulations (e.g. grounds for eviction)
  - ◇ Affirmative Fair Housing Marketing Plan
  - ◇ Work Out Plan (if applicable)

- ◇ Quarterly/monthly reports
- ◇ Current Annual Budget
- ◇ Current Balance Sheet
- ◇ Current Notice of Payment Due Report
- ◇ MFIS Report FRM 2000 (Desk Review)

**F. Completing the Review**

**Physical Inspection:**

The Loan Servicer should use the Worksheet for MFH Exterior Physical Standards and the Worksheet for MFH Interior Physical Standards and Tenant Interviews portions of the Multi-Family Housing Project Supervisory Visit form from MFIS for guidance.

To complete the review, the Loan Servicer will:

- Examine the project's grounds, exteriors, common areas, and interior units. The number of units to be examined will be as follows:

| <u>Number of revenue producing units</u> | <u>Number of occupied units to be inspected</u> |
|--|---|
| 0-5 Units                                | All   |
| 6-30 Units                               | 6 Units   |
| 31-74 Units                              | 10 Units  |
| 75 or more Units                         | 15 Units  |

Plus if the project has vacancies, the greater of 5 percent of vacant units or at least 2 vacant units must also be inspected. For example a 48 unit project with 3 vacant units would require 10 occupied units and 2 vacant units to be inspected for a total of 12 units.

- Complete all parts of the *Form RD 3560-11*.
- Review the extent of borrower compliance with the physical accessibility requirements of civil rights laws. Review the ability of the project's current budgeting and capital planning to implement any improvements identified by the borrower's transition plan.
- Photograph any deficiencies noted during the examination.

**On-Site Review:**

The Loan Servicer should complete the On-Site Review portion of the Multi-Family Housing Project Supervisory Visit form from MFIS.

To perform the on-site review, the Loan Servicer must complete the following steps:

- **Review project records** including marketing materials, applications, and waiting lists. The Loan Servicer should determine whether the marketing materials indicate that the project is complying with the Affirmative Fair Housing Marketing Plan. The Loan Servicer should also determine whether the applications and waiting list records indicate that the borrower is complying with tenant selection requirements.
- **Review tenant files**, which should include such information as income verifications, back-up documentation, the leases, and documentation showing how the rental rates were determined. The sample files should include accepted and rejected applicants. Use Worksheet for MFH Individual Tenant File Review portion of the Multi-Family Housing Project Supervisory Visit form from MFIS to record your review. MFIS will select tenant files using the File Selection Criteria defined below:

(a) MFIS will determine the number of files to be reviewed.

| <u>Number of revenue producing units</u> | <u>Number of files to be reviewed</u> |
|--|---------------------------------------|
| 0-5 Units                                | All                                   |
| 6-30 Units                               | 6 Files                               |
| 31-74 Units                              | 10 Files                              |
| 75 or more Units                         | 15 Files                              |

(b) MFIS will identify the risk factors.

- Gross income < \$3000
- Medical Deductions
- Initial Certification
- Move-out
- Eviction
- Most recent recertification

(c) If there are an insufficient number of files using the risk factors then MFIS will randomly select the remaining files.

- For HUD Section 8 and Housing Choice vouchers, Tenant Subsidy Codes 2 & 6, a tenant file review is NOT required by the Agency.

The reviewer must determine whether:

- ◇ The borrower is maintaining adequate documentation; and
- ◇ The borrower is complying with program requirements for marketing the project, qualifying tenants, determining rents, using waiting lists, and rejecting applicants.

- ◇ If discrepancies are observed and determined to be trends in the tenant file reviews, a full review of all tenant files will be required within 90 days to determine further servicing such as collection of unauthorized assistance or obtain proper verifications.
- **Review borrower compliance** with management requirements, financial requirements and occupancy requirements for the project.

The Loan Servicer will review the following:

- Site Staff
- Maintenance Systems
- Capital Planning and cash flow
- Cash Controls
- Cost Controls
- Insurance and Reserve Accounts
- Identity of Interest
- Occupancy Review
- Tenant/Management Relations

The Loan Servicer must complete the On-Site Review section of the Multi-Family Housing Project Supervisory Visit form.

**Compliance Review:**

To perform the compliance review, the Loan Servicer will:

- Review the management plan to determine project management's method of informing tenants and applicants regarding requests for reasonable accommodations.
- Review the lease agreement, application, and other documentation used by the borrower to determine if policies and procedures represent barriers to occupancy
- If a tenant is an ineligible occupant of a fully accessible unit, determine if there is an executed lease attachment that requires the tenant to move if an individual needing the handicapped features applies for occupancy
- Visually inspect the project to determine if there are physical barriers, and compare it to the self-evaluation and transition plan to determine if those barriers are addressed in the plan and are scheduled to be removed.

- Where transition plans are scheduled to remove barriers over more than a one-year period, review the transition plan and the most recently approved budget to ensure that borrower budgeting and the project's financial condition is supportive of the transition plan as written. Transition plans should include the potential cost of removing identified barriers.
- Interview tenants to determine if the borrower has provided information and made reasonable accommodations upon request by the tenant
- Interview tenants in the fully accessible units to determine if the tenant has need of the accessibility features of the unit and is an eligible occupant

### **G. Exit Conference**

Upon completing the supervisory visit, the Loan Servicer should conduct an exit conference with the borrower to address findings, cause of findings, and possible resolutions. Advise borrower of any Health and Safety Issues, which must be addressed within 10 days.

### **H. MFIS**

Enter the results of the inspection into MFIS.

### **I. Borrower Notification of Review Results**

The Loan Servicer must prepare a written description of the review results for the project case file. They must also issue a letter to the borrower summarizing the conclusions of the supervisory visit and indicate specific follow-up actions the borrower is required to take. In addition, the results of the supervisory visit should be forwarded to other RD offices working with this borrower or agent.

This letter is sent to the borrower within 30 days of the supervisory visit. This letter requests the borrower to respond with procedures and time frames for correcting the noted deficiencies within 30 days. However, if the noted findings involve issues of health and safety, the borrower is required to resolve those specific issues within 10 days of the letter.

If the results of a physical inspection indicate a finding or violation pertaining to "Common Area Accessibility," "Fully Accessible Units," or other relevant physical or accessibility standards, the Loan Servicer should include the specific language in communications with the borrower as shown in Exhibit 9-4.

**Exhibit 9-4**  
**Sample Language – Civil Rights Violations**  
**Detected During Physical Inspections**

“Recent Agency monitoring of the subject project indicates that you are not currently meeting your responsibilities under applicable Civil Rights laws. Since project operating or reserve account funds may be required to address this situation, we request that you advise the Agency of how you intend to comply with the law. In addition to any penalties, liabilities, or loss of tax credits that may result from legal action brought against you by third parties, continued noncompliance may result in your ineligibility to receive further loan funds from the Agency. You failed to meet the following MFH physical standard(s):

1. Common Area Accessibility (Specify)
2. Fully Accessible Units (Specify)
3. Other (Specify).”

If the results of the supervisory visit indicate noncompliance with other Civil Rights laws the Loan Servicer should also include the specific language regarding noncompliance as shown in Exhibit 9-5.

**Exhibit 9-5**  
**Sample Language to Use When Compliance**  
**Reviews Uncover Violations to Civil Rights Laws**

“Recent Agency monitoring of the subject project indicates that you are not currently meeting your responsibilities under applicable Civil Rights laws. Since project operating or reserve account funds may be required to address this situation, we request that you advise the Agency of how you intend to comply with the law. In addition to any penalties, liabilities, or loss of tax credits that may result from legal action brought against you by third parties, continued noncompliance may result in your ineligibility to receive further loan funds from the Agency. You are in noncompliance with the following: (Specify).”

**J. Follow Up**

If the borrower does not respond within the established timeframes, Handbook Letter 301 (3560) in Chapter 10 of HB-3-3560 is to be sent to the borrower within 15 days from the deadlines initially given.

If a third party is involved in financing or providing subsidy to the property and a formal arrangement exists with this third party, the Agency will provide a copy of the notice to the third party source to share information concerning the Agency’s findings.

Servicing Offices must notify the State Civil Rights Coordinator/Manager (SCRC/M) if borrowers fail to bring themselves into compliance with Civil Rights Laws or fail to submit an acceptable transition plan. The State Director will forward the issue of noncompliance to the National Office Civil Rights Staff. The National Office Civil Rights Staff will notify the State Director if further review and processing of the finding will either resolve the finding or require that it be forwarded to the National Office Civil Rights Staff or the Justice Department to resolve the noncompliance issue. The SCRC/M will notify the State Office and the Servicing Office of the disposition of the finding of noncompliance. The SCRC/M will notify the State Office and the Servicing Office of the disposition of the finding of noncompliance.

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## **SECTION 3: AGENCY MONITORING FOR LABOR HOUSING PROJECTS**

### **9.11 OFF-FARM LABOR HOUSING**

Off-Farm Labor Housing projects should be monitored in accordance with the requirements established in this chapter for other multi-family housing projects.

### **9.12 ON-FARM LABOR HOUSING**

On-Farm Labor Housing projects should be reviewed by the Agency at least once every three years. The Loan Servicer should complete the Supervisory Visit Worksheets from MFIS. During the monitoring visit, Loan Servicers should review:

#### **A. Eligibility Documentation**

Borrowers should properly document that each resident is eligible to live in the On-Farm Labor Housing unit. At a minimum the borrower should have an executed lease or employment contract with each tenant and each tenant should meet the eligibility requirements established for On-Farm Labor Housing tenants in Section 9 of Chapter 6 of this Handbook.

#### **B. Financial Information**

The borrower must document that the on-farm labor housing unit(s) are being operating in a nonprofit manner. At a minimum the borrower should develop an operating budget that demonstrates revenues equal expenses and the borrower is not receiving a return from the property.

#### **C. Operating Plan**

The review of the operating plan should also ensure that the property is being managed in a nonprofit manner and that tenant requests and grievances are being handled in a timely manner and in accordance with the management plan.

#### **D. Loan Agreement**

The review of the loan agreement should ensure that the borrower is in compliance with the agreement made to the Agency to provide adequate housing to the employees in the borrower's employment and not to charge rent, unless otherwise approved by the Agency.

#### **E. Security Deposits**

If the borrower has charged security deposits to the tenants, then the review should ensure that security deposits are being managed in accordance with state and/or local law.

**F. Payment of Taxes and Insurance**

The review of taxes and insurance should ensure that taxes are being paid in a timely manner and at the very minimum to ensure that the borrower has adequate insurance in place to cover replacement of the property in the event of a loss.

## **SECTION 4: STATE OFFICE OVERSIGHT OF SERVICING ACTIVITIES**

Once the Servicing Office has conducted routine oversight and reviewed its portfolio, the State Office has a responsibility for additional oversight in a broad sense. The goals and responsibilities of State Offices are described below.

The State Office must use MFIS as the database for maintaining and analyzing project financial information as well as recording and tracking project supervisory activity and servicing efforts.

### **9.13 PORTFOLIO MANAGEMENT GOALS**

Proper asset management of the Agency's multi-family housing portfolio begins with a thorough evaluation of the entire portfolio to obtain a clear understanding of existing and potential problems. Close monitoring, timely follow-up, and a consistent administration of the regulations will be beneficial in the resolution of problems and will contribute to the stability of the program.

Staff, at all levels, need to be better prepared to address the challenges relating to their portfolio. Staff must be provided with training, resources, and support to meet these challenges. The mission and goals, and plan of action for effective loan servicing and portfolio management are described below. For tracking adherence to these goals, State Offices should look at the appropriate MFIS or AMAS report unless specified otherwise.

#### **1. RECEIVERSHIP PROPERTIES. *Reduce Receivership Periods to No More Than 12 Months***

(Measurement Tool: MFIS TRK 2000 – Servicing Effort Tracking Report)

The oversight process of a property held in receivership by the Agency requires close monitoring and supervision by the National Office, State Office, and Servicing Office. This will include the review of property financial records such as monthly reports, year-end reports, and annual audits. Additionally, the staff is responsible for review and approval of the payment of certain expenses, such as management fee, taxes and insurance.

Receivership properties may have special needs and may need to be serviced within the parameters of a workout plan. Others will require sales and/or other liquidation plans. To transition out of the receivership, it will be necessary to focus efforts on obtaining new substitute general partners, transfers of ownership, or to liquidate accounts.

States should input servicing data into the comment section of MFIS to provide updated status.

**2. INVENTORY PROPERTIES: *Reduce Inventory Property Holding Periods to No More Than 12 Months***

(Measurement Tool: States will input comments to update the status of inventory properties in MFIS on a monthly basis. The National Office will review the status of inventory properties by compiling AMAS Reports and then reviewing MFIS TRK 2000.)

State Offices must review their inventory property portfolio and take necessary actions to effectively dispose of these properties. To accomplish this, all efforts should be given to marketing the properties, including reducing the price, sealed bids, or sale as a non-program property. All inventory properties should be managed and made ready for sale in the most expeditious manner using the authorities in 7 CFR part 3560, subpart K.

The National Office should be contacted for assistance in the sale of a property experiencing marketing difficulties.

**3. DELINQUENT LOANS: *Maintain a Delinquency Rate of Two Percent or Less***

(Measurement Tool: AMAS RC 545 Report)

All states with delinquency rates that exceed two percent are required to work with borrowers and take appropriate servicing actions to reduce their delinquency rates to two percent or less.

Borrowers who are consistently delinquent require aggressive servicing and counseling regarding late payments. If long-term delinquency is the result of pending litigation for liquidation, appropriate officials should be notified and encouraged to expedite such litigation. When states are experiencing difficulties with litigation officials or when the loan is part of a long-term work-out agreement, the National Office should be contacted for assistance.

A number of long-term delinquencies are the result of inactive accounts with loan balances remaining after the asset is liquidated (i.e., foreclosure, sale, or transfer for less than the debt, compromise offer, bankruptcy, etc.). These accounts need to be settled due to their negative impact on the overall multi-family housing delinquency rate. State Offices are to immediately request assistance of OGC, the Assistant U.S. Attorney, and/or the National Office when accounts in this category are determined to exist.

Any state with average delinquency rates above the two percent national average will be closely monitored and contacted by the National Office to determine what efforts are being made to reduce the delinquency, and to identify whether assistance or training is needed. Delinquency status reports may be required from those states identified as having problems. Similarly, any states exhibiting a trend in increasing delinquencies may be required to submit an explanation or a plan of action. Any instances of Servicing Offices holding payments and not processing them in a timely manner must be discontinued immediately. All payments are to be processed when received.

**4. OPERATING BUDGETS/UTILITY ALLOWANCES: *Take Appropriate Action on All Budgets/ Utility Allowances Prior to the Beginning of a Project's Fiscal Year***

(Measurement Tool: MFIS TRK 3000 – Tracking Step Summary Report)

Budgets are to be reviewed and approved on MFIS prior to the start of the borrower's fiscal year. If not received or if unacceptable, a finding and a follow up date must be entered in MFIS. Loan Servicers must take action on all budgets within 60 days of receipt.

**5. ANNUAL FINANCIAL REVIEWS: *Complete All Year-End Financial Reviews Within the Required Time Frame***

(Measurement Tool: MFIS TRK 3000 – Tracking Step Summary Report)

The “Actuals” listed on *Form RD 3560-7* and *Form RD 3560-10*, and the engagement are to be reviewed and any findings entered on MFIS within 60 days of receipt. The borrower is to be notified of the results of the review and MFIS is to be updated accordingly. If financial information is not received or is unacceptable, a finding and a follow-up date must be entered in MFIS.

**6. ANNUAL PHYSICAL INSPECTIONS: *Complete All Required Annual Physical Inspections.***

(Measurement Tool: MFIS TRK 3000 – Tracking Step Summary Report)

The purpose of the annual physical inspection is to determine whether or not there are problems that may require immediate attention. In addition, a determination should be made if the exterior and common areas are accessible as required by applicable Federal law. All findings and follow-ups must be entered into MFIS.

**7. SUPERVISORY VISITS: *Complete All Required Supervisory Visits and Compliance Reviews.***

(Measurement Tool: MFIS TRK 3000 – Tracking Step Summary Report)

The Supervisory Visit is the Agency's primary tool to complete in-depth analysis of the borrower operations with regard to Management Plan/Agreement, Fair Housing, tenant eligibility, file review, budget compliance, building security and maintenance. The borrower is to be notified of findings and deficiencies and given a timetable to correct all problems. Any summary level findings must be entered into MFIS.

8. **STATE OFFICE OVERSIGHT OF MFIS DATA:** *State Office responsibility is to select and review 5 percent of projects receiving the Supervisory Visit during the year and to ensure that all the data elements in MFIS have been input.*

*State Office staff must continuously monitor supervisory activities and borrower status to ensure that each project is receiving timely and effective supervision. MFIS will be used to accomplish these monitoring responsibilities.*

When used correctly, MFIS enables the Agency to effectively manage the multi-family housing portfolio and ensure the proper use of Federal housing resources. Staff at National, State, and Servicing Office levels has immediate access to portfolio information in order to make better program management decisions, and more effectively deploy limited resources. With the implementation of MFIS, the ability to review portfolio activity now extends to borrowers and management agents as well as servicing office jurisdictions.

State and Servicing Offices are required to input the current status of all servicing actions into MFIS. The State Office must monitor the MFIS activities of Servicing Offices to ensure that data are accurate, consistent, timely, and complete and that regulatory authorities are effectively used to manage the portfolio and determine that Agency resources are effectively used to obtain compliance.

At least quarterly, State Offices must print out and review the MFIS project classification report. For projects classified with a D or C, State Offices must review the project's supervisory and servicing status on MFIS.

National Office will issue monthly reports on status of portfolio and semi-annual reports on the state's accomplishment on servicing goals.

## SECTION 5: NATIONAL OFFICE INITIATIVES AND OVERSIGHT

### 9.14 WAGE AND BENEFIT MATCHING

States are required to obtain wage and benefit matching agreements with State Departments of Labor (SDOL) and to fully implement and utilize income matching of tenants applying for assistance and rental subsidies under the Multi-Family Housing programs.

State Office staff will:

- Execute a Memorandum of Understanding (MOU) or other appropriate agreement with the state agency charged with administering information required to be kept by the US Department of Labor (DOL) on wage earnings and benefits. The purpose of the MOU is to improve the controls over income certifications and subsidy payment accuracy by providing an independent source for verifying incomes of participants. Before entering into such agreements, states are reminded that the advice and consent of the Office of the General Counsel (OGC) must be obtained.
- Aggressively pursue implementation of MOUs. If assistance is needed to overcome implementation barriers such as statutory prohibitions, automation issues, or a lack of cooperation from the state agency, the Deputy Administrator for Multi-Family Housing Programs should be contacted.
- Approve computer-matching arrangements. The administrative oversight required for a fully interactive wage and benefit-matching system involves considerable resources to meet the stringent administrative oversight required by law.
  1. Where two or more Agency automated systems are to be linked to merge data, the advice and consent of the Deputy Administrator, Multi-Family Housing must be obtained prior to implementation of such a system. (Example: Rural Development may arrange to access a State Wage and Benefit Information Collection Agency's database and pull up information on Agency hardware platforms. Rural Development can then manually compare the results on computer screen or printout with Agency data.)
  2. When the data from two or more agencies is being merged to facilitate efficient comparison between incomes and benefits reported via use of automated software routines comparing database records, approval by the Department of Agriculture's Data Integrity Board is required. In addition, publication of the action in the Federal Register and notification to Congress is required.
- Determine when and how often to conduct wage and benefit matches. State Offices will establish routines to require and ensure that wage matches are performed each year on at least 10 percent of all initial and subsequent tenant certifications of those households earning income, for those residents scheduled to be interviewed prior to conducting supervisory visits, and for projects where the supervisory visits reveal significant discrepancies. (Normally, wage and benefit matches will not exceed a 20 percent level.)

Other incidences when wage and benefit matches may be obtained, but are not required, are for tenant households who are moving into projects for the first time, for tenants or applicants claiming zero or unreasonably low incomes, and for existing tenants where the management agent or the servicing official deems wage matching appropriate.

- Wage and benefit matching for MFH programs includes Labor Housing residents whose eligibility or receipt of subsidy is determined in whole or in part on wage and benefit data.
- Establish notification routines for initiating MFH wage and benefit matching. States may use the notices to borrowers, management agents, and residents, set out in **Appendix 4** of this Handbook, as guides in implementing the wage and benefit matching system for MFH programs.
- Identify illegal or improper assistance and service suspected or confirmed abuses in the MFH program. If the DOL verification and investigation reveals that a tenant has submitted inaccurate or false information regarding household income, the servicing staff is required to notify the borrower of the findings. The borrower must attempt to correct the tenant certification and/or seek restitution of any improperly received rental assistance. See **Appendix 4** of this Chapter for guidance in notifying the borrower of any discrepancies discovered. The borrower will provide the tenant a notice of lease violation and an opportunity for repayment. If the tenant refuses or is unable to repay, the borrower will initiate eviction proceedings. If the tenant moves out of the unit without repaying, the borrower will provide the Agency all relevant tenant records so the Agency can begin the process of recouping the improper assistance through the use of US Treasury offsets

State Offices can contact the Deputy Chief Financial Office, Program Reporting Branch of the St. Louis Office to request assistance in further servicing and collection processing.

- The Agency will confirm that the benefits received under the current tenant certification period are accurate. The Agency does not intend to require past tenant certifications to be reviewed for accuracy by wage and benefit matching unless there is evidence of substantial abuse and the amount of the past-unauthorized assistance exceeds \$500. In addition, any recovery efforts must not begin without first having been assured that tenants have had the opportunity to review the accuracy of the information and appeal any disagreements in accordance with the provisions of CFR 3560.160.

### **Report Quarterly to the National Office on State's progress in obtaining MOUs.**

States listed in **Attachment 9-A** that do not have MOUs in place (except those where State Law prohibits wage matching) must submit quarterly progress reports on actions taken to implement an MOU by memorandum or e-mail to the National Office, Multi-Family Housing Portfolio Management Division (MFHPMD).

## 9.15 UNUSED RENTAL ASSISTANCE

It is the intent of the National Office to recapture all available unused rental assistance into an Administrator's Rental Assistance (RA) Reserve account. This account will be used at the Administrator's discretion. The intent behind establishment of the Reserve is maximum utilization of available RA. State Directors are responsible for identifying unused RA, establishing when unused RA should be withheld from the Administrator's Reserve pending specific events, and how unused RA held in reserve will be transferred according to priorities established by the Administrator. The effective use of Rental Assistance is a major goal of Rural Development.

### A. Unused Rental Assistance Reports

State Directors must report semi-annually on the status of the RA units unused for 6 months or more in their State using **Attachment 9-B**, "Report of Status of Unused RA units." The basis for this information comes from MFIS Report PRJS 4200, "Occupancy Trend." In addition to vacancies, the report identifies unused RA units as of the 1<sup>st</sup> day of the reporting period.

When identifying RA units being unused for six months, evaluations need to be made to determine if RA units are unused because of tenant turnover. This is particularly true in the case of one or two RA units appearing eligible for possible transfer. MFIS Report PRJS 4200, "Occupancy Trend" identifies the possible number of RA units available for transfer. This number is the fewest unused RA units for the past six month period. A review of the current month's occupancy is necessary to determine if there are any applicants/tenants who may need the RA unit in the next month.

A review of MFIS Report PRJ2000, "Project Worksheet" and PRJS 4200, "Occupancy Trend" is needed to determine the impact of unused RA by the following situations:

1. Tenants vacating
2. Tenants moving in
3. Tenants paying overage
4. Percentage of occupancy
5. Number of vacant units

After the review and analysis of the reports, the property should be contacted if there is any uncertainty about the cause of the RA unit being unused.

Regulation 3560.257(c) requires that "...borrowers must assign available rental assistance units as soon as...units become available". If there is substantial traffic in and out of the property, analyze closely to see if the RA that was unused was again re-used in subsequent months within the 6-month period.

Pay particular attention to this in cases where there is substantial activity and one or two units are identified as unused. This is the effect of “turnover”: RA can appear to be unused where there is substantial tenant traffic, when in fact it may be an overlap of unused RA units.

- Part A – Unused RA and unused RA withheld from the Administrator’s Reserve to be used within the next 6 months. All units identified as available for the Administrator’s Reserve should be immediately available for transfer upon submission of the report.
- Part B – Properties where Unused RA is intended to be used in Part A. States must identify the proposed disposition of unused RA according to categories listed in the Report and the following guidance below:
- Part C – State Director’s intended use from the Administrator’s Reserve.

**Reports are due no later than 30 days after April and October (e.g. the Status Report as of April 1 is due May 1).**

## **B. Evaluation of Report**

The National Office will review the Status report within 30 days of receipt. If the National Office determines that State Offices are not aggressively utilizing the unused RA, the Administrator may determine the placement of unused RA units, including transfer to rent overburdened tenants or to the Administrator’s RA Reserve account. If units are to be transferred to the Reserve, the National Office will advise the State Office so that all required administrative actions can be undertaken to affect the transfer. If unused units will not be transferred to the Reserve, the National Office will advise the State Office so that all unused units can be effectively utilized.

## **SECTION 6: SPECIAL PROCEDURES FOR DECLARED DISASTERS**

In the event of a natural or man-made disaster declared by the President of the United States, the Agency may authorize certain actions to be undertaken or certain regulatory provisions that may be waived for MFH borrowers who make their housing available for disaster evacuees.

### **9.16 PRESIDENTIALLY-DECLARED DISASTERS**

In the event of a disaster, the Federal Emergency Management Agency (FEMA) identifies counties affected by the disaster and makes available money or direct assistance to individuals whose property has been damaged or destroyed and whose losses are not covered by insurance.

The Agency has developed Special Actions and Waivers that may be implemented in the event of such disasters for tenants who are residents of the affected counties and owners of Rural Development-financed properties located in the affected counties. For disasters that impact at least 500,000 people, special disaster-related Servicing Actions will be put into effect as outlined below.

#### **A. Definition of Evacuees**

For purposes of the Section 515 and Section 514 loan programs, “disaster evacuees” are defined as residents of counties included in the declared disaster area identified by FEMA. In order to qualify as a recipient of Rural Development multi-family housing assistance and receive the benefits identified below (Special Actions and Waivers), a disaster evacuee must present evidence to the property manager of having resided in the affected county. This evidence may be a driver’s license, utility bill, mortgage statement, lease, etc., or the property manager may verify the address, date of birth etc., from a credit agency.

By definition, a resident in a Rural Development financed property located in a disaster county is a “disaster evacuee” and may be entitled to benefits from Special Actions identified below. For example, an existing tenant may suffer a job loss due to the disaster, which could result in receipt of emergency rent assistance provided by another governmental agency.

#### **B. Use of Rural Development Rental Assistance Program**

A disaster evacuee who is receiving rent assistance from any governmental agency is not eligible to receive benefits from the Rural Development Rental Assistance Program. If the evacuee is not receiving rent assistance from another government agency, the property manager should apply the standard eligibility tests for the evacuee to receive Rural Development Rental Assistance. If the manager is unable to obtain verifications of income or employment because of the disaster, no Rental Assistance can be provided.

**9.17 SPECIAL ACTIONS AND WAIVERS**

Regardless of the size of the affected population, State Directors have authority to implement the following procedures without National Office approval:

1. Applicants may receive a Letter of Priority Entitlement (LOPE) issued by USDA Rural Development or may provide the property owners with documentation of being registered with the FEMA in lieu of a LOPE letter.
2. If an applicant does rent a Rural Development-financed property, the FEMA registration number must be entered into Multi-Family Information System (MFIS). Within *90 days*, field staff will need to conduct a random sampling of tenant files to assure that the FEMA data was input into MFIS correctly.
3. Allow for imputed income from assets due to homeownership affected by the disaster.
4. Zero income applicants will be allowed to reside in apartment units; rental assistance (if available) will be made available to the applicant.
5. Collection of security deposit per 7 CFR 3560.204 may be waived, if requested by the owner of the property.
6. Owners of elderly designated properties may rent to age ineligible applicants for *6 months* from the date of the State Director decision.
7. Annual lease required per 7 CFR 3560.156 (b)(2) is waived and leases may be issued on a month-to-month basis.

Special Actions and Waivers that may be provided by the Agency and the Servicing Requirements that must be implemented by Servicing Officials are listed below.

**A. Tenants Displaced from Rural Development Financed Multi-family Properties**

For existing MFH tenants or Section 502/504 borrowers displaced by the disaster, the Agency has several authorities available to minimize the impact of the devastation.

| <u>Special Action</u>  | <u>Servicing Requirements</u> |
|--|-------------------------------|
| <p>1. The existing MFH tenants and/or Section 502/504 borrowers made homeless by the disaster may apply for occupancy at any Rural Development financed property as a "displaced tenant." In accordance with 7 CFR 3560.154 (g) (2)(ii), they will be placed, first come-first served, on the waiting list, with or without a Letter of Priority Entitlement (LOPE letter). They would then be offered any vacant unit or the next available unit if no vacancies exist. Under this circumstance, the tenant required to move is entitled to or could benefit from the special actions and waivers identified in this section.</p> | <p>No action required.</p>    |

| <u>Special Action</u>   | <u>Servicing Requirements</u>  |
|---|--|
| <p>2. Some existing tenants may have been receiving Rental Assistance (RA) in units made uninhabitable by the disaster. While the Agency cannot provide RA to a tenant unless they occupy an eligible Rural Development financed property, the Agency can allow the transfer of the tenant's RA unit to an eligible Rural Development property where the tenant could then continue to receive RA. Any such arrangement needs to be agreed to by all parties and be designed to return the RA, and the tenant if they chose, back to their original apartment unit.</p> | <p>In accordance with this special action, Servicing Officials will be authorized to arrange temporary transfers of RA from properties made uninhabitable by the disaster to properties in surrounding areas that have vacancies in habitable units, as follows:</p> <ul style="list-style-type: none"> <li>a. The owners must enter into an agreement whereby RA units, in an amount equal to or less than the number of vacant units in the receiving property, are transferred for a period of time until the units in the damaged property can be made habitable. When the units are habitable, the RA units will be transferred back to the original property. RA units may be transferred as a group or one at a time.</li> <li>b. First priority for the use of transferred units is RA tenants moving from the damaged property. The tenants would be accommodated first come-first served from the waiting list in accordance with 7 CFR 3560.154 (g)(2)(ii). These displaced tenants would receive priority over any other applicant or existing tenant.</li> <li>c. Displaced tenants receiving the transferred RA must sign an attachment to their lease indicating that they understand that the RA unit will be returned to its original property when the damaged apartment unit has been made habitable. At that time, the displaced tenant could also return and continue to receive RA. This agreement would be subject to the tenant remaining eligible and the tenant wishing to return to their original unit. However, if the tenant chooses to stay, they could not be assured RA and the borrower would charge an appropriate rent based on any subsidy available to that property.</li> </ul> |

**B. Assistance for Rural Development Financed Properties Destroyed or Damaged**

In properties where all or a substantial number of the units become uninhabitable, the Agency has several authorities available to minimize the financial impact of the disaster.

| <u>Special Action</u>   | <u>Servicing Requirements</u>   |
|---|---|
| 1. If borrowers are unable to transmit tenant certification information due to communication problems relating to the disaster, the Agency may waive overage charges due to late submission. The borrower should contact the Servicing Office to advise them of any problems with transmitting information to the Agency.   | State Office may waive overage charges.   |
| 2. If borrowers are temporarily unable to make loan payments, the Agency may waive late fees to reduce any extra financial burden.  | State Office may waive late fees.   |
| 3. The Agency may enter into servicing workout plans to assist properties whose financial viability has been disrupted. Workout plans as described in 7 CFR 3560.453 can include a variety of actions to lower operating costs. These include reducing contributions to the reserve account or lowering loan payments. Reamortization of the account can be used to bring the account current once the repair is completed. Servicing workout plans would also bring into consideration any borrower receipt of insurance benefits. | The Agency should work with the Borrower to determine an appropriate workout plan.                        |
| 4. Provided borrowers are making a good faith effort to repair any apartment units made uninhabitable by the disaster, interest credit may remain in effect.  | The Agency should review the situation after 180 days to assess progress in rehabilitating damaged units. |

**C. Non-Rural Development Tenants**

Disaster evacuees who were not tenants in other Rural Development properties may apply for housing in Rural Development financed properties. Evacuees are entitled to receive a LOPE letter or may have a FEMA registration number, both of which place them at the top of the waiting list. Borrowers, at their discretion, may apply or waive their standard tenant screening requirements. Borrowers must, however, continue to comply with all Fair Housing regulations and the selection criteria cannot be arbitrary or discriminatory.

| <u>Special Action</u>   | <u>Servicing Requirements</u>   |
|---|---|
| <p>1. Borrowers who house disaster evacuees are required to utilize tracking identification numbers of other government agencies if the evacuee has received federal disaster assistance. If a disaster evacuee applicant rents in a Rural Development-financed property, the FEMA registration number must be entered into Multi-Family Information System (MFIS).</p> | <p>In disaster situations where more than 500,000 people are affected, Agency officials should ensure that:</p> <ol style="list-style-type: none"> <li>1. The property manager inquires about and obtains verification of receipt by an evacuee of any rent assistance provided by any governmental Agency, such as Transition Housing Assistance offered by FEMA. If such assistance is received in a lump sum, it will be treated as exempt income for rent calculation purposes. If such assistance is regular and ongoing, the assistance will be counted as income, <i>regardless of the size of the disaster</i>. These amounts should appear on the Tenant Certification, Form RD 3560-8;</li> <li>2. If a tenant receives a rental voucher (similar to a HUD voucher), then the property manager should code Form RD 3560-8, Part II, field 6 "Tenant Subsidy Code" as "4 – Other Public RA."</li> <li>3. Managers must obtain such verification within 90 days of occupancy;</li> <li>4. Borrowers must place in the tenant's file a copy of the FEMA award notification or other corroborating evidence that the tenant is registered to receive benefits from FEMA;</li> <li>5. Managers must indicate on the Tenant Certification the appropriate disaster code (as provided by Rural Development) for each evacuee housed in the property. Managers must include the correct FEMA registration number on the Tenant Certification form.</li> <li>6. Servicing Officials must conduct a random sampling of evacuee files within 90 days of occupancy to assure that the evacuee provided all required certifications, that the FEMA and the correct disaster code was input to MFIS correctly, and follow-up with corrective actions within 30 days;</li> <li>7. Borrowers should notify disaster evacuees of any available emergency Rural Development assistance upon notification from Rural Development;</li> </ol> |

| <u>Special Action</u>  | <u>Servicing Requirements</u>   |
|--|---|
|  | 8. Servicing Officials must conduct a random sampling of evacuee files within 180 days to review rent charges to all evacuees to ensure borrowers are not collecting rent amounts in excess of the tenant's net tenant contribution and review properties that have an unusually high number of tenants classified as disaster evacuees (in cases where emergency rental assistance has been provided). |
| 2. Allow for imputed income from assets due to homeownership affected by the disaster.   |   |
| 3. Zero income applicants may be allowed to reside in apartment units, if rental assistance or other subsidy is available.   |   |
| 4. Collection of security deposit per 7 CFR 3560.204 may be waived, if requested by the owner of the property.   |   |
| 5. Owners of elderly designated properties may rent to age-ineligible applicants for six months from the date of the waiver.   | In disaster situations regardless of the number of people affected, Servicing Officials must review a random sample of evacuee files within 180 days of evacuee occupancy to ensure that the age-ineligible evacuees are no longer residents of the elderly designated properties.  |
| 6. If requested, the Agency may waive 7 CFR 3560.576 (b)(2) and (e) to allow Off Farm Labor Housing owners to accept non-farm applicants and allow for income to be received from sources other than from farm labor employment. | In disaster situations regardless of the number of people affected, Servicing Officials must review a random sample of evacuee files within 180 days of evacuee occupancy to ensure that the ineligible evacuees are no longer residents of the farm labor housing property.  |
| 7. Annual lease required per 7 CFR 3560.156 (b)(2) may be waived and leases may be issued on a month-to-month basis.   |   |

**ATTACHMENT 9-A****State Wage and Benefit Matching Agreements****(As of April 2006)**

| <u>State</u>   | <u>Matching Agreements</u> | <u>Matching Impediment</u> | <u>Actively Matching</u> | <u>Disclosure Allowed</u> |
|----------------|----------------------------|----------------------------|--------------------------|---------------------------|
| Alabama        | Yes                        | N/A                        | Yes                      | Yes                       |
| Alaska         | Yes                        | N/A                        | No                       | No                        |
| Arizona        | Yes                        | N/A                        | Yes                      | Yes                       |
| Arkansas       | No                         | C                          | N/A                      | N/A                       |
| California     | Yes                        | N/A                        | Yes                      | No                        |
| Colorado       | Yes                        | N/A                        | Yes                      | No                        |
| Connecticut    | No                         | B                          | N/A                      | N/A                       |
| Delaware       | Yes                        | N/A                        | Yes                      | No                        |
| Florida        | Yes                        | N/A                        | Yes                      | Yes                       |
| Georgia        | Yes                        | N/A                        | Yes                      | Yes                       |
| Hawaii         | No                         | C                          | No                       | No                        |
| Idaho          | Yes                        | N/A                        | Yes                      | Yes                       |
| Illinois       | Yes                        | N/A                        | Yes                      | No                        |
| Indiana        | Yes                        | N/A                        | Yes                      | No                        |
| Iowa           | Yes                        | N/A                        | Yes                      | No                        |
| Kansas         | Yes                        | N/A                        | Yes                      | No                        |
| Kentucky       | No                         | B                          | N/A                      | N/A                       |
| Louisiana      | Yes                        | N/A                        | Yes                      | No                        |
| Maine          | Yes                        | N/A                        | Yes                      | No                        |
| Maryland       | Yes                        | N/A                        | Yes                      | No                        |
| Massachusetts  | No                         | A                          | N/A                      | N/A                       |
| Michigan       | No                         | A                          | N/A                      | N/A                       |
| Minnesota      | Yes                        | N/A                        | Yes                      | No                        |
| Mississippi    | No                         | C                          | N/A                      | N/A                       |
| Missouri       | Yes                        | N/A                        | Yes                      | No                        |
| Montana        | Yes                        | N/A                        | Yes                      | N/A                       |
| Nebraska       | Yes                        | N/A                        | Yes                      | No                        |
| Nevada         | Yes                        | N/A                        | No                       | No                        |
| New Hampshire  | No                         | A                          | N/A                      | N/A                       |
| New Jersey     | Yes                        | N/A                        | Yes                      | No                        |
| New Mexico     | No                         | C                          | N/A                      | N/A                       |
| New York       | No                         | C                          | N/A                      | N/A                       |
| North Carolina | Yes                        | N/A                        | Yes                      | N/A                       |
| North Dakota   | No                         | A                          | N/A                      | N/A                       |
| Ohio           | No                         | A                          | N/A                      | N/A                       |
| Oklahoma       | No                         | A                          | N/A                      | N/A                       |
| Oregon         | Yes                        | N/A                        | Yes                      | No                        |
| Pennsylvania   | No                         | C                          | N/A                      | N/A                       |
| Puerto Rico    | No                         | A                          | N/A                      | N/A                       |
| Rhode Island   | No                         | A                          | N/A                      | N/A                       |
| South Carolina | No                         | C                          | N/A                      | N/A                       |
| South Dakota   | Yes                        | N/A                        | Yes                      | No                        |
| Tennessee      | Yes                        | N/A                        | No                       | No                        |

| <u>State</u>  | <u>Matching Agreements</u> | <u>Matching Impediment</u> | <u>Actively Matching</u> | <u>Disclosure Allowed</u> |
|---------------|----------------------------|----------------------------|--------------------------|---------------------------|
| Texas         | Yes                        | N/A                        | Yes                      | No                        |
| Utah          | Yes                        | N/A                        | Yes                      | No                        |
| Vermont       | No                         | C                          | N/A                      | N/A                       |
| Virginia      | Yes                        | N/A                        | Yes                      | No                        |
| Washington    | Yes                        | N/A                        | Yes                      | No                        |
| West Virginia | Yes                        | N/A                        | Yes                      | No                        |
| Wisconsin     | Yes                        | N/A                        | Yes                      | Yes                       |
| Wyoming       | Yes                        | N/A                        | Yes                      | No                        |

A = State Law prohibited agreement

B = RD State Office could not reach acceptable agreement with State DOL

C = RD State Office working with State DOL to reach an acceptable agreement. Quarterly reporting as to the status of reaching an acceptable agreement to the National Office is required.

**ATTACHMENT 9-B  
REPORT OF STATUS OF UNUSED RENTAL ASSISTANCE UNITS**

State: \_\_\_\_\_

Use this form to report semi-annually on the planned disposition of available unused RA in your State. In the table below, identify the number of withheld units allotted in each category.

Check the box below for the appropriate Reporting Date:

- A.  Reporting as of April 1, 20\_\_\_\_ Due Date: May 1, 20\_\_  
 B.  Reporting as of October 1, 20 \_\_\_\_ Due Date: November 1, 20\_\_

| <b>Part A</b>  | <b># RA units</b> |   |
|--|-------------------|---|
| <b>1. Possible RA Units for Transfer: (Per PRJS4200 "Occupancy Trend")</b>   |                   | <input type="checkbox"/> <b>If adjusted for turnover units, check this box.</b>   |
| 2. Less: LH Seasonal – units not currently occupied  |                   |   |
| 3. Less: Legal Actions Underway (Acceleration/Foreclosure)   |                   |   |
| 4. Less: Property Undergoing Rehab. – units not currently occupied   |                   |   |
| 5. Less: Existing RA Agreement dated prior to 5/85 (Agreement does not allow for transfer)                                 |                   |   |
| 6. Less: Unused RA Units Currently in Appeal   |                   |   |
| 7. Less: Unused RA units to be used in conjunction with new construction/ rehabilitation/ ownership transfers/equity loans |                   | <b>Complete Part B for all RA units identified on this line</b>   |
| 8. Less: No. of RA units that have not begun to go through the administrative actions (appeal rights)                      |                   |   |
| <b>9. Administrator's Reserve</b>  |                   | <b>Line 2 minus the sum of lines 3 through 9.</b><br><br><b>Must submit Form RD 3560-55 (only complete the "Transferor" column) for all projects with units on this line. If RA units are from FY 2004 – 2006 appropriations, please provide expiration date on Form RD 3560-55 in the Remarks section.</b> |

\_\_\_\_\_  
(Signature) State Director

\_\_\_\_\_  
Date

**Part B:** States must identify the Proposed Disposition of their available unused RA. State Directors may designate unused RA units to be used in conjunction with new construction, rehabilitation, transfers, or incentive loans that are expected to be used in the next 6 months. Units should be used within the allotted timeframe or will become subject to recapture. **Number of RA units listed must match Part A, line 8.**

| Project Name | No. of RA units | Date of Anticipated Use | Purpose (I.E. New Construction, Rehabilitation, Transfers, Equity Loans) |
|--------------|-----------------|-------------------------|--|
|              |                 |                         |  |
|              |                 |                         |  |
|              |                 |                         |  |
|              |                 |                         |  |
|              |                 |                         |  |
|              |                 |                         |  |
|              |                 |                         |  |
|              |                 |                         |  |
|              |                 |                         |  |

**Part C:** This is your State’s Request for Unused RA that may be available from the Administrator’s Reserve. Use the codes below and identify State needs for RA. Do not repeat property needs from Part B unless there is insufficient unused RA in your State to satisfy the project’s needs.

| Use Code (See Below) | Project Name | No. of RA units | Date of Anticipated Use | Comments |
|----------------------|--------------|-----------------|-------------------------|----------|
|                      |              |                 |                         |          |
|                      |              |                 |                         |          |
|                      |              |                 |                         |          |
|                      |              |                 |                         |          |
|                      |              |                 |                         |          |
|                      |              |                 |                         |          |
|                      |              |                 |                         |          |
|                      |              |                 |                         |          |
|                      |              |                 |                         |          |

Use Codes:

1. National Emergency – Per Administrator’s declaration
2. State Emergency – Per State Director declaration and National Office concurrence
3. Preservation – Sale to Nonprofit or Incentive RA (to be used within the quarter)
4. Agency Credit Sales (to be funded in current FY)
5. Ownership Transfer (to close within the quarter)
6. Agency Rehabilitation loan (to be used within the quarter)
7. Other Rehabilitation funding (to close within the quarter)
8. New Construction (to be used within the quarter)
9. Workout Plan (To be used within the quarter)
10. Rent Overburdened Tenants
11. Other (identify in Comment area)

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