TABLE OF CONTENTS

CHAPTER 1: INTRODUCTION 1-1

SECTION 1: INTRODUCTION TO THE LOAN ORIGINATION HANDBOOK 1-1

1.1 ABOUT THIS HANDBOOK 1-1
1.2 COMPANION MULTI-FAMILY HOUSING HANDBOOKS 1-1
1.3 USING THIS HANDBOOK 1-2

A. Citations and Text Boxes 1-2
B. Attachments and Appendices 1-2
C. Terminology 1-2

SECTION 2: OVERVIEW OF THE MULTI-FAMILY HOUSING PROGRAMS 1-5

1.4 GOALS OF RHS MULTI-FAMILY HOUSING PROGRAMS 1-5
1.5 SECTION 515 PROGRAM—OVERVIEW 1-5
1.6 SECTION 514 PROGRAM—OVERVIEW 1-6

A. Section 514 Loans and Section 516 Grants for Off-Farm Housing 1-6
B. Section 514 Loans for On-Farm Housing 1-6

SECTION 3: GENERAL PROGRAM REQUIREMENTS 1-7

1.7 CIVIL RIGHTS *[7 CFR 3560.2]* 1-7

A. Nondiscrimination 1-8
B. Reasonable Accommodations for Persons with Disabilities 1-8
C. Limited English Proficiency *[7 CFR 3560.2]* 1-8
D. Civil Rights Impact Analysis 1-8

1.8 REVIEWS AND APPEALS *[7 CFR 3560.9]* 1-9

A. Informing Program Participants of Their Rights 1-9
B. Adverse Decisions That Cannot Be Appealed 1-10
C. Informal Review 1-10
D. Mediation or ADR 1-10
E. Appeal 1-14

1.9 CONFLICT OF INTEREST *[7 CFR 3560.10]* 1-14

A. Applicant Disclosure 1-15
B. Agency Employee Disclosure 1-15

1.10 OTHER FEDERAL REQUIREMENTS 1-15

A. Environmental Requirements *[7 CFR 3560.3* and *3560.4]* 1-15
B. Construction Standards 1-15
C. Lobbying Restrictions 1-16
D. Administrative Requirements 1-16

1.11 EXCEPTION AUTHORITY *[7 CFR 3560.8]* 1-16

ATTACHMENT 1-A: EQUAL CREDIT OPPORTUNITY ACT (ECOA)
ATTACHMENT 1-B: ATTACHMENT TO LETTER NOTIFYING CUSTOMERS OF AN ADVERSE DECISION THAT IS APPEALABLE
ATTACHMENT 1-C: ATTACHMENT TO LETTER NOTIFYING CUSTOMERS OF AN ADVERSE DECISION THAT CANNOT BE APPEALED
ATTACHMENT 1-D: ATTACHMENT TO LETTER NOTIFYING CUSTOMERS OF UNFAVORABLE DECISION REACHED AS A RESULT OF AN INFORMAL REVIEW
ATTACHMENT 1-E: ATTACHMENT FOR NOTIFYING CUSTOMERS THAT REQUEST MEDIATION IN STATES WITH A USDA-SPONSORED MEDIATION PROGRAM
ATTACHMENT 1-F: ATTACHMENT FOR REQUESTING MEDIATION OR ALTERNATIVE DISPUTE RESOLUTION (ADR) SERVICES
ATTACHMENT 1-G: ATTACHMENT FOR NOTIFYING CUSTOMERS THAT REQUEST MEDIATION OR ALTERNATIVE DISPUTE RESOLUTION (ADR) OF SERVICE PROVIDER
ATTACHMENT 1-H: ATTACHMENT FOR NOTIFYING CUSTOMERS THAT REQUEST MEDIATION OR ALTERNATIVE DISPUTE RESOLUTION (ADR) OF POTENTIAL SERVICE PROVIDERS
ATTACHMENT 1-I: ATTACHMENT FOR NOTIFYING CUSTOMERS THAT MEDIATION OR ALTERNATIVE DISPUTE RESOLUTION (ADR) DID NOT RESULT IN RESOLUTION OF ISSUES

CHAPTER 2: MULTI-FAMILY HOUSING PROGRAMS AND THE ORIGINATION PROCESS 2-1

2.1 INTRODUCTION 2-1

SECTION 1: SECTION 515 PROGRAM 2-1

2.2 OVERVIEW 2-1
2.3 TYPES OF PROJECTS 2-2

A. Family Projects 2-2
B. Elderly Projects 2-2
C. Congregate Projects 2-2
D. Group Homes 2-2
E. Rural Cooperative Housing 2-3
F. Mixed Projects 2-3

2.4 TYPES OF LOANS 2-3

A. Initial Loans 2-3
B. Subsequent Loans 2-4
C. Assumed Loans 2-4

2.5 PREFERENCE FOR PROJECTS THAT LEVERAGE OTHER FUNDS 2-5

SECTION 2: SECTION 514/516 PROGRAM 2-7

2.6 TYPES OF PROJECTS 2-7

A. Off-Farm Labor Housing 2-7
B. On-Farm Labor Housing 2-7

2.7 LOANS AND GRANTS 2-7

A. Farm Labor Housing Loans 2-7
B. Farm Labor Housing Grants 2-8

2.8 PREFERENCE FOR PROJECTS THAT LEVERAGE OTHER FUNDS 2-8

SECTION 3: SECTION 521 PROGRAM 2-9

2.9 OVERVIEW 2-9
2.10 SECTION 515 and 514/516 PROGRAM 2-9

A. Section 515 2-9
B. Section 516/516 2-9

SECTION 4: OVERVIEW OF LOAN AND GRANT ORIGINATION 2-10

2.11 THE LOAN ORIGINATION PROCESS AND THIS HANDBOOK 2-10
2.12 KEY STEPS IN THE ORIGINATION PROCESS 2-10

A. Section 515 Loan Origination Process 2-10
B. Section 514/516 Loan and Grant Origination Process 2-12

2.13 LOAN ORIGINATION FOR SECTION 515 PROJECTS 2-13

A. Property Requirements (Chapter 3) 2-13
B. NOFA and Initial Application Process – Stage 1 (Chapter 4) 2-13
C. Processing Final Applications – Stage 2 (Chapter 5) 2-14
D. Participation with Other Funding Sources (Chapter 6) 2-14
E. Security Requirements (Chapter 7) 2-14
F. Loan Closing and Project Lease-Up (Chapter 8) 2-15
G. Project Construction (Chapter 9) 2-15
H. Subsequent Loans and Loans for Final Payments (Chapter 10) 2-15
I. Special Property Types (Chapter 11) 2-15

2.14 FARM LABOR HOUSING LOANS AND GRANTS (CHAPTER 12) 2-15

A. Off-Farm Labor Housing 2-15
B. On-Farm Labor Housing 2-16

CHAPTER 3: PROPERTY REQUIREMENTS 3-1

3.1 INTRODUCTION 3-1

SECTION 1: DESIGNATED PLACES *[7 CFR 3560.57]* 3-1

3.2 OVERVIEW 3-1
3.3 ESTABLISHING A DESIGNATED PLACE LIST 3-1

A. Requirements for Establishing Designated Places 3-1
B. Procedures for Establishing the Designated Place List 3-3
C. Updating the Designated Place List 3-4
D. Partnership Designated Place List 3-4

SECTION 2: SITE REQUIREMENTS *[7 CFR 3560.58]* 3-5

3.4 OVERVIEW 3-5
3.5 SITE LOCATION 3-5

A. Designated Place 3-5
B. Residential Area 3-5
C. Downtown Business Area 3-5
D. Public Facilities and Services 3-6
E. Desirable Areas 3-6
F. Historic Places 3-6

3.6 SITE STANDARDS 3-7

A. Applicable Codes 3-7
B. Adequate Utilities and Infrastructure 3-7
C. Water and Wastewater Disposal 3-8
D. Grading and Drainage 3-9
E. Size and Shape 3-9
F. Noncontiguous Sites 3-9
G. Undesirable Physical Conditions 3-10

3.7 SITE DENSITY 3-10
3.8 CIVIL RIGHTS 3-10

SECTION 3: ENVIRONMENTAL REQUIREMENTS *[7 CFR 3560.59]* 3-13

3.9 OVERVIEW 3-13
3.10 TYPES OF ENVIRONMENTAL REVIEWS 3-13
3.11 COMPLETING ENVIRONMENTAL REVIEWS 3-13
3.12 FLOOD HAZARD DETERMINATION *[7 CFR 3560.58]* 3-15
3.13 MANAGEMENT OF HAZARDOUS SUBSTANCES 3-15

A. Due Diligence Requirements 3-15
B. Phase I Environmental Site Assessment 3-16
C. Appraisers' Responsibilities 3-16
D. Loan Originator and Loan Servicer Responsibilities 3-17

SECTION 4: DESIGN REQUIREMENTS *[7 CFR 3560.60]* 3-19

3.14 OVERVIEW 3-19
3.15 STANDARDS 3-19
3.16 RESIDENTIAL DESIGN 3-20
3.17 ECONOMICAL DEVELOPMENT COSTS 3-20

A. Evaluating Cost Reasonableness 3-20
B. Evaluating Cost Effectiveness 3-21

3.18 ACCESSIBILITY 3-22
3.19 RELOCATION 3-25

A. Uniform Relocation Assistance and Property Acquisition Act of 1970 3-25
B. Temporary Relocation of Tenants During Rehabilitation 3-25

3.20 CONVENTIONAL RENTS FOR COMPARABLE UNITS 3-25

A. The CRCU Standard 3-25
B. Exceptions to the CRCU Standard 3-26

ATTACHMENT 3-A: GUIDE FOR SELECTING AN ENVIRONMENTALLY SOUND SITE
ATTACHMENT 3-B: CHECKLIST OF ARCHITECTURAL DOCUMENTS
ATTACHMENT 3-C: SAMPLE DESIGNATED PLACE LIST FORMAT

CHAPTER 4: NOFA AND INITIAL APPLICATION PROCESS — STAGE 1 4-1

4.1 INTRODUCTION 4-1
4.2 OVERVIEW OF STAGE 1, PROCESSING THE INITIAL APPLICATION 4-2

SECTION 1: INVITING INITIAL APPLICATIONS 4-3

4.3 FUNDING AND RENTAL ASSISTANCE LIMITS 4-3
4.4 STATE ACTIONS TO PREPARE FOR THE NOFA 4-3
4.5 THE NOFA 4-4
4.6 LOAN PURPOSES 4-6

A. Eligible Loan Purposes *[7 CFR 3560.53]* 4-6
B. Prohibited Uses of Loan Funds *[7 CFR 3560.54]* 4-7
C. Eligible Applicants *[7 CFR 3560.55]* 4-7

4.7 CONTENTS OF THE INITIAL APPLICATION PACKAGE 4-10
4.8 PRELIMINARY MEETING WITH APPLICANT 4-13
4.9 ACCEPTING INITIAL APPLICATIONS 4-14

A. Date Stamping Initial Applications 4-14
B. 30-Day Agency Review 4-15

SECTION 2: THE REVIEW PROCESS AND SCORING AND RANKING 4-15

4.10 OVERVIEW OF THE REVIEW PROCESS 4-15

4.11 LOAN REVIEW COMMITTEES 4-15
4.12 PRELIMINARY ASSESSMENT OF THE INITIAL APPLICATION *[7 CFR 3560.56(b)]* .. 4-16

A. Was the Initial Application Submitted on Time? 4-16
B. Is the Initial Application Complete? 4-16
C. Establishing Applicant/Project Data 4-17
D. Is the Applicant Eligible? 4-17
E. Does the Applicant Entity Have the Financial Resources to Commit to the Project? 4-18
F. Does the Applicant Show Site Control? 4-18
G. Is the Project for an Authorized Purpose and in a Designated Place? 4-19
H. The Site Review 4-19
I. Environmental Review 4-20
J. Is There a Market for the Project? 4-20

4.13 SCORING AND RANKING INITIAL APPLICATIONS 4-20

A. Scoring Leveraged Assistance 4-21
B. Scoring Other Factors 4-23
C. Ranking Initial Applications 4-24
D. Review of Highest Ranked Initial Applications 4-25
E. Forwarding Initial Applications to National Office for National Ranking 4-26

4.14 INFORMING THE APPLICANTS OF RESULTS OF INITIAL APPLICATION REVIEW 4-26

SECTION 3: PROJECT FEASIBILITY REVIEW 4-27

4.15 UNDERWRITING THE PROPOSED PROJECT 4-27

A. Key Decisions 4-27
B. Ordering the Appraisal 4-28
C. Documenting Underwriting 4-28

4.16 APPLICANT ELIGIBILITY *[7 CFR 3560.55]* 4-28

A. Citizenship Requirements 4-28
B. Organizational Requirements 4-29
C. Financial Requirements 4-31
D. Compliance Requirements for Current or Previous Borrowers 4-33

4.17 PROJECT ELIGIBILITY *[7 CFR 3560.58, 3560.59, and 3560.60]* 4-34

A. Civil Rights Impact Analyses 4-34
B. Working with the State Historic Preservation Office (SHPO) 4-35
C. Flood Hazard Determination 4-35
D. Design Review 4-35
E. Prohibited Conditions 4-35

4.18 PROJECT FEASIBILITY 4-36

A. Feasibility of Agency's Security 4-36
B. Market Feasibility 4-36
C. Financial Feasibility 4-41

4.19 SUBSIDY LAYERING *[7 CFR 3560.63]* 4-44

A. Fee Norms 4-44
B. Excess Assistance 4-45

4.20 INITIAL APPLICATIONS WITH RENTAL SUBSIDY 4-45

A. Agency-Funded Rental Assistance 4-45
B. Non–Agency Rental Subsidy 4-46

4.21 PROJECT COSTS 4-46

A. The State Architect's Role 4-46
B. Cost Databases 4-47
C. Acceptable and Unacceptable Legal Costs 4-48
D. Unacceptable Construction Costs 4-48

4.22 ADEQUATE SECURITY 4-48
4.23 COMPLETING THE INITIAL APPLICATION REVIEW 4-49

A. Notifying Applicants of Their Status 4-49
B. Returning Unused Funds 4-49
C. Withdrawing and Rejecting Applications 4-49

4.24 CONDITIONAL LETTERS OF COMMITMENT 4-49

ATTACHMENT 4-A: STATE NOFA RESPONSE SUMMARY SHEET
ATTACHMENT 4-B: ELIGIBLE LOAN PURPOSES
ATTACHMENT 4-C: PROHIBITED LOAN USES
ATTACHMENT 4-D: CONTENTS OF INITIAL APPLICATION PACKAGE
ATTACHMENT 4-E: SITE EVALUATION CHECKLIST
ATTACHMENT 4-F: ANALYZING THE MARKET FEASIBILITY DOCUMENTATION
ATTACHMENT 4-G: EXAMPLE OF INTEREST CREDIT DETERMINATION FOR RURAL RENTAL HOUSING

CHAPTER 5: PROCESSING FINAL APPLICATIONS — STAGE 2 5-1

5.1 INTRODUCTION 5-1
5.2 OVERVIEW OF STAGE 2, FINAL APPLICATIONS 5-1

SECTION 1: REQUESTING FINAL APPLICATIONS AND MEETING WITH APPLICANTS 5-3

5.3 REQUESTING FINAL APPLICATIONS 5-3

A. Invitation to Submit Final Application 5-3
B. Content of Final Application 5-3
C. Construction Contract Documents 5-5

5.4 MEETING WITH THE APPLICANT AND PREPARING THE LOAN DOCKET 5-6
5.5 APPLICANT'S COMPLIANCE WITH OTHER AGENCY DEBT 5-7

SECTION 2: REVIEWING THE FINAL APPLICATION 5-7

5.6 OVERVIEW 5-7
5.7 APPLICANT ELIGIBILITY 5-7

A. Acceptable Borrower Entity 5-7
B. Identity-of-Interest Disclosure 5-8
C. Applicant Certification Regarding Debt Collection 5-8

5.8 FINAL PROJECT ELIGIBILITY 5-8

A. Property Requirements 5-8
B. Acceptable Agreements and Contracts 5-9
C. Concurrence with Construction Contracts 5-9
D. Clear Title and Necessary Local Approval 5-9
E. Prohibited Conditions 5-10

5.9 FINAL PROJECT FEASIBILITY ANALYSIS 5-10

A. Are Final Costs Acceptable? 5-10
B. Matching Income Stream with Projected Costs 5-10
C. Failure to Obtain Leveraging 5-10
D. Adequacy of the Initial Operating Capital 5-11
E. Management Systems 5-11

SECTION 3: DETERMINING LOAN LIMITS, RATES, AND TERMS 5-15

5.10 DETERMINING LOAN LIMITS *[7 CFR 3560.63]* 5-15

A. Determining Maximum Debt Limit and Equity Contribution 5-15
B. Land or Cash Equity Contribution 5-16
C. Subsidy Review 5-16

5.11 SETTING LOAN RATES AND TERMS *[7 CFR 3560.67]* 5-17

A. Interest 5-17
B. Interest Credit 5-17
C. Loan Term and Amortization Period 5-17

5.12 ESTABLISHING PROFIT BASE AND RETURN ON INITIAL INVESTMENT
[7 CFR 3560.68] 5-17

A. Return on Required Investment 5-17
B. Return on Additional Investment 5-18

C. Tax Credit Proceeds 5-18
D. Building Sites 5-18

SECTION 4: REJECTING AND APPROVING FINAL APPLICATIONS 5-19

5.13 REJECTING FINAL APPLICATIONS 5-19
5.14 RECOMMENDING PROJECTS FOR FINAL APPROVAL 5-19

A. Preparing the Recommendation for Approval 5-19
B. Submitting the Completed Docket 5-20

5.15 ACTION BY THE LOAN APPROVAL OFFICIAL 5-20

A. Reviewing of Docket by Loan Approval Official 5-20
B. Approving Loans 5-20

5.16 LETTER TO INTERIM LENDER 5-21
5.17 OBLIGATING FUNDS 5-21

A. Initial Obligation 5-21
B. Changing the Loan Amount 5-21

5.18 FOLLOW-UP TO OBLIGATIONS 5-22
5.19 TRANSFER OF FUND OBLIGATION 5-23
5.20 CANCELING AN OBLIGATION 5-23
5.21 LETTER OF CONDITIONS 5-24
5.22 INSURANCE REQUIREMENTS 5-26
5.23 ASSIGNING CASE NUMBERS, PROJECT NUMBERS, AND LOAN CODES 5-26

ATTACHMENT 5-A: AGENCY DOCKET CHECKLIST
ATTACHMENT 5-B: LOAN CALCULATION WORKSHEETS

CHAPTER 6: PARTICIPATION WITH OTHER FUNDING SOURCES 6-1

6.1 INTRODUCTION 6-1
6.2 OVERVIEW OF PARTICIPATION LOANS 6-1

SECTION 1: REQUIREMENTS FOR PARTICIPATION LOANS *[7 CFR 3560.66]* 6-3

6.3 GENERAL 6-3
6.4 DESIGN REQUIREMENTS 6-3

A. Composition and Quality of Units 6-4
B. Nonessential Common Facilities *[7 CFR 3560.66(e)]* 6-4

6.5 SECURITY AGREEMENTS 6-4

A. Lien Position 6-4
B. Security Agreement 6-4
C. Sample Agreements 6-5

6.6 SUBSIDY LAYERING 6-5

6.7 RENTS, RENTAL ASSISTANCE, AND MANAGEMENT 6-6

A. Establishing Rents 6-6
B. Rental Assistance *[7 CFR 3560.66(b)]* 6-6
C. Management 6-6

6.8 RESERVE REQUIREMENTS *[7 CFR 3560.65]* 6-6

SECTION 2: PROCESSING APPLICATIONS INVOLVING PARTICIPATION LOANS 6-7

6.9 OVERVIEW 6-7
6.10 UNDERWRITING 6-8

A. Applicant and Project Eligibility 6-8
B. Project Feasibility 6-8
C. Reasonable Project Costs 6-9
D. Management 6-9

6.11 ENVIRONMENTAL REQUIREMENTS 6-10
6.12 SUBSIDY REVIEWS 6-10
6.13 ESTABLISHING LOAN AMOUNT, TERMS, AND CONDITIONS 6-10

A. Establishing Loan Amounts 6-10
B. Borrower Contribution Requirement 6-11

6.14 WORKING WITH STATE HOUSING FINANCE AGENCIES 6-11

A. Coordinating Resources 6-12
B. Entering into a Memorandum of Understanding 6-12
C. Working with the State Agency 6-13

ATTACHMENT 6-A: SAMPLE #1 SAMPLE INTERCREDITOR AGREEMENT
SAMPLE #2 SAMPLE PARITY AGREEMENT
SAMPLE #3 SAMPLE SUBORDINATION AGREEMENT
ATTACHMENT 6-B: SAMPLE PROCESSING MEMORANDUM OF UNDERSTANDING

CHAPTER 7: SECURITY REQUIREMENTS *[7 CFR 3560.61]* 7-1

7.1 INTRODUCTION 7-1
7.2 ADDRESSING SECURITY REQUIREMENTS DURING THE ORIGINATION PROCESS 7-1

SECTION 1: SECURITY REQUIREMENTS 7-1

7.3 CONTROL OF LAND 7-1

A. At Time of Application 7-2
B. At Loan Closing 7-2

7.4 ADEQUATE SECURITY FOR THE LOAN 7-3
7.5 LIABILITY 7-3
7.6 ACCEPTABLE LIEN POSITION 7-3

A. Acceptable Lien on Property 7-3
B. Acceptable Lien on Project Revenue 7-4

SECTION 2: ASSESSING THE VALUE OF THE SECURITY—APPRAISALS 7-5

7.7 PURPOSE OF THE APPRAISAL 7-5
7.8 REQUIREMENTS FOR APPRAISALS *[7 CFR part 3560, subpart P]* 7-5
7.9 VALUING MULTI-FAMILY HOUSING PROJECTS 7-7

A. Basic Components of an Appraisal 7-7
B. Valuation of Favorable Financing 7-9

7.10 THE APPRAISAL PROCESS—ROLES AND RESPONSIBILITIES 7-9

A. The Appraisal Process 7-9
B. Roles and Responsibilities 7-11

7.11 SELECTING AN APPRAISER 7-12

A. Blanket Purchase Agreement 7-12
B. Request for Contract Services 7-13
C. Time frame for Completion and Review of Appraisals 7-13

7.12 WORKING WITH THE APPRAISER 7-13

A. Post-Award Conference with the Appraiser 7-13
B. The Statement of Work 7-14
C. Paying for Appraisals 7-15

7.13 AGENCY REVIEW OF THE APPRAISAL 7-15

7.14 RELEASE OF APPRAISALS 7-16
A. Freedom of Information Act 7-16
B. Steps in Release of Appraisals 7-17

7.15 EVALUATING THE RESULTS OF THE APPRAISAL 7-18

A. Is the Project Eligible? 7-18
B. Is the Project Economically Feasible? 7-18
C. Are the Costs Reasonable? 7-19
D. Are the Agency's Interests Secure? 7-20

ATTACHMENT 7-A: VALUE TYPES USED IN MULTI-FAMILY HOUSING APPRAISALS
ATTACHMENT 7-B: PROPERTY RIGHTS VALUED
ATTACHMENT 7-C: SPECIFIC VALUE TYPES TO BE REQUESTED AND REPORTED BASED ON INTENDED USE OF APPRAISAL
ATTACHMENT 7-D: STANDARD STATEMENT OF WORK (SOW) FOR MULTI-FAMILY HOUSING CONTRACT APPRAISALS
ATTACHMENT 7-E: APPRAISAL INFORMATION SHEET (EXAMPLE), ATTACHMENT TO SOW
ATTACHMENT 7-F: APPRAISAL DATA PACKAGE CHECKLIST
ATTACHMENT 7-G: SAMPLE TRANSMITTAL LETTER
ATTACHMENT 7-H: GUIDE FOR VALUATION OF INTEREST CREDIT SUBSIDY
ATTACHMENT 7-I: INSURABLE VALUE CALCULATION

CHAPTER 8: LOAN CLOSING AND PROJECT LEASE-UP 8-1

8.1 INTRODUCTION 8-1

SECTION 1: LOAN CLOSING *[7 CFR 3560.72]* 8-1

8.2 OVERIVEW 8-1
8.3 TIMING OF LOAN CLOSING 8-1
8.4 LOAN CLOSING REQUIREMENTS 8-2
8.5 CHOOSING THE CLOSING AGENT AND TITLE COMPANY 8-4
8.6 CLOSING AGENT RESPONSIBILITIES 8-4
8.7 LOAN PROCESSING STAFF RESPONSIBILITIES 8-6

A. Work with the Applicant 8-6
B. Review Title Insurance Binder 8-6
C. Prepare Documents for Closing Instructions 8-7
D. Provide Closing Agent with Closing Instructions and Materials 8-7
E. Obtain Loan Check 8-7
F. Establish Payment Schedule 8-8
G. Establish Initial Disbursement 8-8

8.8 ACTIONS AT LOAN CLOSING 8-8
8.9 POSTCLOSING ACTIVITIES 8-9

A. Obtain and Review Closing Documents 8-9
B. Record Mortgage or Deed 8-9
C. Secure Title 8-9
D. Establish the Amortization Effective Date 8-9
E. Put Closing Information into AMAS 8-9
F. Complete Loan Docket and Transfer to Servicing Staff 8-10
G. Populate Multi-Family Housing Information System (MFIS) 8-10

SECTION 2: PROJECT LEASE-UP 8-11

8.10 PROJECT LEASE-UP REQUIREMENTS 8-11
8.11 MONITORING PROJECT LEASE-UP 8-11

A. Pre-Occupancy Conference 8-12
B. The 90-Day Visit 8-13
C. The 11-Month Warranty Inspection 8-14

ATTACHMENT 8-A: LOAN CLOSING DOCUMENTS

CHAPTER 9: PROJECT CONSTRUCTION 9-1

9.1 INTRODUCTION 9-1
9.2 OVERIVEW OF THE AGENCY'S ROLE IN THE CONSTRUCTION PROCESS 9-1
9.3 CONSTRUCTION FINANCING 9-2
9.4 IDENTITY-OF-INTEREST RELATIONSHIPS 9-2

SECTION 1: CONSTRUCTION REQUIREMENTS 9-3

9.5 CONSTRUCTION STANDARDS 9-3
9.6 METHODS OF CONTRACTING 9-3

A. Competitive Bid 9-3

B. Negotiated Contract 9-4
C. Owner-Builder Contract [RD Instruction 1924.13(e)(2)] 9-4

9.7 CONTRACTOR REQUIREMENTS 9-4

A. Debarment and Suspensions 9-5
B. Insurance 9-5
C. Payment and Performance Bonds 9-5
D. Letters Of Credit 9-5
E. Warranties 9-6
F. Compliance with Civil Rights Requirements 9-6

9.8 COST CERTIFICATION 9-7

SECTION 2: CONTRACTING PROCEDURES 9-9

9.9 COMPETITIVE BIDDING PROCEDURES 9-9

A. Contents of the Bidding Package 9-9
B. Distribution of the Bidding Packages 9-9

9.10 AGENCY CONCURRENCE IN THE CONTRACT 9-9

A. Review of the Bid 9-10
B. Use of the Contract Documents 9-10

9.11 PRECONSTRUCTION CONFERENCE 9-11
9.12 NOTICE TO PROCEED 9-13

SECTION 3: CONSTRUCTION OVERSIGHT 9-15

9.13 PROGRESS INSPECTIONS 9-15

A. Timing of Inspections 9-15
B. Inspection Procedures 9-16

9.14 CHANGE ORDERS 9-17
9.15 PARTIAL PAYMENTS 9-18
9.16 OBTAINING THE CHECK FOR MULTIPLE ADVANCES 9-19
9.17 CONTRACT CLOSE-OUT 9-19

A. Final Inspections 9-20
B. Final Payment 9-20

CHAPTER 10: SUBSEQUENT LOANS *[7 CFR 3560.73]* AND LOANS FOR FINAL PAYMENTS *[7 CFR 3560.74]* 10-1

10.1 INTRODUCTION 10-1
10.2 OVERVIEW 10-1

A. Loans for Existing Units 10-2
B. Loans Made with Conventional Financing 10-2

SECTION 1: QUALIFYING FOR SUBSEQUENT LOANS 10-3

10.3 ELIGIBILITY, LOAN PURPOSES, AND PRIORITIES 10-3

A. Project Eligibility 10-3
B. Eligible Loan Purposes 10-3
C. Repair and Rehabilitation Loan Funds 10-3

10.4 DESIGN REQUIREMENTS 10-3
10.5 ENVIRONMENTAL REQUIREMENTS 10-4
10.6 LOAN LIMITS 10-4

A. Borrower Equity Contribution 10-4
B. Initial Operating Capital 10-4

10.7 RATES AND TERMS 10-5
10.8 RESTRICTIVE-USE PROVISIONS 10-5

A. Extension of Restrictive-Use Provisions 10-6
B. Prepaying Projects 10-6

SECTION 2: APPLICATION SUBMISSION AND PROCESSING 10-7

10.9 ACCEPTING APPLICATIONS 10-7
10.10 SETTING DEADLINES AND EVALUATING COMPLETENESS 10-8

A. Submission Deadlines 10-8
B. Completeness Requirements 10-8

10.11 UNDERWRITING 10-8

A. Applicant Eligibility 10-9
B. Project Eligibility 10-9
C. Reasonable Costs 10-9
D. Project Feasibility 10-9
E. Security 10-10

10.12 LOAN APPROVAL AND CLOSING 10-11

A. General Procedures 10-11
B. Implementing Restrictive-Use Provisions 10-11

10.13 RELOCATION PLANS 10-11

SECTION 3: FINAL PAYMENTS 10-13

10.14 FINANCING FINAL PAYMENTS 10-13

CHAPTER 11: SPECIAL PROPERTY TYPES *[7 CFR 3560.69* and *7 CFR 3560.70]* 11-1

11.1 INTRODUCTION 11-1

SECTION 1: CONGREGATE HOUSING *[7 CFR 3560.69]* 11-1

11.2 OVERVIEW 11-1
11.3 RESTRICTIONS ON USE OF LOAN FUNDS 11-2
11.4 USE OF OPERATING CAPITAL 11-2
11.5 ELIGIBILITY REQUIREMENTS 11-2

A. Eligible Loan Applicants 11-2
B. Eligible Tenants 11-3
C. Eligible Projects 11-3

11.6 APPLICATION REQUIREMENTS 11-3
11.7 DESIGN REQUIREMENTS 11-3
11.8 TENANT SUPPORT SERVICES 11-4

A. Services Plan 11-5
B. Minimum Services 11-5
C. Project Services Coordinator 11-7
D. Service Agreements 11-7

11.9 NONTENANT SERVICES 11-7
11.10 PROCESSING APPLICATIONS 11-7

A. Agency Action 11-7
B. Requirements of the Applicant 11-8

11.11 PRELIMINARY MEETING 11-8
11.12 UNDERWRITING CONSIDERATIONS 11-9

A. Market Feasibility Documentation 11-9
B. Tenant Services 11-9
C. Management 11-10

11.13 DESIGN CONSIDERATIONS 11-10

SECTION 2: GROUP HOMES *[7 CFR 3560.69]* 11-11

11.14 OVERVIEW 11-11
11.15 PROJECT ELIGIBILITY 11-11

A. Tenancy 11-11
B. Applicable Laws 11-11
C. Association with Another Organization 11-11

11.16 SUPPORT SERVICES 11-11
11.17 DESIGN REQUIREMENTS 11-12
11.18 RENTS AND RENTAL ASSISTANCE 11-12
11.19 APPLICATION REQUIREMENTS AND PROCESSING 11-13
11.20 UNDERWRITING CONSIDERATIONS 11-13

SECTION 3: MARKET FEASIBILITY CONSIDERATIONS FOR CONGREGATE HOUSING AND GROUP HOMES 11-15

11.21 ADDITIONAL MARKET FEASIBILITY DOCUMENTATION REQUIREMENTS *[7 CFR 3560.69(f)]* 11-15

SECTION 4: MANUFACTURED HOUSING *[7 CFR 3560.70]* 11-17

11.22 OVERVIEW 11-17
11.23 ELIGIBILITY REQUIREMENTS 11-17

A. Applicant Eligibility 11-17
B. Project Eligibility 11-17

11.24 DESIGN REQUIREMENTS 11-18
11.25 SPECIAL WARRANTY REQUIREMENTS 11-18
11.26 RATES AND TERMS 11-19
11.27 LOAN PROCESSING AND UNDERWRITING 11-19
11.28 LOAN CLOSING 11-19

SECTION 5: RURAL COOPERATIVE HOUSING 11-21

11.29 OVERVIEW 11-21
11.30 ELIGIBILITY AND ORGANIZATIONAL REQUIREMENTS 11-21
11.31 MARKET FEASIBILITY 11-22
11.32 APPLICATION REQUIREMENTS 11-22
11.33 MANAGEMENT REQUIREMENTS 11-23

A. Cooperative Board of Directors 11-24
B. Adviser to the Board 11-24
C. Committees 11-24
D. Acceptable Forms of Management 11-25
E. Management Reserves and Patronage Accounts 11-26
F. Occupancy Agreement 11-27

11.34 COOPERATIVE MEMBERSHIP FEE 11-27
11.35 LOAN PROCESSING 11-27
11.36 LOAN CLOSING AND POST-CLOSING ACTIVITIES 11-28

ATTACHMENT 11-A: MANAGEMENT OF CONGREGATE HOUSING AND GROUP HOMES
ATTACHMENT 11-B: SUPPORT SERVICES FOR CONGREGATE HOUSING AND GROUP HOMES
ATTACHMENT 11-C: OCCUPANCY AGREEMENT
ATTACHMENT 11-D: COOPERATIVE HOUSING SURVEY
ATTACHMENT 11-E: LIMITED EQUITY AGREEMENT
ATTACHMENT 11-F: QUALIFICATIONS FOR AN ADVISER TO THE BOARD
ATTACHMENT 11-G: RELATIONSHIP OF ADVISER TO MEMBERS
ATTACHMENT 11-H: ADVISER RESPONSIBILITIES
ATTACHMENT 11-I: SUBSCRIPTION AGREEMENT

CHAPTER 12: FARM LABOR HOUSING LOANS AND GRANTS 12-1

12.1 INTRODUCTION 12-1

SECTION 1: OFF-FARM LABOR HOUSING LOANS AND GRANTS 12-1

12.2 OVERVIEW 12-1
12.3 APPLICANT ELIGIBILITY FOR OFF-FARM LABOR HOUSING *[7 CFR 3560.555]* 12-2

A. Eligible Applicants for Farm Labor Housing Loans 12-2
B. Eligible Applicants for Farm Labor Housing Grants 12-2

12.4 TECHNICAL ASSISTANCE GRANTS 12-3
12.5 PROJECT ELIGIBILITY 12-4

A. Site Requirements *[7 CFR 3560.558]* 12-4
B. Design Requirements *[7 CFR 3560.559]* 12-4

12.6 LOAN AND GRANT FUND USES 12-5

A. Eligible Uses of Funds *[7 CFR 3560.53(k)* and *(o)]* 12-5
B. Prohibited Uses of Funds *[7 CFR 3560.554]* 12-5

12.7 SUBMISSION AND PROCESSING OF INITIAL APPLICATIONS 12-5

A. Content of Initial Applications 12-5
B. Completeness Review 12-6
C. Eligibility Review 12-6
D. Scoring and Ranking of Initial Applications 12-6
E. National Ranking and Selection of Initial Applications 12-6
F. Notification of Initial Applications Selection 12-7

12.8 FURTHER PROCESSING OF INITIAL APPLICATIONS 12-7

A. Project Eligibility 12-7
B. Applicant Eligibility 12-8
C. Project Feasibility 12-8
D. Calculation of the Allowable Grant Amount 12-8

12.9 SUBMISSION AND PROCESSING OF FINAL APPLICATIONS 12-8

A. Security Value and Borrower Contributions 12-8
B. Establishing a Profit Base on Initial Investment Return 12-9

12.10 LOAN/GRANT APPROVAL AND CLOSING *[7 CFR 3560.571]* 12-9

A. Loan Resolution or Loan Agreement 12-9
B. Labor Housing Grant Agreement and Resolution 12-9
C. Restrictive-Use Provisions 12-10

12.11 CONSTRUCTION FINANCING 12-10
12.12 MONITORING CONSTRUCTION AND PROJECT LEASE-UP 12-10
12.13 ESTABLISHING DIMINISHED NEEDS FOR FARM LABOR HOUSING 12-11
SECTION 2: ON-FARM LABOR HOUSING LOANS 12-12

12.14 OVERVIEW 12-12
12.15 ON-FARM LABOR HOUSING CHECKLIST 12.12
12.16 APPLICANT ELIGIBILITY *[7 CFR 3560.605]* 12-16
12.17 PROJECT ELIGIBILITY *[7 CFR 3560.605]* 12-17
12.18 LOAN FUND USES 12-18

A. Eligible Uses of Funds *[7 CFR 3560.603]* 12-18
B. Prohibited Uses of Funds *[7 CFR 3560.604]* 12-18

12.19 PRIORITIES FOR FUNDING 12-18

12.20 SUBMISSION AND PROCESSING OF INITIAL APPLICATIONS 12-18

A. Project Eligibility 12-18
B. Applicant Eligibility 12-19
C. Project Feasibility 12-19
D. Financial Capacity 12-19

12.21 SUBMISSION AND PROCESSING OF FINAL APPLICATIONS 12-20

A. Determining Loan Limits, Rates, and Terms *[7 CFR 3560.612* and *616]* 12-20
B. Establishing a Profit Base on Initial Investment Return 12-20

12.22 LOAN APPROVAL AND CLOSING *[7 CFR 3560.621]* 12-20

A. Loan Resolution or Loan Agreement *[7 CFR 3560.571]* 12-20
B. Security Documents *[7 CFR 3560.610]* 12-21
C. Loan Companies and Closing Attorneys 12-21

12.23 CONSTRUCTION MONITORING 12-21

12.24 CONSTRUCTION COST NORMS ……...12-21

ATTACHMENT 12-A: CLARIFYING THE DEFINITION OF "FARM LABOR"

APPENDICES

Appendix 1: 7 CFR part 3560
Appendix 2: 7 CFR part 11
Appendix 3: Forms Referenced in this Handbook
Appendix 4: Handbook Letters Referenced in this Handbook

CHAPTER 1: INTRODUCTION

SECTION 1: INTRODUCTION TO THE LOAN ORIGINATION HANDBOOK

1.1 ABOUT THIS HANDBOOK

This handbook provides Multi-Family Housing Staff with the guidance needed to originate loans and grants efficiently and effectively. Its goal is to help Loan Originators and Loan Approval Officials in Field Offices process applications smoothly, while making sure that the applicable legal and administrative requirements are met.

The handbook describes the Agency's loan processing policies and establishes its procedures for originating:

- Section 515 Multi-Family Housing projects:
  - ◊ Rural rental housing (including congregate housing and group homes); and
  - ◊ Rural cooperative housing.
- Section 514/516 Farm Labor Housing projects:
  - ◊ Off-farm labor housing; and
  - ◊ On-farm labor housing.

The guidance provided by this handbook is intended to be consistent with all applicable laws, Executive Orders, and Departmental regulations, including other Agency regulations. Nothing contained in this handbook should be construed to supersede, rescind, or otherwise amend such laws, Executive Orders, and regulations.

1.2 COMPANION MULTI-FAMILY HOUSING HANDBOOKS

This handbook is the first in a series of three handbooks that describe the requirements and procedures for the Multi-Family Housing direct loan and grant programs. The two companion handbooks are:

- **HB-2-3560: Asset Management.** This handbook covers the requirements and procedures regarding the ongoing management of Multi-Family Housing projects and the Agency's oversight of borrower performance.
- **HB-3-3560: Project Servicing.** This handbook addresses the requirements and procedures for servicing loan accounts, allowable servicing actions borrowers can request, project preservation, prepayment, and Agency actions in the event of compliance violations or project default.

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1.3 USING THIS HANDBOOK

The handbook is organized to allow the reader to look up information on specific topics easily. Several graphic tools and conventions have been used to make information easier to find and understand.

A. Citations and Text Boxes

- **Regulatory citations.** The regulation for Multi-Family Housing programs is provided in 7 CFR Part 3560. The text of that regulation is included in **Appendix 1**. To help readers locate the regulatory authority for procedures described here, references in paragraph headings to this regulation appear in italicized brackets, for example *[7 CFR 3560.51]*. Other regulations or RD Instructions are simply referenced.

- **Form references.** Agency forms and Agency guide, form, and system letters are shown in *italics.* All forms referenced in this handbook can be found in **Appendix 3** and all letters can be found in **Appendix 4**.

- **Examples and exhibits.** Text boxes labeled as examples provide a specific illustration of a concept described in the text. Exhibits illustrate key points and are numbered in sequence, using the chapter number and a sequence number; for example, Exhibit 3-1 is the first exhibit in Chapter 3.

B. Attachments and Appendices

- **Attachments.** Attachments at the end of each chapter contain technical information that is specific to the topics covered in the chapter. Attachments are referenced in sequence, using the chapter number and a sequence letter; for example, **Attachment 4-A** is the first attachment in Chapter 4.

- **Appendices.** Appendices at the end of the handbook include forms and other reference materials that relate to multiple chapters.

C. Terminology

Because terminology may vary from State to State and may change over time, this handbook uses certain standard terminology to provide consistency.

- **Agency.** The term “Agency” is used throughout this handbook to refer to the Rural Housing Service (RHS) within the U.S. Department of Agriculture (USDA) that is responsible for the administration of the Multi-Family Housing programs.

- **Borrower.** The term “borrower” refers to one or more individuals who are receiving Agency assistance through a Multi-Family Housing program in the form of a loan or a grant.

- **Loan Approval Official.** "Loan Approval Official" is used whenever someone other than the Loan Originator must approve an action. Unless otherwise specified, each State Director may determine which actions may be approved at the Field Office and which must be approved at the State Office.

- **Loan Origination Office.** Because the number of offices and the nature of the work conducted in each office may vary from state to state, the term "Loan Origination Office" is used throughout this handbook to refer to the office that is originating or servicing the loan.

- **Loan Originator.** "Loan Originator" refers to a person who is working directly with an applicant and conducting the basic underwriting analysis.

- **Loan Processing Staff.** This term is used as a general reference to Agency Field Office Staff that process loan and grant applications.

- **Loan/Grant Applicant.** The term "applicant" refers to one or more individuals who have applied for Agency assistance.

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SECTION 2: OVERVIEW OF THE MULTI-FAMILY HOUSING PROGRAMS

1.4 GOALS OF RHS MULTI-FAMILY HOUSING PROGRAMS

The purpose of the Multi-Family Housing programs is to provide adequate, affordable, decent, safe, and sanitary rental units for very low-, low-, and moderate-income households in rural areas. In providing this service, the Agency strives to meet several goals.

- **Customer service.** The Agency is committed to providing customer-friendly, streamlined service. The Agency will administer its programs fairly and in accordance with both the letter and the spirit of all equal opportunity and fair housing legislation and applicable Executive Orders.

- **Partnerships.** Working with its partners, such as borrowers, property management agents, tenants, other lenders, nonprofit organizations, and State and local agencies, can enhance the Agency's ability to better serve eligible households.

- **Effective use of resources.** As publicly funded initiatives, the Multi-Family Housing programs must use tax dollars efficiently. The Agency aims to minimize administrative costs, underwrite loans responsibly, and leverage funding with private sources of credit to the extent possible.

1.5 SECTION 515 PROGRAM—OVERVIEW

The Section 515 direct loan program *[7 CFR Part 3560]* provides financing to support the development of rental units in rural areas that need housing affordable to very low-, low-, and moderate-income households, and where this housing is unlikely to be provided through other means.

Section 515 loans can be used to build, acquire and rehabilitate, or improve dwellings in rural areas. The term for an initial Section 515 loan is 30 years with a 50-year amortization period. However, the term for subsequent loans and loans for special types of properties, such as manufactured housing, may be made for a shorter term based on the project's expected useful life.

Each loan is made at a note rate established by the Agency as prescribed in RD Instruction 440.1. Borrowers approved for initial and/or subsequent loans receive interest credit, which reduces the effective interest rate for the Agency's financing, thereby lowering the property's rents. In return for this below-market rate financing, the borrower agrees to lease the project's rental units to income-eligible households at rents approved by the Agency. Borrowers operate on a nonprofit or limited-profit basis.

1.6 SECTION 514 PROGRAM—OVERVIEW

Section 514/516 direct loan and grant programs provide funds to support the development of adequate, affordable housing for farmworkers that is unlikely to be provided through other means.

A. Section 514 Loans and Section 516 Grants for Off-Farm Housing

Section 514 loans and Section 516 grants can be used for the same purposes as Section 515 loans to finance rental housing for farmworkers. Unlike Section 515 projects, off-farm labor housing projects may be built outside rural areas, as long as the project addresses a need for affordable housing for farmworkers. These projects are eligible for financing at terms comparable to Section 515 loans, a grant to cover a share of the development cost, or a loan/grant combination finance package. The maximum term for an Off-Farm Labor Housing loan is 33 years, and the effective interest rate is 1 percent. For Off-Farm Labor Housing grants, the grant agreement remains in effect for 50 years. Tenants not only must be income eligible, but also receive priority based on the proportion of their income received from farm work.

B. Section 514 Loans for On-Farm Housing

Section 514 loans can also be used to finance the development of adequate housing for farm workers involved in a specific farm operation—On-Farm Labor Housing projects. These projects are treated as part of the farming operation, and the occupants do not pay shelter cost (rent & utilities) unless the shelter cost is approved by the Agency.

SECTION 3: GENERAL PROGRAM REQUIREMENTS

1.7 CIVIL RIGHTS *[7 CFR 3560.2]*

The Agency will administer its programs fairly and in accordance with both the letter and the spirit of all equal opportunity and fair housing legislation and applicable Executive Orders. The civil rights compliance requirements for the Agency are contained in RD Instruction 1901-E. Exhibit 1-1 lists the applicable Federal laws and Executive Orders and highlights key aspects of their requirements.

Exhibit 1-1

Major Civil Rights Laws Affecting the Multi-Family Housing Loan and Grant Programs

- **Equal Credit Opportunity Act (ECOA).** Prohibits discrimination in the extension of credit on the basis of race, color, religion, national origin, sex, marital status, age, income from public assistance, and exercise of rights under the Consumer Credit Protection Act.
- **Title VI of the Civil Rights Act of 1964.** Prohibits discrimination in a federally assisted program on the basis of race, color, and national origin.
- **Title VIII of the Civil Rights Act of 1968** (also known as the Fair Housing Act of 1988, as amended). Prohibits discrimination in the sale, rental, or financing of housing on the basis of race, color, religion, sex, national origin, familial status, or disability.
- **Section 504 of the Rehabilitation Act of 1973.** Prohibits discrimination in a federally assisted program on the basis of disability.
- **Age Discrimination Act of 1975.** Prohibits discrimination in a federally assisted program on the basis of age.
- **Title IX of the Education Amendments of 1972.** Prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance from Rural Development.
- **Executive Order 11063, as Amended by Executive Order 12259.** Prohibits discrimination in housing or residential property financing to any federally assisted activity against individuals on the basis of race, color, religion, sex, or national origin.
- **Executive Order 11246.** Prohibits discrimination in employment by construction contractors (and subcontractors) receiving federally assisted construction contracts in excess of $10,000. Provides for equal employment opportunity without regard to race, color, religion, sex, and national origin.
- **Executive Order 12898.** Requires each Federal Agency to make achieving environmental justice a part of its mission by identifying and addressing disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations.

A. Nondiscrimination

The various civil rights laws prohibit the denial of loans, grants, services, and benefits provided under the Section 515 and 514/516 programs to any person based upon race, color, national origin, sex, religion, familial status, age, physical or mental disability, or source of income, or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act (15 U.S.C. 1601). Discrimination in employment practices is also prohibited. These same requirements also apply to program participants. Agency oversight of borrower compliance with civil rights laws is covered in HB-2-3560. Complaints filed by tenants will be handled by the Agency in accordance with RD Instruction 2000-GGG and **Attachment 1-A**.

Effective management and consistent procedures are good business practices that help ensure that all applicants are treated fairly. Poor program implementation, whether or not discrimination is intended, has possible civil rights consequences.

Key Civil Rights Issues for Loan Origination

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

B. Reasonable Accommodations for Persons with Disabilities

In addition to avoiding discrimination, the Agency and loan and grant recipients must make reasonable accommodations to permit persons with disabilities to apply for and benefit from Agency programs. Reasonable accommodations may include providing modifications to the dwellings and facilities so that they are physically accessible. Reasonable accommodations may also include effective communication and outreach tools so that all applicants can obtain program information (e.g., a Telecommunications Device for the Deaf [TDD]).

C. Limited English Proficiency *[7 CFR 3560.2]*

Borrowers and grantees must take reasonable steps to ensure that Limited English Proficiency (LEP) persons receive the language assistance necessary to afford them meaningful access to USDA programs and activities, free of charge. Failure to ensure that LEP persons can effectively participate in or benefit from Federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). USDA has issued guidance to clarify the responsibilities of recipients and subrecipients who receive financial assistance from USDA and assist them in fulfilling their responsibilities to LEP persons under Title VI of the Civil Rights Act, as amended, and implementing regulations.

D. Civil Rights Impact Analysis

Agency employees will conduct civil rights impact analyses in accordance with RD Instruction 2006-P to determine whether proposed policy actions, if approved and implemented, will negatively and disproportionately affect employees, program

beneficiaries, or applicants for employment or program benefits due to race, national origin, or other protected basis.

1.8 REVIEWS AND APPEALS *[7 CFR 3560.9]*

Decisions that are not made in favor of a program participant (applicant or borrower) are known as adverse decisions. Adverse decisions must be based upon regulations that are published in the Code of Federal Regulations (CFR). For the direct Multi-Family Housing programs, any adverse decisions must be based upon 7 CFR Part 3560 and not the administrative guidance contained in this handbook. Adverse decisions include: (1) administrative actions taken by Agency officials; and (2) the Agency's failure to take required actions within timeframes specified in statutes or regulations or within a reasonable time if no deadline is specified. **Appendix 2** of this handbook contains 7 CFR Part 11, which is the regulation of the National Appeals Division (NAD) and provides procedures that both Agency officials and program participants must follow when an appeal is made. *Handbook Letter 101 (3560), Standardized Adverse Decision Letter,* will be used for all adverse decisions unless another format is prescribed in this handbook.

A. Informing Program Participants of Their Rights

Whenever an Agency official makes a decision that will adversely affect a program participant, the official must inform the participant in writing that an informal review with the person who made the decision may be requested. If the decision is appealable, the participant will also be informed of their rights to seek mediation or Alternative Dispute Resolution (ADR) and to request a hearing with NAD; **Attachment 1-B** is used for this purpose. If the decision cannot be appealed, participants will be informed of their rights to have NAD review the accuracy of the Agency's finding that the decision cannot be appealed; **Attachment 1-C** is used for this purpose. Mediation or ADR is not applicable for decisions that cannot be appealed.

Letters notifying participants of adverse decisions must contain the required information regarding an informal meeting, rights to mediation or ADR, rights to a NAD appeal, and civil rights. **Attachment 1-A** includes only the specific civil rights language that must be contained in any adverse decision letter. **Attachments 1-B** through **1-I** contain, as necessary, the civil rights language and include information on requesting an informal review, rights to mediation or ADR, and rights to a NAD appeal. The Attachments are all titled to assist Field Office Staff in selecting the correct Attachment for the decision being made. The Attachments do not need to be used when an RD Form, Handbook Letter, or other document already includes the appropriate participant rights.

B. Adverse Decisions That Cannot Be Appealed

Certain decisions made by the Agency cannot be appealed. In these cases, the participant is still provided the opportunity for an informal review; however, rights to a NAD appeal and rights to mediation or ADR are not offered. Participants will be informed through the use of **Attachment 1-C** that they may request an informal review and write to NAD for a review of the accuracy of the Agency's determination that the case cannot be appealed. Decisions that cannot be appealed include:

- Decisions made by parties outside the Agency, even when these decisions are used as a basis for Agency decisions (such as when an applicant disagrees with a private lender's decision not to provide credit for a leveraged loan);
- An official's refusal to request an administrative waiver under the provisions of Paragraph 1.11 of this handbook, or a waiver authorized by any applicable regulation;
- Denials of credit due to lack of funds; and
- Rural area designations.

When one or more of the reasons for an adverse decision are reasons that cannot be appealed, the adverse decision cannot be appealed. In these cases, the letter containing the adverse decision will include only the items that cannot be appealed as the reason why the decision cannot be appealed. If other reasons also exist for the adverse decision, they will be listed separately in the decision letter as other reasons the assistance could not be granted.

C. Informal Review

Participants who want to request an informal review with the person who made the decision must do so within 15 days of the date of the Agency's letter notifying the participant of the adverse decision. The participant must make a request for an informal review in writing, and the request will be retained in the participant's case file. The informal review can be conducted, at the discretion of the Agency, by telephone or through a face-to-face meeting. The informal review can also be conducted by a

representative of the person who made the decision. The purpose of the informal review is to further explain the Agency's reasons for the adverse decision, listen to why the participant feels the decision may be incorrect, and obtain any further information from the participant to support their request. The review must be completed within 45 days of the request, and the participant is notified in writing of the results. The State Director may require that the decision be reviewed by the next-level supervisor or other designated Rural Development Staff before the participant is notified of the decision. **Attachment 1-D** will be used if the adverse decision is not reversed as a result of the informal review. If the decision is reversed, a letter will be sent to the participant notifying them of the decision and next steps.

Participants may skip an informal review and, if applicable, request mediation, ADR, or a NAD appeal. In doing so, participants automatically waive their rights to an informal review.

D. Mediation or ADR

Adverse decisions that are appealable to NAD also require that the participant be given the opportunity to seek mediation or ADR prior to having a hearing with NAD. The purpose of mediation or ADR is to resolve disputes through the use of a neutral mediator. State Directors may wish to consider issuing a State Supplement, outlining the coordination required between the Field Office and State Office on handling mediation and ADR requests.

Participants may skip mediation or ADR and request a NAD appeal. In doing so, they automatically waive their rights to mediation or ADR.

1. Requests for Mediation or ADR

After receiving **Attachment 1-B** or **1-D**, a program participant may request mediation or ADR services. Upon receipt of the program participant's request for mediation or ADR, **Attachment 1-E**, **1-G**, or **1-H** is sent to the participant to start the process. The Attachment used depends upon whether the State in which the action applies is covered by a USDA-sponsored mediation program. These Attachments are generally sent by the State Director since costs are involved; however, they can be sent directly by the Field Office at the discretion of the State Director.

2. Cost of Mediation or ADR

There are generally costs associated with participation in mediation or ADR. When there are costs, they will be shared equally between the Agency and the program participant, if Agency funds are available. Where Agency funds are not available, the Agency will participate in mediation or ADR if requested by the program participant; however, the program participant will be notified in advance of the portion of the cost that the Agency will pay (if any) and their estimated cost for this service. The state Director will ensure that all participants requesting mediation or ADR in their state are treated consistently and pay the same percentage of the cost toward this service. The State Director may also consent to pay a larger percentage (up to 100 percent) of the cost of mediation or ADR for participants with incomes below the poverty level. The Agency will notify the mediation or ADR sources of how the cost of such service will be paid. **Attachments 1-E, 1-F, 1-G,** and **1-H** include language to meet this requirement.

3. Mediation in States with a USDA-Sponsored Mediation Program

Many states have a USDA-sponsored mediation program. These programs are funded, in part, by USDA and were established primarily to mediate cases originating from the Farm Service Agency (FSA). If a program participant is unsure if a USDA-sponsored mediation program exists in their state, they should contact their state Director. In states with a USDA-sponsored mediation program, program participants who are provided appeal rights will generally be referred to the USDA-sponsored mediation program. ADR is not applicable in these States. **Attachment 1-E** may be sent to the program participant to acknowledge their request, and **Attachment 1-F** may be used to refer the case to the USDA-sponsored mediation program. In states where alternative mediation sources are readily available at a lower cost than the USDA-sponsored mediation program, the State will follow the guidance for states without a USDA-sponsored mediation program and include the USDA-sponsored mediation program on the list of acceptable providers.

4. Mediation or ADR in States without a USDA-Sponsored Mediation Program

In States without a USDA-sponsored mediation program, Agency officials are responsible for maintaining a list of mediators or ADR providers. The State Office will generally maintain this list as program participants are referred to the State Director to initiate mediation or ADR. FSA can generally provide a list of acceptable mediation or ADR sources in a state. Other contacts include the American Association of Arbitrators (AAA) or State bar association. When making contacts with these sources, the Agency must request the services of a mediator and not an arbitrator. (A mediator resolves disputes by negotiating a resolution through mutual agreement. An arbitrator resolves disputes through hearing both parties and then rendering a binding decision and should not be used.) The list of mediators will contain the approximate cost of each service provider, if known. States may handle the list of mediation and ADR sources as follows:

- The state may select a mediator or ADR provider from the list, provided there is not a significant variation in the cost of service providers. The list will be maintained alphabetically and sources selected in sequential order. **Attachment 1-G** may be sent to the program participant to acknowledge their request for mediation or ADR, and **Attachment 1-F** may be used to refer the case to the provider. States will need to maintain documentation to ensure that mediators and ADR providers receive an equal number of referrals. If there is a significant variation in cost among service providers, this option will not be used.

- The state may provide the list of mediators or ADR providers to the participant and request the participant to select the source or provide the name of another acceptable source of mediation or ADR. The list will contain the approximate cost of each service provider, if known. **Attachment 1-H** is used for this purpose and provides the participant with 10 days to select a service provider. After selection, **Attachment 1-F** will be used to refer the case to the mediator or ADR provider. If the program participant does not provide the name of a mediator or ADR provider within 10 days, their request for mediation or ADR will be considered withdrawn. Withdrawal or cancellation of mediation or ADR does not extinguish the participant's right to an appeal with NAD.

5. Timing of Mediation or ADR

Mediation or ADR must be completed within 45 days after the case is referred to the mediation or ADR source, unless the complexity of the case warrants a longer time frame and all parties agree to a specific time frame. A mediator or ADR provider will generally conduct a teleconference between the parties prior to accepting a case to determine if the case can be mediated. The Agency encourages the use of a premediation conference since many adverse decisions in the Multi-Family Housing program may not lend themselves to mediation. Regardless, the Agency will not refuse to participate in mediation or ADR if requested to do so by the program participant.

Mediation or ADR occurs prior to having a hearing with NAD. Requests for mediation or ADR made prior to filing an appeal with NAD stop the clock on the 30-day period during which a participant may appeal to NAD. After mediation or ADR has concluded, any days that remain from the 30-day period are available to the participant to request an appeal to NAD. **Attachment 1-I** is used for this purpose. The person completing **Attachment 1-I** will need to determine the number of days the participant took to request mediation or ADR. Hearing dates for participants who request mediation or ADR after filing an appeal must be selected within 45 days of the conclusion of mediation or ADR. Participants may also request mediation or ADR after filing an appeal with NAD, but prior to the hearing.

E. Appeal

Participants who wish to appeal an adverse decision must submit a written request to NAD within 30 days of receiving notice of an adverse decision. The request must be signed by the participant and include: (1) a copy of the adverse decision to be appealed; and (2) a brief statement describing why the participant believes the decision is wrong.

Upon receiving a notice from NAD that an appeal has been filed, the Field Office will promptly provide NAD with a copy of the Agency record, specific references in 7 CFR Part 3560 to support the adverse decision, and any other pertinent information. A copy will also be provided to the program participant.

In accordance with NAD regulations, the program participant has the right to a face-to-face hearing in the participant's state of residence. The program participant also has the right to request that the hearing be handled by teleconference. An adverse decision made by the Agency may result in an appeal hearing and require a face-to-face hearing. In these cases, the Appeal Coordinator may request the State Director to provide Field Office Staff to attend the hearing and represent the Agency. The Appeal Coordinator will provide sufficient documentation and phone resources to the person selected by the State Director to adequately represent the Agency in the case.

NAD will notify the participant and the Agency once it has made a final determination. If NAD reverses the Agency's decision, the next loan processing action that would have occurred if no adverse decision had been made must be taken within 30 days after the effective date of the notice from NAD, unless the Agency requests a review of the case by the Director of NAD. See **Appendix 2** for more guidance on Director Reviews and other information regarding appeals.

1.9 CONFLICT OF INTEREST *[7 CFR 3560.10]*

All Agency employees must strive to maintain the highest levels of honesty, integrity, and impartiality in conducting their activities on behalf of the Agency. The Agency's conflict of interest requirements are described in RD Instruction 1900-D. To reduce the potential for conflicts of interest, all processing, approval, servicing, or review activity must be conducted by Agency employees who:

- Are not the recipient (applicant or borrower), a recipient's family member, or a close known relative of the recipient;

- Do not have an immediate working relationship with the recipient, the Agency employee related to the recipient, or the Agency employee who would normally conduct the activity; and

- Do not have a business or close personal association with the recipient.

A. Applicant Disclosure

Applicants must disclose any known relationship or association with Agency employees when they apply.

B. Agency Employee Disclosure

Agency employees must disclose any known relationship or association with a recipient, regardless of whether the relationship is known to others. Loan Originators should notify a supervisor after the application is accepted but before any eligibility determination is made.

1.10 OTHER FEDERAL REQUIREMENTS

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

The Agency considers environmental quality equally with economic, social, and other factors in its program development and decision making processes. Both the Loan Originators and the Loan Approval Official are responsible for effectively integrating Agency environmental policies and procedures with loan and grant origination and servicing activities. It is particularly important for Loan Servicers to be aware of environmental requirements concerning sites, especially during the liquidation process, when the Agency needs to ensure that it will not acquire property with an environmental liability. The Loan Servicer should also be aware of mitigation measures contained in the Agency's environmental review. Where mitigation measures require an on-going effort of owner and management (such as maintaining the condition of a historic building or not building on portions of the site) these should be a part of servicing. Agency environmental policies and procedures can be found in RD Instruction 1940-G, Environmental Program and historic preservation requirements can be found in RD Instruction 1940-G and 1901-F. Agency-assisted properties also must meet current Agency guidance on lead-based paint requirements and 1904-G.

B. Construction Standards

Sites and dwellings developed or rehabilitated with Section 515 or Section 514/516 funds must meet the construction standards described or referenced in RD Instructions 1924-A and 1924-C. Existing dwellings financed by the Agency must be decent, safe, and sanitary and must meet all applicable State and local codes.

C. Lobbying Restrictions

RD Instruction 1940-Q prohibits applicants and recipients of Agency assistance from using appropriated funds for lobbying the Federal Government in connection with a specific award. This Instruction also requires that entities that request or receive loans or grants must disclose the expenditure of any funds, other than appropriated funds, for lobbying activities using Exhibit A-1 from RD Instruction 1940-Q.

D. Administrative Requirements

Agency employees must comply with Agency and departmental administrative requirements.

1. Procurement

Goods and services procured to support Agency activities such as appraisals, inspections, broker services, and property management services must conform with the policies and procedures of RD Instruction 2024-A.

2. File Management

Files and other Agency records must be maintained in accordance with RD Instruction 2033-A. Additional information is provided in Chapter 9 of HB-2-3560.

3. Handling Funds

Project funds must be handled in accordance with RD Instruction 1902-A.

1.11 EXCEPTION AUTHORITY *[7 CFR 3560.8]*

Exceptions to any requirement of this handbook or 7 CFR Part 3560 may be approved in individual cases by the Administrator if application of the requirement or failure to take action would adversely affect the Government's interest or conflict with the objectives and spirit of the authorizing statute. Any exception must be consistent with the authorizing statute and other applicable laws.

Requests for exceptions are submitted to the Administrator, through the Deputy Administrator, Multi-Family Housing, and may be initiated by the State Director; the Director, Multi-Family Housing Processing Division; or the Director, Multi-Family Housing Portfolio Management Division.

The exception request must provide clear and convincing evidence of the need for the exception. At a minimum the request must include:

- A full explanation of the circumstances, including an explanation of the adverse effect on the Government's interest;
- A discussion of proposed alternatives considered; and
- A discussion of how the adverse effects will be eliminated or minimized if the exception is granted.

Requests to the Administrator for exceptions regarding architectural, environmental, or civil rights issues will include the review and comments of the appropriate National Office Staff.

ATTACHMENT 1-A

EQUAL CREDIT OPPORTUNITY ACT (ECOA)

The Federal ECOA prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, martial status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this assistance is the Federal Trade Commission. If a person believes he or she was denied assistance in violation of this law, they should contact the Federal Trade Commission, Washington, D.C. 20580.

The Fair Housing Act prohibits discrimination in real estate related transactions or in the terms of conditions of such a transaction, race, color, religion, sex, disability, familial status, or national origin. The Federal agency that is responsible for enforcing this law is the U. S. Department of Housing and Urban Development. If a person believes that they have been discriminated against in violation of this law, they should contact the U. S. Department of Housing and Urban Development, Washington, D.C. 20410 or call (800) 669-9777.

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ATTACHMENT 1-B

ATTACHMENT TO LETTER NOTIFYING CUSTOMERS OF AN ADVERSE DECISION THAT IS APPEALABLE

The decision described in the attached letter did not grant you the assistance you requested or will terminate or reduce the assistance you are currently receiving. If you believe this decision or the facts used in this case are in error, you may pursue any or all of the following three options.

Option 1 - Informal Review

If you have questions concerning this decision or the facts used making it and desire further explanation, you may write this office to request an informal review. ***There is no cost for an informal review.*** This written request must be received no later than 15 calendar days from the date of the attached letter. You must present any new information, evidence, and possible alternatives along with your request. You may also have a representative or legal counsel participate in the process, at your cost. The informal review may be conducted by telephone or in person, at the discretion of the Agency. Please include a daytime phone number in your request to arrange for the review. You may skip this step in the informal process and select one of the following two options. If you do, you will automatically waive your right to an informal review.

Option 2 - Mediation or ADR

You have the right to request mediation or other forms of ADR for the issues that are available for mediation. ***You will have to pay for at least 50 percent of the cost of mediation or ADR.*** Rural Development will pay for the other 50 percent of the cost, provided the Agency has sufficient resources from its appropriated funds. If the Agency does not have sufficient resources, you will be advised how much, if any, the Agency can contribute to the cost of mediation or ADR. If you need the information to assist you in deciding whether to seek mediation or ADR, you may contact the Rural Development State Director listed below.

If you elect to seek mediation or ADR, your written request for this service must be sent to the Rural Development State Director listed below and must be postmarked no later than 30 days from the date of the attached letter. The Rural Development State Director will advise you of the estimated cost of mediation or ADR, the extent to which the Agency can contribute to the cost, and the process and procedures for this service. In states with a USDA-sponsored mediation program, you will generally be referred to such service. In states without a USDA-sponsored mediation program, you will be provided with the name or names of mediators. You will be advised directly by the mediation or ADR source if they can mediate your case. Once you request mediation or ADR, it stops the running of the 30-day period in which you may request an appeal (described in Option 3). If mediation or ADR does not result in resolution of these issues, you have the right to continue with a request for an appeal hearing as set forth in Option 3.

When mediation or ADR is concluded, you will be notified of the result and the number of days remaining to request an appeal, if applicable. If you request mediation or ADR prior to filing for an appeal, the number of days you will have to request an appeal will be 30 days from the adverse decision minus the number of days you took to request mediation. Mediation or ADR does not take the place of, or limit your rights to, an appeal to the NAD; however, an NAD appeal hearing would take place after mediation or ADR. You may skip mediation or ADR and request an appeal hearing. However, in doing so, you will automatically waive your rights to an informal meeting, mediation, or ADR.

Rural Development State Director address:

Option 3 - Request an Appeal

You may request an appeal hearing by the NAD rather than an informal review, mediation, or ADR. ***There is no cost for an appeal.*** Your request for an appeal must be made no later than 30 days from the date you receive the attached letter. You must write the Assistant Director, NAD, for your region at the following address:

NAD Assistant Director address:

Your request for an NAD hearing must state the reasons why you believe the decision is wrong, be personally signed by you, and must include a copy of the attached letter. A copy of your

request must also be sent to the Rural Development State Director at the address listed under Option 2.

You have the right to an appeal hearing within 45 days of the receipt of your request. You or your representative or counsel may contact this office anytime during regular office hours in the 10 days following the receipt of your request for a hearing to examine or copy relevant non-confidential material in your file. Photocopies will be provided to you. Your representative or counsel should have your written authorization to represent you and review your file.

The NAD Hearing Officer will contact you regarding a time and place for the hearing. You may also request a teleconference hearing in lieu of the face-to-face hearing. At any time before the scheduled hearing you may also request that the Hearing Officer make a decision without a hearing. If you do, the Hearing Officer's decision will be based on the Rural Development file, any written statements or evidence you may provide and any additional information the Hearing Officer thinks necessary.

The Federal ECOA prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant’s income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is the Federal Trade Commission. If a person believes he or she was denied assistance in violation of this law, they should contact the Federal Trade Commission, Washington, D.C. 20580

The Fair Housing Act prohibits discrimination in real estate related transactions, or in the terms of conditions of such a transaction, because of race, color, religion, sex, disability, familial status, or national origin. The federal agency that is responsible for enforcing this law is the U. S. Department of Housing and Urban Development. If a person believes that they have been discriminated against in violation of this law, they should contact the U. S. Department of Housing and Urban Development, Washington, D.C. 20410 or call (800) 669-9777.

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ATTACHMENT 1-C

ATTACHMENT TO LETTER NOTIFYING CUSTOMERS OF AN ADVERSE DECISION THAT CANNOT BE APPEALED

The decision described in the attached letter did not grant you the assistance you requested or will terminate or reduce the assistance you are currently receiving.

If you have questions concerning this decision or the facts used in making it and desire further explanation, you may write this office to request an informal review. This written request must be received no later than 15 calendar days from the date of the attached letter. You must present any new information, evidence, and possible alternatives along with your request. You may also have a representative or legal counsel participate in the process, at your cost. The informal review may be conducted by telephone or in person, at the discretion of the Agency. Please include a daytime phone number in your request to arrange for the review.

Applicants and borrowers generally have a right to appeal adverse decisions, but decisions based on certain reasons cannot be appealed. We have determined that reasons for the decision cannot be appealed under our regulations. You may, however, write the Assistant Director with the NAD for a review of the accuracy of our finding that the decision cannot be appealed. Your request must be made no later than 30 days from the date you receive the attached letter.

NAD Assistant Director address:

The Federal ECOA prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is the Federal Trade Commission. If a person believes he or she was denied assistance in violation of this law, they should contact the Federal Trade Commission, Washington, D.C. 20580.

The Fair Housing Act prohibits discrimination in real estate related transactions, or in the terms of conditions of such a transaction, race, color, religion, sex, disability, familial status, or national origin. The Federal agency that is responsible for enforcing this law is the U. S. Department of Housing and Urban Development. If a person believes that they have been

discriminated against in violation of this law, they should contact the U. S. Department of Housing and Urban Development, Washington, D.C. 20410 or call (800) 669-9777.

ATTACHMENT 1-D

ATTACHMENT TO LETTER NOTIFYING CUSTOMERS OF UNFAVORABLE DECISION REACHED AS A RESULT OF AN INFORMAL REVIEW

We appreciated the opportunity to review the facts relative to your request for assistance. We regret that the decision in the attached letter did not grant the assistance you requested or will terminate or reduce the assistance you are currently receiving. If you believe that facts used in this case are in error, you may pursue any or all of the following two options.

Option 1 - Mediation or ADR

You have the right to request mediation or other forms of ADR for the issues that are available for mediation. ***You will have to pay for at least 50 percent of the cost of mediation or ADR.*** Rural Development will pay for the other 50 percent of the cost, provided the Agency has sufficient resources from its appropriated funds. If the Agency does not have sufficient resources, you will be advised how much, if any, the Agency can contribute to the cost of mediation or ADR. If you need information to assist you in deciding whether to seek mediation or ADR, you may contact the Rural Development State Director listed below.

If you elect to seek mediation or ADR, your written request for this service must be sent to the Rural Development State Director listed below and must be postmarked no later than 30 days from the date of the attached letter. The Rural Development State Director will advise you of the estimated cost of mediation or ADR, the extent to which the Agency can contribute to the cost, and the process and procedures for this service. In states with a USDA-sponsored mediation program, you will generally be referred to this service. In states without a USDA-sponsored mediation program, you will be provided with the name or names of mediators. You will be advised directly by the mediation or ADR source if they can mediate your case. Once you request mediation or ADR, it stops the running of the 30-day period in which you may request an appeal (described in Option 2). If mediation or ADR does not result in resolution of these issues, you have the right to continue with a request for an appeal hearing as set forth in Option 2.

When mediation or ADR is concluded, you will be notified of the result and the number of days remaining to request an appeal, if applicable. If you request mediation or ADR prior to filing for an appeal, the number of days you will have to request an appeal will be 30 days from the adverse decision minus the number of days you took to request mediation. Mediation or ADR does not take the place of, or limit your rights to, an appeal to the NAD; however, an NAD appeal hearing would take place after mediation or ADR. You may skip mediation or ADR and request an appeal hearing. However, in doing so, you will automatically waive your rights to an informal meeting, mediation, or ADR.

Rural Development State Director address:

Option 2 - Request an Appeal

You may request an appeal hearing by the NAD rather than an informal review or mediation. ***There is no cost for an appeal.*** Your request for an appeal must be made no later than 30 days from the date you receive the attached letter. You must write the Assistant Director, NAD, for your region at the following address:

NAD Assistant Director address:

The request for an NAD hearing must state the reasons why you believe the decision is wrong, be personally signed by you, and must include a copy of the attached letter. A copy of your request must also be sent to the Rural Development State Director at the address listed under Option 1.

You have the right to an appeal hearing within 45 days of the receipt of your request. You or your representative or counsel may contact this office anytime during regular office hours in the 10 days following the receipt of your request for a hearing to examine or copy relevant non-confidential material in your file. Photocopies will be provided to you. Your representative or counsel should have your written authorization to represent you and review your file.

The NAD Hearing Officer will contact you regarding a time and place for the hearing. You may also request a teleconference hearing in lieu of the face-to-face hearing. At any time before the scheduled hearing, you may also request that the Hearing Officer make a decision without a hearing. If you do, the Hearing Officer's decision will be based on the Rural Development file, any written statements or evidence you may provide and any additional information the Hearing Officer thinks necessary.

The Federal ECOA prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is the Federal Trade Commission. If a person believes he or she was denied assistance in violation of this law, they should contact the Federal Trade Commission, Washington, D.C. 20580

The Fair Housing Act prohibits discrimination in real estate related transactions, or in the terms of conditions of such a transaction, race, color, religion, sex, disability, familial status, or national origin. The federal agency that is responsible for enforcing this law is the U. S. Department of Housing and Urban Development. If a person believes that they have been discriminated against in violation of this law, they should contact the U. S. Department of Housing and Urban Development, Washington, D.C. 20410 or call (800) 669-9777.

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ATTACHMENT 1-E

ATTACHMENT FOR NOTIFYING CUSTOMERS THAT REQUEST MEDIATION IN STATES WITH A USDA-SPONSORED MEDIATION PROGRAM

This replies to your request for mediation or alternative dispute resolution services. The state in which you requested assistance has an impartial USDA-sponsored mediation program available. Your request for mediation has been sent to:

You will be contacted directly by the USDA-sponsored mediation program to determine if they can mediate the issues in your case.

As indicated in our adverse decision letter, there may be a cost for mediation services. The cost estimated for this service is:

> $ _____ You will be advised directly by the USDA-sponsored mediation program of the full cost of mediation. This is only an estimate and may vary depending on the issues and complexity of the case. If you decide not to pursue mediation, you must immediately contact this office and the USDA-sponsored program to cancel your request

Rural Development will:

> _____ Contribute 50 percent towards the cost. The balance of the cast will have to be paid from your own resources.
>
> _____ Cannot contribute towards the cost as the Agency does not have financial resources for these services. You must pay the full cost of mediation from your own personal resources.
>
> _____ Contribute _____ towards the cost. The balance of the cost will have to be paid from your own personal resources.

When mediation is concluded, you will be notified of the results and the number of days remaining to request an appeal, if applicable. If you request mediation prior to filing for an appeal, the number of days you will have to request an appeal will be <u>30 days</u> from the adverse

decision minus the number of days you took to request mediation. Mediation does not take the place of, or limit your rights to, an appeal to the NAD; however, an NAD appeal hearing would take place after mediation.

Remember, if you decide not to pursue mediation, you must immediately contact this office and the USDA-sponsored mediation program to cancel your request. You will be responsible for any costs incurred by the mediation or ADR source up until the time of your cancellation. Canceling your request for mediation does not affect your rights to seek an appeal with the NAD as discussed in our original decision letter.

ATTACHMENT 1-F

ATTACHMENT FOR REQUESTING MEDIATION OR ALTERNATIVE DISPUTE RESOLUTION (ADR) SERVICES

TO:

FROM:

SUBJECT: Request for Mediation or ADR Services

CUSTOMER:

The above-subject Rural Development customer has received an adverse decision from our Agency and has requested mediation or ADR services. Attached is a copy of the adverse decision letter and the customer's request for your service.

Informal Review:

___ The customer was provided with the opportunity for an informal review with the Agency; however, chose not to exercise this option.

___ An informal review was conducted; however, the Agency did not reverse its decision.

___ This case is under the jurisdiction of our State Office.

Payment for Service:

___ The customer and Agency will split the cost of this service 50/50.

___ The customer will pay the full cost of mediation or ADR.

___ The Agency will pay _____ towards mediation or ADR. The customer will pay the balance.

If the Agency is paying for any portion of the cost of this service, the bill for the Agency's portion should be submitted to this office. The customer is solely responsible for their portion of the cost of this service and should be billed directly.

Jurisdiction of case:

___ The adverse decision in this case was made by the following office. You should contact this office for further information on the case:

___ The adverse decision in this case was made by the ___[insert appropriate name]___. You may contact the Appeals Coordinator for further information on the case and to arrange for mediation or ADR:

USDA, Rural Development

Appeals Coordinator

ATTN: _____

_____, _____ _____

(___) ___-____, extension _____

Mediation or ADR must be completed within 45 days; unless the complexity of the case requires a longer time frame and all parties agree to a specific time frame. We also request a teleconference prior to your acceptance of this case to determine if the adverse decision lends itself to mediation or ADR.

ATTACHMENT 1-G

ATTACHMENT FOR NOTIFYING CUSTOMERS THAT REQUEST MEDIATION OR ALTERNATIVE DISPUTE RESOLUTION (ADR) OF SERVICE PROVIDER

This replies to your request for mediation or alternative dispute resolution services. Your request has been sent to:

You will be contacted directly by the above to determine if they can mediate the issues in your case.

As indicated in our adverse decision letter, there may be a cost for these services. The estimated cost for this service is:

> $ _____ You will be advised directly by the mediation or ADR source of the full cost of this service. This is only an estimate and may vary depending upon the issues and complexity of the case. If you decide not to pursue mediation or ADR, you must immediately contact this office and the above-mentioned mediation or ADR provider.

Rural Development will:

> _____ Contribute 50 percent towards the cost. The balance of the cost will have to be paid from your own resources.
>
> _____ Cannot contribute towards the cost as the Agency does not have the financial resources. You must pay the full cost from your own personal resources.
>
> _____ Contribute _____ towards the cost. The balance of the cost will have to be paid from your own personal resources.

When mediation or ADR is concluded, you will be notified of the result and the number of days remaining to request an appeal, if applicable. If you request mediation or ADR prior to filing for an appeal, the number of days you will have to request an appeal will be 30 days from the date you received notice of the adverse decision minus the number of days you took to request mediation. Mediation or ADR does not take the place of, or limit your rights to, an appeal to the NAD; however, an NAD appeal hearing would take place after mediation or ADR.

Remember, if you decide not to pursue mediation or ADR, you must immediately contact this office and the mediation or ADR provider to cancel your request. You will be responsible for

any costs incurred by the mediation or ADR source up until the time of your cancellation. Canceling your request for mediation does not affect your rights to seek an appeal with the NAD as discussed in our original decision letter.

ATTACHMENT 1-H

ATTACHMENT FOR NOTIFYING CUSTOMERS THAT REQUEST MEDIATION OR ALTERNATIVE DISPUTE RESOLUTION (ADR) OF POTENTIAL SERVICE PROVIDERS

This replies to your request for mediation or ADR services. Attached you will find a list of mediation and ADR providers. You will need to select one of the sources from the list, or you may provide the name of another independent mediation or ADR source. You must provide this office, in writing, with the name of the provider within 10 days. Rural Development will then contact the source and provide photocopies of the adverse decision letter and any other relevant information. We will also request that the mediation or ADR provider conduct a teleconference between the parties.

If we do not receive your selection of a mediator or ADR provider within 10 days, we will consider such inaction to be your notice to cancel your request for mediation or ADR. You may continue to pursue an appeal to the NAD as outlined in our original adverse decision letter.

As indicated in our original adverse decision letter, there may be a cost for these services. The estimated cost for this service is:

> $ _____ You will be advised directly by the mediation or ADR source of the full cost of this service. This is only an estimate and may vary depending upon the issues and complexity of the case. If you decide not to pursue mediation or ADR, you must immediately contact this office and the above-mentioned mediation or ADR provider.

Rural Development will:

> _____ Contribute 50 percent towards the cost. The balance of the cost will have to be paid from your own resources.
>
> _____ Cannot contribute towards the cost as the Agency does not have the financial resources. You must pay the full cost from your own personal resources.
>
> _____ Contribute _____ towards the cost. The balance of the cost will have to be paid from your own personal resources.

When mediation or ADR is concluded, you will be notified of the result and the number of days remaining to request an appeal, if applicable. If you request mediation or ADR prior to filing for an appeal, the number of days you will have to request an appeal will be 30 days from the date you received notice of the adverse decision minus the number of days you took to request mediation. Mediation or ADR does not take the place of, or limit your rights to, an appeal to NAD; however, an NAD appeal hearing would take place after mediation or ADR.

Remember, if you decide not to pursue mediation or ADR, you must immediately contact this office to cancel your request. Canceling your request for mediation does not affect your rights to seek an appeal with the NAD as discussed in our original decision letter.

ATTACHMENT 1-I

ATTACHMENT FOR NOTIFYING CUSTOMERS THAT MEDIATION OR ALTERNATIVE DISPUTE RESOLUTION (ADR) DID NOT RESULT IN RESOLUTION OF ISSUES

We regret that we are unable to grant the assistance you requested or will terminate or reduce the assistance you requested. Mediation or ADR did not result in resolution of the issues.

If you believe the decision or facts used in the case are in error, you may pursue your right to an appeal by the NAD. ***There is no cost for an appeal.*** The number of days in which you have to request an appeal depends upon whether you previously requested an appeal to NAD prior to entering into mediation or ADR. ***Please follow the guidance in the paragraph indicated with an "X".***

___ You requested an appeal hearing to NAD prior to entering into mediation or ADR. You must write to the Assistant Director of NAD at the following address to schedule the appeal hearing:

NAD Assistant Director address:

___ You did not request an appeal hearing to NAD prior to entering into mediation or ADR. You must write to the Assistant Director of NAD at the following address. Your request must be postmarked within ____ days from receipt of this letter. This represents the difference between 30 days and the number of days you took after the adverse decision to request mediation or ADR. Use the NAD Assistant Director address is listed above.

Information regarding appeals

You have the right to an appeal hearing within 45 days of NAD's receipt of your request. You or your representative or counsel may contact this office anytime during regular office hours in the 10 days following the receipt of your request for a hearing to examine or copy relevant non-confidential material in your file. Photocopies will be provided to you. Your representative or counsel should have your written authorization to represent you and review your file.

The NAD Hearing Officer will contact you regarding a time and place for the hearing. You may also request a teleconference hearing in lieu of the face-to-face hearing. At any time before the scheduled hearing you may also request that the Hearing Officer make a decision without a hearing. If you do, the Hearing Officer's decision will be based on the Rural Development file,

any written statements or evidence you may provide, and any additional information the Hearing Officer thinks necessary.

The Federal ECOA prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is the Federal Trade Commission. If a person believes he or she was denied assistance in violation of this law, they should contact the Federal Trade Commission, Washington, D.C. 20580

The Fair Housing Act prohibits discrimination in real estate related transactions, or in the terms of conditions of such a transaction, race, color, religion, sex, disability, familial status, or national origin. The federal agency that is responsible for enforcing this law is the U. S. Department of Housing and Urban Development. If a person believes that they have been discriminated against in violation of this law, they should contact the U. S. Department of Housing and Urban Development, Washington, D.C. 20410 or call (800) 669-9777.

cc: NAD Assistant Director

CHAPTER 2: MULTI-FAMILY HOUSING PROGRAMS AND THE ORIGINATION PROCESS

2.1 INTRODUCTION

This chapter introduces the key aspects of the Section 515 Rural Rental Housing and Section 514/516 Farm Labor Housing programs. Under these programs, the Agency provides direct loans and grants to support the development of affordable rental housing that serves rural areas. The Section 538 Multi-Family Housing Guarantee program—the Agency's third Multi-Family Housing program that guarantees loans made by private lenders—is covered in a separate regulation [*7 CFR Part 3565*] and handbook (HB-1-3565).

This chapter presents an overview of the framework that the Agency uses in soliciting applications for funds and selecting projects to receive loans or grants. The framework provides Loan Processing Staff with a consistent basis for attracting and funding project applications that further the objectives of the program and meet applicable Federal requirements.

Section 1 introduces the types of loans and other forms of assistance available through the Section 515 program and the Agency's objectives in providing this assistance. Section 2 describes the loans, grants, and other assistance available to increase the supply of affordable housing specifically targeted toward farm labor. The chapter concludes with Section 3, which outlines the major actions and decisions in the loan origination process, as well as the key parties involved.

SECTION 1: SECTION 515 PROGRAM

2.2 OVERVIEW

The Section 515 program offers direct loans to eligible borrowers to provide economically designed and constructed housing and related facilities for very low-, low-, and moderate-income households; elderly households; and persons with disabilities living in rural areas. This section of the chapter describes:

- The types of projects allowed;
- The types of loans available;
- Rental assistance available from the Agency; and
- The Agency's preference for leveraged projects.

2.3 TYPES OF PROJECTS

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

- Family projects;
- Elderly projects;
- Congregate projects;
- Group homes; and
- Rural Cooperative housing.

In addition, Section 515 loans can be used to finance rural cooperative housing projects. The Agency also allows mixed projects that contain both family and elderly units.

The housing must be economical and must not include elaborate features, but must be adequate to meet tenants' needs. The project should be of average quality and cost. With the exception of Off-Farm Labor Housing, all projects must be developed in locations in designated places as described in Chapter 3.

A. Family Projects

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

B. Elderly Projects

An elderly project is a rental property that is developed for occupancy solely by eligible elderly households, which include a tenant, or cotenant who is disabled, or age 62 and older. Persons with disabilities and their families are permitted to live in elderly housing.

C. Congregate Projects

Congregate projects are rental properties developed for occupancy by eligible very low-, low-, and moderate-income elderly households, individuals with disabilities, and families who require some supervision and central services but are otherwise able to care for themselves. Congregate projects consist of private apartments and central dining facilities in which a number of allowable pre-established services are provided to tenants. These projects are <u>not</u> designed to be nursing homes and, therefore, are not allowed to pay for the cost of medical- or healthcare-related services.

D. Group Homes

A group home is housing that is occupied by eligible very low-, low-, and moderate-income elderly persons or individuals with disabilities who share living space within a rental unit and in which a resident assistant may be required.

E. Rural Cooperative Housing

Section 515 loans may be used to finance rural cooperative housing projects operated by nonprofit consumer cooperatives for the benefit of eligible very low-, low-, and moderate-income members who will own and manage the development.

F. Mixed Projects

Mixed projects are properties developed with a portion of the units designated as family units and the remainder of the units established as elderly units. At the time the project is developed, the borrower must designate the units that will be operated as family units and those that will be operated as elderly units.

2.4 TYPES OF LOANS

The rules governing the origination of Section 515 loans differ slightly, depending upon the type of loan being made. The types of loans available under Section 515 include:

- Initial loans;
- Subsequent loans; and
- Assumed loans.

Loans are only made to projects that further the program's objectives and comply with applicable Agency requirements. Eligible uses of loan funds and the conditions that borrowers must meet to be eligible are discussed in Chapter 4.

A. Initial Loans

Initial loans are normally made to build new projects. However, the Agency does make initial loans for the purchase and rehabilitation of existing properties when it is in the Agency's best interest.

The interest rate for these loans is set at the note rate established in RD Instruction 440.1. The Agency then provides interest credit assistance, which reduces the effective interest rate to 1 percent.[1] The amount of interest credit received depends on the income

[1] Some existing projects do not receive interest credit, while others receive interest credit that reduces the interest rate to 3 percent. However, all initial loans made by the Agency following the publication of this handbook will receive interest credit as described here.

of the eligible tenants living in the complex. The administration of interest credit is covered in HB-2-3560 and HB-3-3560.

The Agency establishes the term of these loans to correspond to the expected useful life of the property. The maximum term is 30 years with an amortization period not to exceed 50 years. Generally, initial loans are made for a term of 30 years, with the exception properties where the expected useful life is shorter (e.g., manufactured housing).

B. Subsequent Loans

Subsequent loans can be issued during the term of an Agency loan to help an existing borrower pay for repairs or improvements to the property, or in conjunction with the transfer of a property where the purchaser is assuming the initial Agency loan. The key differences between processing requirements for subsequent and initial Section 515 loans are discussed in Chapter 10. Guidance regarding the requirements and procedures for processing project transfers is covered in HB-3-3560. Subsequent loans may also be used to finance equity to avert prepayment of the project.

Subsequent loans to add units to an existing project will be processed in the same way initial loans are and will be subject to the Notice of Funding Availability (NOFA) requirements. However, subsequent loans to add units for the disabled are not subject to the NOFA requirements.

C. Assumed Loans

Section 515 loans may be assumed in conjunction with the transfer of ownership of the property. The terms and conditions of the assumption depend upon the needs of the project at the time of the transfer.

1. New Rates and Terms Assumption

Most assumptions of Section 515 loans are new rates and terms assumption—that is, the purchaser assumes responsibility for all or a portion of the remaining debt. To conserve the Agency's budgetary resources, the transaction does not involve paying off the old loan and issuing a new initial loan. Instead, the purchaser assumes the outstanding debt, which is reamortized at new rates and terms. Such assumptions are used when the purchaser will experience financial difficulties under the terms of the initial loan or when a change in rates and terms is necessary to facilitate the transfer.

2. Same Rates and Terms Assumption

Transfers may also take place in conjunction with a same rates and terms assumption. Under this type of assumption, the existing note terms, including the interest rate and the remaining repayment period, do not change.

2.5 PREFERENCE FOR PROJECTS THAT LEVERAGE OTHER FUNDS

To maximize the number of units produced with Section 515 loan funds, the Agency gives preference to project applications for new loans that leverage other funds, thereby reducing the amount of Section 515 loan funds needed to develop the project. The greater the leveraging proposed in a project application, the greater the preference for funding. Examples of funds that count as leveraged funds include borrower resources beyond the minimum required amount, equity generated by the sale of low-income housing tax credits (LIHTCs), a second loan from another lender, or a grant from a State or local public agency or other source.

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SECTION 2: SECTION 514/516 PROGRAM

2.6 TYPES OF PROJECTS

The Section 514/516 Farm Labor Housing program provides funds to support the development of housing for farm labor. Section 514/516 assistance differs from the Section 515 loans in the following ways:

- The objective of the program is to provide housing for farmworkers;
- There are no rural restrictions; and
- Agency grants are available to support the development of these projects.

Section 514/516 assistance may be used for Off-Farm Labor Housing projects. On-Farm Labor Housing projects may receive only 514 assistance, they are not eligible for grants (516). Section 514 assistance may be used in conjunction with Federal LIHTCs.

A. Off-Farm Labor Housing

The Agency is authorized to make loans and grants for financing off-farm labor housing to broad-based nonprofit organizations; nonprofit organizations of farmworkers; Federally recognized Indian tribes, agencies, or political subdivisions of State or local Governments; and public agencies (such as local housing authorities). Section 514 loans can be made to limited partnerships in which the general partner is a nonprofit entity.

B. On-Farm Labor Housing

On-Farm Labor Housing is designed to provide adequate housing for farmworkers involved in a specific farming operation. Individual farmers, family farm corporations or partnerships, or associations of farmers may develop these projects but must operate them on a nonprofit basis. To qualify for occupancy, an individual or a household must simply be employed as part of the farming operation. There is no income restriction governing occupancy; however, immediate family members of individuals with an ownership interest in the farm are prohibited from living in this housing at the property.

2.7 LOANS AND GRANTS

A. Farm Labor Housing Loans

Section 514 loans for Farm Labor Housing projects are very similar to Section 515 loans, but differ in two important ways:

- These loans carry a 1 percent effective interest rate (i.e., there is no interest credit); and
- The maximum term for these loans is 33 years.

These loans can be used to finance either Off-Farm or On-Farm Labor Housing projects.

At one time, loans for both types of projects were processed on a first-come, first-served basis. Today, lending decisions regarding loans for Off-Farm Labor Housing projects are handled through a competitive NOFA process, while loans for On-Farm Labor Housing projects are still processed in the order they are received. Chapter 12 provides more detailed information about the origination process for these loans.

B. Farm Labor Housing Grants

Section 516 grants may only be used to support the development of Off-Farm Labor Housing projects. These grants may be used for the same purposes as Section 514 loans when there is reasonable doubt that the housing would not be affordable to prospective farmworkers without the grant. Chapter 12 provides more information about the origination process for these grants.

2.8 PREFERENCE FOR PROJECTS THAT LEVERAGE OTHER FUNDS

Like the Section 515 program, the Agency gives preference to applications for Off-Farm Labor Housing projects that leverage other sources of funds. There is no leveraging preference for On-Farm Labor Housing applications.

SECTION 3: SECTION 521 PROGRAM

2.9 OVERVIEW

The Section 521 Rental Assistance program provides assistance to individual residents of Agency financed multi-family projects. Rent subsidies under the Rental Assistance program ensure that elderly, disabled, and low-income residents of multi-family housing projects financed by RHS are able to afford rent payments. With the help of the Rental Assistance Program, a qualified applicant/tenant pays no more than 30% of his or her income for housing.

Residents of multi-family housing projects built both under the Rural Rental Housing Program (Section 515) and the Farm Labor Housing Program (Section 514) are eligible to apply for the Rental Assistance Program. Not all residents of RHS-financed housing developments receive rental assistance.

The Agency and the project owner execute a contract in which the Agency commits payments on behalf of tenants in a designated number of the units. Both the Agency and the project owner agree to be bound by all applicable Agency regulations. The contract becomes effective on the first day of the month in which it is executed (additional units may be covered if funds are available and an additional contract is executed). The agreement may be renewed as many times as funds are made available. State Directors may transfer unused and unneeded contracts or portions of contracts to other projects.

2.10 SECTION 515 & 514/516 PROGRAMS.

A. Section 515

Owners of Section 515 projects located in areas where prospective applicants are likely to be overburdened by rent or where existing tenants are already over-burdened can apply for rental assistance administered by the Agency.

B. Section 514/516

Off-Farm Labor Housing projects may also apply for rental assistance administered by the Agency. The requirements for obtaining rental assistance are the same as for Section 515 projects. Operating assistance may be used in lieu of tenant-specific rental assistance in off-farm labor housing projects financed under Section 514 or Section 516 that serve migrant farmworkers. On-Farm Labor Housing projects are not eligible for rental assistance.

SECTION 4: OVERVIEW OF LOAN AND GRANT ORIGINATION

2.11 THE LOAN ORIGINATION PROCESS AND THIS HANDBOOK

Because most of the initial Multi-Family Housing loans made by the Agency finance Section 515 rental projects, this handbook first presents the loan origination requirements and

procedures for these loans. The loan origination process for these projects also serves as a basis for the Agency's lending decisions for other types of loans. Next, the handbook covers the process for making subsequent loans to these projects. The handbook then discusses how the loan origination process differs for loans to special types of Section 515 projects—congregate housing, group homes, projects using manufactured housing, and cooperative projects. Finally, the handbook presents the origination process for Section 514/516 loans and grants for farm labor housing projects.

2.12 KEY STEPS IN THE ORIGINATION PROCESS

A. Section 515 Loan Origination Process

1. Family and Elderly Projects

Processing Steps

This section outlines the steps involved in processing Section 515 and Section 514/516 loans and grants. It is intended to provide a conceptual overview of the process. The detail needed to fully understand each step follows in later chapters.

The Agency uses a competitive process to select project proposals that will be invited to apply for loans. The Agency's competitive process involves a NOFA that requests project proposals that meet the established eligibility requirements and selection criteria. Selected applications that are determined to be both eligible and feasible are approved for a loan and the applicants proceed with construction and loan closing. Project lease-up generally begins once construction and closing are completed.

The NOFA is published annually once the Agency has received the appropriation for the program and determined the available funding. Exhibit 2-1 outlines the key steps in the Section 515 loan origination process. Chapters 3 through 11 provide specific guidance regarding the Agency's requirements and procedures for originating Section 515 loans for these projects.

Exhibit 2-1

Key Steps in the Origination Process for Section 515 Loans

Stage 1 — NOFA and Initial Application Process

Loan Applications

- Loan Processing Staff develop list of designated places.
- Agency publishes NOFA.
- Applicants submit initial applications within required timeframes.
- Loan Processing Staff perform preliminary eligibility evaluation of initial applications and rank them using scoring criteria from the NOFA.
- Loan Processing Staff forward a list of eligible and feasible proposals to the National Office.
- National Office notifies State Loan Processing Staff of applications that scored high enough for funding in the national ranking to warrant further processing.
- Loan Processing Staff return to applicants low-scoring project proposals that will not be considered for a loan.
- Loan Processing Staff conduct underwriting analysis of initial applications.
- Loan Processing Staff reject initial applications that do not meet their underwriting standards.
- Loan Processing Staff invite the applicants who had submitted backup project proposals to submit applications (if needed).
- Loan Processing Staff invite applicants with top-scoring initial applications that meet Agency underwriting standards to submit final applications.

Final Applications

- Applicants submit final applications within 30 days.
- Loan Processing Staff review final applications to confirm eligibility and project feasibility and final documents still outstanding.
- State Director* or delegated Loan Approval Official review and approve applications determined to be eligible and feasible. Applications that are not eligible or feasible are rejected.

Loan Closing and Construction

Project Lease-Up

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* Review and approval may also be performed by a Loan Approval Official designated by the State Director.

2. Congregate Housing and Group Homes

Loan Processing Staff review and rank initial applications for congregate housing together with all other Section 515 proposals submitted in response to the NOFA. After its Loan Processing Staff have reviewed the initial application for eligibility and

feasibility, the Field Office will forward the application (if it ranks high enough) with its recommendation to the National Office for review. If the National Office concurs with the recommendation of the Field Office, the applicant is invited to submit a final application.

Applications for loans to finance group home projects are handled in the NOFA process. Field Offices may process applications after contacting the National Office to confirm that such funding is available. Initial applications approved by the Field Office are forwarded to the National Office for review and concurrence. Final applications are processed much like those for other projects.

Chapter 11 provides specific guidance regarding the requirements and procedures for making loans to these projects.

3. Cooperative Projects

Applications for Section 515 loans to finance cooperatives are processed on a first-come, first-served basis from the National Office reserve NOFA. Applications requesting loans for cooperatives are forwarded to the National Office for processing. Guidance regarding the loan origination process is covered in Chapter 11.

B. Section 514/516 Loan and Grant Origination Process

1. Off-Farm Labor Housing Projects

The loan/grant origination process for Off-Farm Labor Housing parallels the procedures for Section 515 loans with a few key differences. The Farm Labor Housing NOFA will be published by the Agency at approximately the same time as the Section 515 NOFA. However, interested parties will have 60 days to respond, which is 15 days longer than for Section 515 loans.

Once the Loan Processing Staff have ranked the proposals in their State, the top-scoring proposals will be submitted to the National Office for national ranking. National Office Staff will notify Field Offices of the proposals that scored high enough nationally to be selected for further processing. At this point, Field Office Staff will invite NOFA respondents with top-scoring initial applications to submit final applications. The procedures for processing Off-Farm Labor Housing loan applications follow the general Section 515 procedures.

2. On-Farm Labor Housing Projects

Interested parties may submit applications for Section 514 loans for On-Farm Labor Housing projects at any time sufficient funds are available for the proposed projects. The procedures for reviewing and approving initial and final applications parallel the procedures in Chapters 4 and 5.

2.13 LOAN ORIGINATION FOR SECTION 515 PROJECTS

Chapters 3 through 11 specifically address the loan origination requirements and procedures for Section 515 projects.

A. Property Requirements (Chapter 3)

To qualify for a Section 515 loan from the Agency, proposed projects must comply with the property requirements established in 7 CFR 3560.57 through 7 CFR 3560.59. Specifically, these requirements address:

- Location;
- Site conditions;
- Project design; and
- Environmental reviews.

These requirements ensure that proposed projects fulfill the program's objectives; provide adequate, modest-quality housing for tenants; and protect the security of the Agency's loan.

This information is presented early in the handbook because prospective applicants for funding need to understand these requirements before they can prepare an application. Loan Processing Staff should refer to this chapter and the corresponding sections of the regulation when responding to inquiries.

B. NOFA and Initial Application Process – Stage 1 (Chapter 4)

Each year, the process of making Section 515 loans begins with the Agency's publication of the NOFA requesting project proposals. Potential loan applicants submit project proposals to Field Offices in response to the criteria and priorities established in the NOFA. Loan Processing Staff review the proposals to make an initial eligibility determination and rank the proposals according to the scoring criteria in the NOFA. The National Office will rank all requests nationwide and will notify all States of applications that scored high enough nationally for funding and further processing. Proposals determined to be ineligible are rejected, and low-scoring proposals with no chance of funding are returned.

After reviewing project proposals submitted in response to the NOFA, Loan Processing Staff will then invite the applicants who had submitted top-scoring proposals to submit applications. Applications provide more detailed information about the applicant and the proposed project. Once applications are received, State Loan Processing Staff will review them using the Agency's underwriting standards to evaluate the eligibility and feasibility of the proposed project. The underwriting analysis of initial applications will examine:

- Loan applicant eligibility;
- Project eligibility;
- Project financial feasibility;
- Environmental impact;
- Reasonableness of project costs; and
- Security available for the Agency loan.

Loan applications that meet the Agency's underwriting standards will continue for further processing. Applications that fail to meet the standards will be rejected. Loan Processing Staff will extend invitations for applications from those who had submitted backup proposals in the event of any applications being rejected.

C. Processing Final Applications – Stage 2 (Chapter 5)

Applications that pass the initial application stage will be invited to submit final applications. This chapter explains how the Agency makes a final determination about the feasibility of the project, establishes that the applicant has adequate systems to successfully develop and operate the project under the program, and sets the terms of Agency financing. The applicant also signs the loan agreement or resolution, as applicable, which becomes their legal obligation to comply with all Agency program requirements.

D. Participation with Other Funding Sources (Chapter 6)

Because the Agency is encouraging leveraging as a way to maximize the number of units that can be produced with available loan funds, a significant number of loans involve the participation of other sources of funds and financing. The participation of parties beyond the Agency and the borrower can enhance the production of housing, but it also increases the risk to the Agency. The Agency has established additional requirements and procedures for participation loans to ensure that these projects are developed in a manner consistent with the program's objectives, that the Agency receives adequate security for its loans, and that the amount of Government assistance to these projects is no more than necessary for the project to be feasible.

E. Security Requirements (Chapter 7)

As a lender, the Agency needs to ensure that it obtains adequate security to protect its investment in the event the project fails. The requirements and procedures regarding security for the Agency's loan are designed to provide reasonable assurance that the Agency will be able to recoup the loan principle if the project fails.

F. Loan Closing and Project Lease-Up (Chapter 8)

Once the Agency has approved a loan application, Loan Processing Staff and the applicant will prepare for loan closing and construction. The process depends on the type of construction financing obtained by the applicant. At loan closing, the transfer of property takes place, and the documents establishing the loan applicant's responsibility to repay the Agency financing and comply with the requirements of the program are executed. Once loan closing and construction are complete, the borrower begins to lease units in the property to eligible tenants in accordance with applicable program requirements.

G. Project Construction (Chapter 9)

While improvements are being made at the property, the Agency will monitor the progress of construction to confirm that the work is being performed as agreed and that the quality of work is satisfactory. This oversight ensures that the project will offer adequate housing for tenants and provide the necessary security for the Agency's loan.

H. Subsequent Loans and Loans for Final Payments (Chapter 10)

After a project is complete, there may be times when an additional loan from the Agency is required to address legitimate project needs. Under certain circumstances, the Agency will provide subsequent loans to projects to protect the interests of the Government and tenants.

I. Special Property Types (Chapter 11)

Due to differences in the nature of the projects that can be financed with Section 515 loans, the requirements and procedures for making loans to congregate housing, group homes, and rural cooperative housing differ in several important respects from those for Section 515 rural cooperative housing standard family and elderly rental projects. These differences in requirements and procedures are designed to ensure that these projects fulfill the objectives for which they were built and protect the Agency's interests.

2.14 FARM LABOR HOUSING LOANS AND GRANTS (CHAPTER 12)

The requirements and procedures for originating Farm Labor Housing loans and grants closely parallel those for Section 515 loans. However, there are important differences, given the purpose and nature of farm labor housing.

A. Off-Farm Labor Housing

Because the funding for farm labor housing is separate and distinct from Section 515 funding, the Agency publishes a separate NOFA requesting proposals for Off-Farm Labor Housing projects. To facilitate the fair and equitable allocation of available funds for these projects, Loan Processing Staff submit the top-ranked project proposals to the National Office to be ranked nationally. Based on this national ranking, the National Office will identify those projects that will be invited to submit applications. In making

this determination, the National Office will consider geographic location, as well as point score. Field Offices will then be informed of the applicants who had submitted project proposals that should be invited to submit applications for loans and grants (if needed). After this point, the process proceeds on a parallel track to the Section 515 application process using the procedures presented in Chapters 4 and 5.

B. On-Farm Labor Housing

Given the Agency's program priorities, the amount of funding allocated for On-Farm Labor Housing is usually limited. For this reason, On-Farm Labor Housing loan applications are processed on a first-come, first-served basis. When Loan Processing Staff receive an inquiry regarding On-Farm Labor Housing financing, the State Office should contact the National Office to determine whether loan funds are potentially available. If loan funds are available, the Loan Origination Office can accept an application from the prospective borrower. Loan Processing Staff will process initial applications and final applications using the same basic procedures presented in Chapters 4 and 5.

CHAPTER 3: PROPERTY REQUIREMENTS

3.1 INTRODUCTION

Multi-Family Housing projects are subject to a number of property requirements. These requirements serve to establish standards for the quality of the housing provided under the program. The Agency's goal is to develop decent, safe, and sanitary housing for program-eligible residents in eligible rural areas at a reasonable cost to the Agency and the taxpayer in needy areas of suitable communities.

This chapter describes the requirements that govern the designation of places where the Agency will focus its loan activity and that establish the standards by which the projects will be developed. Section 1 describes designated places and how they are established. Section 2 describes site requirements, including the site location, site standards, and density, and civil rights. Section 3 describes environmental requirements, and Section 4 describes design requirements, including design standards, residential design, economical development costs, and accessibility.

SECTION 1: DESIGNATED PLACES *[7 CFR 3560.57]*

3.2 OVERVIEW

In establishing the Multi-Family Housing programs, lawmakers included a provision for targeting assistance to the geographic areas that most need it. To meet this requirement, the Agency identifies certain areas as "designated places," which are rural areas where development of a rental project will further the program's goals.

Every year, the State Office must submit a list of designated places to the National Office. Only project proposals located in the areas on this list are eligible to compete for funding under the Notice of Funding Availability (NOFA). The following paragraphs explain how to establish and maintain this list.

3.3 ESTABLISHING A DESIGNATED PLACE LIST

The National Office will send the State Office a list of places in accordance with the following criteria. The area must qualify as a rural area; have a demonstrated lack of mortgage credit; and have a demonstrated need for multi-family housing based on the incidence of poverty, the existence of substandard housing, and the lack of affordable housing (see 7 CFR 3560.57 for more information on these factors).

A. Requirements for Establishing Designated Places

The State Office will select designated places from the ranked list provided by the National Office. In making the selection, the following requirements must be met:

- The designated places must be chosen in rank order.

- The list may not include places with fewer than 250 households unless the State has requested and been granted by the Administrator a Statewide exception. For Indian reservations, at least 250 households must be located within the boundaries of the reservation to be eligible for the list.

- The list may include up to 10 percent of the State's total eligible rural places, except in States with fewer than 100 eligible rural places, the list of designated places must include 10 eligible places if available. The National Office may authorize states to select up to 20 percent of eligible rural places if funding levels warrant.

- The State has some discretion to add additional places to create geographic diversity on the list if an established geographic region or district is not represented on the list. Each place chosen for geographic diversity must be the top-ranked place in its region or district.

- The State may add places of high need to this list (above 10 percent or 10 places). High need areas are defined as:

  ◊ Empowerment Zones (EZs), Enterprise Communities (ECs), and Rural Economic and Area Partnership (REAP) communities;

  ◊ Places in the State Consolidated Plan or similar State plan or needs assessment report that have received concurrence from the National Office;

  ◊ Indian reservations or communities in the boundaries of tribal-allotted or trust land; or

  ◊ Places that have a special need, as identified by the State Director, which require National Office concurrence.

- Places with "build-and-fill" conditions must be deferred, including "high-need" places. These places cannot be considered for funds until the build-and-fill condition is gone. Places with build-and-fill conditions must be reviewed annually and returned to the list when the build-and-fill condition no longer exists. Areas with build-and-fill conditions include areas where:

  ◊ The Agency has selected another loan request for processing.

  ◊ A previously authorized Agency, the Department of Housing and Urban Development (HUD), or similarly assisted housing project (including tax credit projects) has not been completed or reached its projected occupancy level.

◊ An existing assisted housing project is experiencing high vacancy levels. State Offices will establish a written policy regarding acceptable vacancy levels.

◊ A Special Note Rent (SNR) or similar servicing tool is pending or in effect at another project.

◊ The need in the market area is for additional rental subsidy, not for additional housing units.

- Exceptions to build-and-fill restrictions can be made for:

  ◊ Group homes proposed for persons with disabilities where existing housing is insufficient for their needs or unavailable; or

  ◊ In unusual circumstances in which there is a compelling need for additional housing, which requires National Office concurrence.

B. Procedures for Establishing the Designated Place List

Each State Office will take the following steps to establish a designated place list:

- **Step 1.** Upon receipt of the ranked list of places from the National Office, remove all ineligible places from the list (for example, places that no longer meet the rural area definition).

- **Step 2.** Establish the number of places to be put on this list—up to 10 percent of the total eligible places on this list, or <u>at least</u> 10 places in States with fewer than 100 eligible places.

- **Step 3.** Remove all places with fewer than 250 eligible households from the list.

- **Step 4.** Select the appropriate number of places (as established in Step 2) in rank order from the list.

- **Step 5.** Add any of the following, as appropriate, to the list:

  ◊ **Geographic diversity.** If any region or district is not represented on the list, add the highest-ranked place from that region or district to the list.

  ◊ **High-need areas.** If an area is deemed to be high need (EZ, EC, REAP, Indian reservation, or other special need as documented in a comprehensive plan or similar document that has National Office concurrence), it may be added to the list.

- **Step 6.** Defer any places with build-and-fill conditions.

- **Step 7.** Submit the list to the National Office by October 1, or as otherwise notified by the National Office. The list must be provided in the format shown in **Attachment 3-C.**

- **Step 8.** If the National Office does not notify the State Office of any problems, consider the list approved after 30 days. The National Office will announce in the NOFA published in the *Federal Register* that the lists are available from the State Offices.

C. Updating the Designated Place List

Once established, the designated place list is used for 3 years. However, the list must be updated annually to account for changes in local conditions.

- **Step 1.** Defer all places that received Agency funding for a project or that have otherwise developed build-and-fill conditions.

- **Step 2.** Remove any places that have become ineligible (for example, areas that no longer qualify as rural areas).

- **Step 3.** Reinstate any places that no longer have build-and-fill conditions.

Note that additional places are not routinely added to the list to replace the places taken from the list. (In some cases, for example when a State is experiencing high leveraging activity, the State may request permission to add to the list). Consequently when the original list is developed, it should have a sufficient number of places on it to account for likely attrition over the 3-year life of the list.

D. Partnership Designated Place List

States with active leveraging programs and formal partnership agreements with their State agencies may establish partnership designated place lists. These lists consist of places identified by the partnerships as high-need areas. (These high-need areas must be designated based on criteria consistent with the Agency's and the State's authorizing statutes.) The partnership agreement and partnership designated place list must have National Office concurrence.

SECTION 2: SITE REQUIREMENTS *[7 CFR 3560.58]*

3.4 OVERVIEW

Finding an appropriate site is the earliest important decision made by an applicant. Selection of the site is solely the applicant's responsibility, and the Agency will evaluate the proposed site as part of a total project proposal. The Loan Originator may offer comments about the perceived adequacy of the site at the applicant's request, but the applicant holds full responsibility for the selection of an acceptable site.

This section provides guidance on site requirements including site location, standards and density, and civil rights. Applicants will provide documentation in their proposals that these requirements have been met. However, a site visit is essential to evaluating the appropriateness of the site. **Attachment 4-E** to Chapter 4 provides a site evaluation checklist to the Loan Originators in their site evaluation during the site visit.

3.5 SITE LOCATION

Multi-Family Housing properties must be located in areas that are appropriate for residential housing and represent reasonable real estate investments for the Agency. To meet this requirement, the area where the site is located must be a residential area in a designated place that provides adequate services and facilities.

A. Designated Place

Sites must be located within the boundaries of a designated place to be considered for a loan. Loan requests must be checked against the list of designated places to make sure that all loans are made in designated places.

B. Residential Area

Multi-Family Housing projects must be in residential areas as part of an established rural community. The Agency defines a "residential area" as an area where at least half of the neighboring properties are developed with inhabited residential structures or are zoned for residential occupancy. The Loan Originator should confirm that these requirements are met during the site visit. An exception can be granted by the Agency for an existing structure in a downtown business area of a rural town as described in paragraph C below.

C. Downtown Business Area

A project may be located in a downtown business area only if the project is part of a comprehensive strategy for meeting a community's development and housing needs. In this event, the applicant must be able to demonstrate that the proposed project fits in the community's comprehensive strategy. In addition, the National Office must concur with the proposal before the Loan Processing Staff authorize the applicant to submit a final application.

In the project proposal, the applicant must show that the following conditions are met:

- The local governing body has adopted, through resolution or other official act, a community development and housing plan that addresses neighborhood revitalization, housing, and economic development. The project proposal must include documentation from the local governing body identifying the proposed site or structure as an essential component of the plan.

- Public and private resources will be available for completing other critical parts of the community development and housing plan.

D. Public Facilities and Services

Sites must have adequate necessary facilities and services to support the needs of the tenants. During the site visit, the Loan Originator must check that the following necessary facilities and services exist or will be provided and that they are close and convenient to the site:

- Necessary facilities include schools, hospitals, and water and sewer systems;

- Necessary services include shopping, medical, and pharmaceutical services; and

- The "close-and-convenient" standard may differ by area based on local transportation, population density, and type of project proposed (e.g., public transportation may be more important to elderly projects than to family property). Factors to consider include available transportation, traffic patterns, road conditions, and terrain.

E. Desirable Areas

The Agency encourages applicants to propose projects located in desirable areas where residents are more likely to find satisfactory living conditions and the value of the Agency's investment is well protected. Sites in industrial areas or declining neighborhoods or sites that are adjacent to high-volume train tracks, grain elevators, gas stations, car lots, or other such locations that are likely to affect the value of the property or the quality of life of residents may not be acceptable.

F. Historic Places

Proposed projects that have the potential to affect properties that are listed or are eligible to be listed on the National Register of Historic Places (RD Instructions 1924-C, 1901-F, and 1940-G) are subject to the requirements of the National Historic Preservation Act. Compliance will be evidenced in the environmental review in accordance with Section 3.

3.6 SITE STANDARDS

Planning for development must take into consideration topography, soils, climate, adjacent land use, environmental impacts, energy efficiency, aesthetic and cultural values, public and private services, and housing and social conditions.

The selection and planned development of a site is the responsibility of the applicant. The Agency must review the plans for compliance with Agency site standards. The adequacy of a site is measured against two key standards:

Technical Assistance on Site Standards

Applicants may find technical services to help with this planning from the State's Soil Conservation Services and Cooperative Extension Services.

Technical services, such as architectural, engineering, land survey, or site planning services, must be performed by professionals who are qualified and authorized to provide such services in the State where the project is developed.

- **Appropriateness for residential development.** Is this site appropriate for residential development? Is it accessible? Does it have adequate infrastructure? Is it free of undesirable conditions?

- **Reasonable site development costs.** Can the site be developed for a reasonable cost? Does this site require minimal work to accommodate grading, drainage, and other development requirements?

Agency guidance for site planning is provided in RD Instruction 1924-C, and is briefly summarized in the following paragraphs.

A. Applicable Codes

All Multi-Family Housing projects must observe all applicable Federal, State, and local codes, laws, ordinances, zoning requirements, and regulations on health and safety standards. Where inspections are required to meet these codes, the applicant should include written assurance of the responsible public authority stating compliance with these codes.

B. Adequate Utilities and Infrastructure

Sites must have infrastructure and utilities that are adequate for the needs of the site and that meet all local requirements.

- The facilities must be safe, economic, energy efficient, and dependable.

- Ideally, the utilities should be publicly owned. If the project will operate its own system, justification must be included in the application.

The applicant's proposal should address all of the items listed below, stating whether the specific utility is publicly, privately, or community-owned and providing any other relevant information:

- **Roads.** The site must be accessible by a public road. The roads must be paved or all-weather unless the Agency grants an exception.

- **Electrical service to the site.** The applicant must check with the power supplier to assure that there is adequate electrical service available to meet the needs of the proposed site. Underground services are preferred.

- **Gas service.** Gas distribution facilities, if necessary, must be installed according to local requirements. Gas service must be dependable and adequate for the needs of the site.

- **Water and wastewater disposal.** Water and wastewater disposal are discussed in paragraph C below.

C. Water and Wastewater Disposal

The site must have water and wastewater disposal systems, whether individual, central, or privately owned and operated, that meet the applicable water and wastewater disposal system requirements of RD Instruction 1924-C. There must be assurance of continuous service at reasonable rates for central water and wastewater disposal systems. A system owned or operated by a private party must have a legally irrevocable agreement that allows interested third parties to enforce the obligation.

- Central systems are preferable. When central systems are unavailable, the Agency will evaluate the proposed individual system for economic feasibility and potential impact on the environment and the project operating budget. Information on evaluation and design of individual water and wastewater systems is available from the Environmental Protection Agency (EPA). Multi-Family Housing developments of more than 25 units with individual systems must have National Office concurrence (see RD Instruction 1924-C for guidance on obtaining concurrence). Private companies usually inspect individual wells and septic system drainfields; these companies provide written results of the inspection.

- In addition, the responsible local or State regulatory agency must verify, in writing, that the privately owned water and wastewater disposal systems comply with the Safe Drinking Water Act and the Clean Water Act (33 U.S.C. 1341), respectively. Inspections are not required on public water and wastewater disposal systems.

- Sites that are not presently served by a central system but are scheduled for tie-in to the central system within 2 years should have all lines installed during the initial construction. Such sites must have an approved interim water supply or wastewater disposal system.

D. Grading and Drainage

Soil and geological conditions must be suitable for the type of construction proposed. In questionable and unserved areas, the applicant must provide an engineering report with supporting data to identify all pertinent subsurface conditions that could adversely affect the structure and show proposed solutions.

- Grading will promote drainage of surface water away from buildings and foundations, minimize earth settlement and erosion, and ensure that drainage from adjacent properties does not create problems on the site.

- Generally, ideal grading is 4 to 5 percent. Less grading does not allow for drainage, while more slope adds costs to the development of the property. However, the Agency recognizes that ideal grading is not available in all areas. Site Approval Officials will use their best judgment in site approval based on other available properties and the general topography in the area.

- Sites requiring extensive earthwork, cuts, and fills must be designed by a professional engineer. When topography requires fills or extensive earthwork to support building structures and foundation, fill must be controlled, and all work must be designed, supervised, and tested by a qualified soils engineer.

- All slopes must be protected from erosion by planting or other means.

- Storm water systems must be designed to consider property protection at the site and at the drainage basin level.

E. Size and Shape

The size and shape of a site determines if there is enough room for the proposed units, as well as walks, parking, any onsite septic system, and other site improvements. The size should be adequate to support all proposed work and, generally, sites should be close to square in shape, as an elongated site may restrict the number, orientation, and layout of buildings and amenities.

F. Noncontiguous Sites

In some cases, projects may involve noncontiguous sites. Note that the development of noncontiguous sites involves complexities and costs that do not exist for single sites.

- Although environmental reviews may have to be performed for every site, they may be combined into a single report.

- Coordination of construction on separate sites requires extra time and labor and leads to additional costs.

- Management and maintenance of buildings on separate sites create additional costs of operation.

G. Undesirable Physical Conditions

Sites must not have undesirable physical conditions that create hazards or unnecessary development costs. Examples of such conditions include:

- Poor soil conditions that increase development costs;
- Noise from nearby roads, airports, or factories that create unacceptable residential conditions; and
- Pollution from nearby facilities or crop spraying that creates hazardous health conditions.

3.7 SITE DENSITY

Acceptable density standards will vary by area and local preferences. Because of these differences, program rules do not provide specific, quantifiable density standards (for example, 10 units per acre). Instead, project density should be evaluated based on the following three factors:

- **Compatibility and consistency with the community.** Site density must be similar to other developments in the community. The Multi-Family Housing project should not look more crowded than the surrounding area nor should it look more spacious.
- **Sufficient size to accommodate necessary site features.** Each site must be large enough to support the housing units, as well as adequate public space, walkways, parking, and other site amenities.
- **Impact on total development costs and project budget.** Decisions regarding the first two factors must take costs into account. How does the number of units and the cost of the site affect the per-unit investment of the Agency, and can the project budget support the proposed number of units?

3.8 CIVIL RIGHTS

It is the Agency's intent that the location of multi-family housing expands the supply of decent, safe, and sanitary housing for very low-, low- and moderate-income elderly persons, persons with disabilities, and families in a nondiscriminatory way. The location should promote a greater choice of housing opportunities in the housing market area. Housing location should also promote equal access for the inclusion of all groups without regard to their race, color, sex, national origin, religion, age, disability, or marital or familial status.

To ensure the above objective, whenever a loan is proposed to be made, and in accordance with RD Instruction 2006-P, the Agency must conduct a civil rights impact analysis

and document this analysis utilizing *Form RD 2006-38, Civil Rights Impact Analysis*. This must be done prior to any commitment of Agency resources, including issuance of *Handbook Letter 102 (3560), Letter of Conditions, Loan Approval, or Obligation of Funds.*

The civil rights impact analysis addresses two areas in particular:

- The extent to which the project serves all eligible members of the community. The Agency will examine applicant plans to market the project affirmatively and to implement nondiscriminatory occupancy policies and procedures.

- The extent to which the project location promotes equal access for the inclusion of all peoples, thereby opening up nonsegregated housing opportunities for minorities. The Agency will examine the project proposal to ensure that the project is located in an area without environmental hazards, which does not adversely impact the health and safety of the tenants. Examples include locating the project near a sewage treatment facility, train tracks, or a farm that routinely crop dusts. Not extending water or sewer lines to a minority or low-income area would be another example of an adverse civil rights impact.

The State Director, or official designated to certify on the State Director's behalf, is the certification official for analyses conducted at the State Office level. For loan approvals, this will normally be the Loan Originator. The State Civil Rights Coordinator/Manager will assist the Loan Originator on an as-needed basis and provide advice and guidance to the State Director and Field Office Staffs.

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SECTION 3: ENVIRONMENTAL REQUIREMENTS
[7 CFR 3560.59]

3.9 OVERVIEW

The Agency considers environmental quality equally with economic, social, and other factors in its program development and decisionmaking processes. The environmental review process is intended to help Agency officials make decisions that are based on an understanding of the environmental consequences of a proposed action and to take those actions that protect, restore, and enhance the environment.

This section contains a general discussion of basic environmental requirements that apply to the development of Multi-Family Housing projects that are financed by the Agency. Detailed environmental policies and procedures can be found in RD Instruction 1940-G, which contains compliance requirements for the National Environmental Policy Act of 1969 (NEPA), as well as other relevant laws, Executive Orders, and departmental regulations.

3.10 TYPES OF ENVIRONMENTAL REVIEWS

NEPA requires that Agency actions be classified into three basic categories of actions. This classification of actions provides the Agency with a starting point for beginning its environmental review. The three categories of actions are:

- Actions that normally qualify as **categorical exclusions**;
- Actions that normally require an **environmental assessment (EA)**; and
- Actions that normally require an **environmental impact statement (EIS)**.

For a complete list of housing actions and their classifications, refer to RD Instruction 1940-G. See **Attachment 3-A** for a guide to choosing an environmentally sound site.

3.11 COMPLETING ENVIRONMENTAL REVIEWS

The environmental review must examine a wide range of environmental issues, including the potential for impacting on protected reserves. Exhibit 3-1 lists the major resources to be considered.

Exhibit 3-1

Environmentally Sensitive Issues, Land Uses, and Resources

Wetlands	Coastal barriers
Floodplains	Natural landmarks
Wilderness areas	Important farmland
Wild and scenic rivers	Prime forestland
Historical and archaeological sites	Prime rangeland
Historic districts	Coastal zone management area
Sites of significance to Native Americans	Sole source aquifer recharge area
Critical habitat or endangered or threatened species	State water quality standards
	Noise impacts on sites
	Parks and designated trails

By completing the environmental review, the Agency provides the necessary documentation to demonstrate (1) compliance with requirements for the protection of the environment, including the development of practicable alternatives to either avoid or lessen adverse environmental impacts; and (2) why the potential impact on the environment is not considered to be significant so an environmental impact statement is not required.

The Agency is responsible for completing the appropriate level of environmental review in accordance with RD Instruction 1940-G. This includes the assembly and analysis of relevant material, the development and analysis of practicable alternatives and mitigation measures (as appropriate), and the development of recommendations and decisions regarding environmental impacts and environmental compliance. Applicants may be requested to provide the Agency with assistance in the completion of the environmental review, including, but not limited to, data collection, preparation of forms, investigation of alternative sites and building designs or locations, issuing public notices, and development and implementation of mitigation measures to lessen adverse environmental impacts. When the environmental review determines an effect on a resource, mitigation of the effects may be required. Where mitigation measures affect the design of structures, locations on site, or costs of the project the mitigation measures will be identified and detailed in the designs and construction documents, and reflected in cost estimates for construction.

The Agency approval official will use the environmental review documents and the recommendations of the State Environmental Coordinator (SEC) to make the Agency's final decision regarding an environmental impact determination and compliance with environmental requirements. This decision is evidenced by execution of the "Finding" on *Form 1940-22, Environmental Checklist for Categorical Exclusions*, for categorical exclusions or by execution of the Finding of No Significant Impact (FONSI) for environmental assessments.

SECs are available to provide technical guidance and to assist in problem resolution on environmental issues. Environmental problems should be referred promptly to the SEC.

3.12 FLOOD HAZARD DETERMINATION *[7 CFR 3560.58]*

Properties located in flood or mudslide prone areas designated by the Federal Emergency Management Agency (FEMA) must meet the provisions of the National Flood Insurance Act of 1968, as amended. This evaluation should be done early to allow a search for reasonable alternatives, if necessary.

- *Form FEMA 81-93, Standard Flood Hazard Determination*, documents if the property is located in a Special Flood Hazard Area (SFHA) identified by FEMA and, if so, states the availability of flood insurance for this property through FEMA's National Flood Insurance Program (NFIP). The form may be prepared by Agency Staff or by a contract service.

- Property in a SFHA is <u>not eligible</u> for Federal financial assistance unless flood insurance is purchased through the NFIP.

The information regarding floodplains on this Form FEMA 81-93 will assist in the preparation of the environmental review document. It is important to understand that the availability of flood insurance through the NFIP is not sufficient to allow a proposal to proceed on a floodplain site. The environmental review completed by the Agency must examine if there is a reasonable alternative to a proposed purchase/construction in the floodplain.

3.13 MANAGEMENT OF HAZARDOUS SUBSTANCES

The Agency must consider the management of hazardous substances, including hazardous wastes and petroleum products, from two perspectives: (1) liability under hazardous substance and hazardous waste laws; and (2) the economic risks posed by the presence of hazardous substances. Both of these issues are addressed through due diligence. Due diligence is the process of evaluating real estate, in the context of a real estate transaction for the presence of contamination from hazardous substances, hazardous wastes, or petroleum products and determining what effect, if any, such contamination has on the regulatory status and security value of the property.

A. Due Diligence Requirements

The Loan Originator will ensure that due diligence is performed for appropriate loan processing and servicing actions. For loan origination, due diligence will be performed for:

- Applications for new construction under the Section 515 and Section 514/516 housing programs;

- Applications to purchase and rehabilitate existing structures under the Section 515 and Section 514/516 programs, if the Agency becomes aware that a potential for contamination from hazardous substances, hazardous wastes, or petroleum products has been observed on the property or nearby properties or encountered through research or interviews with individuals knowledgeable about the property; and

- Applications for new or existing structures when the Agency becomes aware of possible.

The acceptable format for documentation of the Agency's due diligence efforts will be *ASTM Standard E-1528 (TSQ), Transaction Screen Questionnaire,* or similar documentation as may be adopted by the Agency in the future.

The presence and condition of underground storage tanks (USTs) will be documented as a part of performing due diligence. If the appraiser reports a possible UST, the Loan Originator is responsible for verifying that the UST is in compliance with appropriate regulatory requirements or arrangements must be made for removal of the UST (refer to RD Instruction 1940-G for further details).

To ensure that the appraisal accurately reflects a property's market value, due diligence is normally performed in conjunction with the appraisal process and the due diligence report is shared with the appraiser. The due diligence report will be attached to and considered in the environmental review of the project.

B. Phase I Environmental Site Assessment

Phase I Environmental Site Assessments, ASTM E-1527 (Phase I ESA), and Phase II Environmental Site Assessments, ASTM E-1903-97 (Phase II ESA), must be completed by a qualified environmental professional.

If a Phase I ESA reveals contamination, the applicant must provide evidence that action has been taken to remove or control the contamination, under the direction of the appropriate regulatory agency, before the Agency will consider an application involving the site. The Agency will not knowingly accept contaminated property as security without the prior approval of the State Director and, in case of sites listed on EPA's Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) National Priority List or comparable State listing, without the prior approval of the Administrator.

Determinations of the costs for remediation of site contamination will be developed in a Phase II ESA or in a combined Phase I and II ESA.

During application for financial assistance for construction the costs for Phase I or Phase II ESAs will be the applicant's responsibility. In servicing actions that may lead to foreclosure or require a determination of value, the Agency will bear the costs for these services.

C. Appraisers' Responsibilities

The Loan Originator will ensure that appraisers understand their responsibility:

- To notify the Agency when potential contamination from hazardous substances, hazardous wastes, or petroleum products has been observed on the property or

encountered through research or interviews with individuals knowledgeable about the property; and

- To notify the Agency of the existence or potential existence of regulated or unregulated USTs on the property.

D. Loan Originator and Loan Servicer Responsibilities

The Loan Originator will be responsible for making a site visit to visually assess the potential for contamination. Where the potential for contamination is determined to exist the Agency may forego preparation of the TSQ and move directly to a Phase I or Phase II ESA after consultation with the SEC.

When visiting a property, the Loan Originator should always be alert for any indication of potential contamination from hazardous substances, hazardous wastes, or petroleum products.

For loan servicing actions that require a determination of market value, the Agency will ensure that the appropriate level of due diligence is completed in conjunction with the appraisal.

Prior to any action that may result in the acquisition of security property, the Agency will ensure completion of a due diligence report. If there is contamination or potential for contamination, the Loan Approval Official and the SEC will be consulted. The Agency may forego accepting title to contaminated property if the cost of any necessary remedial response action and the amount of the debt exceeds the market value of the property. If the Agency does not choose to accept conveyance or foreclosure on security property, in whole or in part, because of a release of hazardous substances, hazardous wastes, or petroleum products, the SEC will notify the appropriate regulatory agency of its actions and provide a copy of the Agency's due diligence report.

Due diligence will be completed, or a previous due diligence report updated, prior to lease or disposal of inventory property. If a release or threatened release of hazardous substances, hazardous wastes, or petroleum products is discovered on inventory property or nearby properties, prospective leasees or purchasers will be informed and the SEC will notify the appropriate regulatory agency.

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SECTION 4: DESIGN REQUIREMENTS *[7 CFR 3560.60]*

3.14 OVERVIEW

Design requirements apply to the features, amenities, and costs of the project. The Agency's goal is to develop quality projects at a reasonable cost.

The Agency receives information about the design from the preliminary plans and specifications, the design development drawings, and the final plans and specifications. The Loan Originator will make sure that these and other appropriate architectural documents are submitted (as listed in **Attachment 3-B**) and pass them to the architect for review and approval. The architect reviews the design for compliance with requirements described in this section.

3.15 STANDARDS

Projects must meet the following design standards:

- Projects must consist of two or more units and appropriate facilities except in circumstances described below.

- Single-family units may be used for group homes, cooperative housing projects, and where Section 502 inventory housing is being converted to a Multi-Family Housing project.

- Project designs must comply with the requirements of RD Instruction 1924-A. In particular,

  ◊ Construction must be planned to conform with good construction practices as detailed in applicable State and local laws, ordinances, and codes; HUD Multifamily Physical Standards (MPS) Appendices C through F; and thermal requirements (Model Energy Code 1992 edition or more stringent). (Appropriate model building code standard must be applied based on type of development.)

  ◊ All final drawing and specs and any modifications must be certified in writing as conforming with the applicable development standards by the project architect. *Form RD 1924-25, Plan Certification,* may be used.

  ◊ During the Agency's environmental review, consideration of effects on important environmental resources is made. When the environmental review determines an effect on a resource mitigation of the effects may be required. Where mitigation measures affect the design of structures, locations on site, or costs of the project, the mitigation measures will be identified and detailed in the designs and construction documents, and reflected in cost estimates for construction.

3.16 RESIDENTIAL DESIGN

All housing must be residential in character and must meet the needs of eligible residents. Family housing must include active outdoor recreation areas. Elderly housing must include elevators for buildings with more than one level that cannot be accessed without steps.

3.17 ECONOMICAL DEVELOPMENT COSTS

To achieve affordable rents, Multi-Family Housing projects must be designed with costs in mind. However, the Agency does not encourage cost containment measures that compromise the quality or longevity of the project. Poor quality designs or substandard construction are not acceptable means of achieving economy. Projects should be designed to provide the features and amenities necessary for the lifestyles of the tenants at a cost that is economical and cost effective in the long term. The Agency encourages the use of features that minimize maintenance costs over the life of the project.

Designs must be economical and avoid unnecessary or elaborate features. In evaluating proposed project costs, Loan Originators will use data on average costs for average quality components. They will also have to use judgment and experience to assess maintenance and operation costs and local conditions.

In general, there are two basic questions that Loan Originators must address when evaluating the cost of the proposed design:

- Is the cost reasonable?
- Is the design cost effective?

A. Evaluating Cost Reasonableness

To determine if the proposed costs for a project are reasonable, Loan Originators will compare the costs shown on the project cost estimate to the known benchmark costs. These costs can be found in the databases described in Chapter 4 including Automated Multi-Family Housing Accounting System (AMAS), Marshall and Swift, and Integra Claims, or State-maintained database.

Minimize Processing Delays

Costs can be reduced by eliminating unnecessary delays in application processing. Delays in processing can contribute to higher interest and other business expenses on land, inventory, tests, design studies, etc. When reasonable time frames for processing applications are established, known, and followed, appropriate time can be planned for preparing a quality application and construction documents. Planning can result in better instructions for the builder, fewer errors, and lower construction costs.

Proposals that exceed these costs should be evaluated for reductions. However, the Loan Originator should always take into consideration local conditions and the special conditions of the particular project. For example, high land costs or the costs of development in remote

rural areas may explain why a project's costs are higher than the benchmark. Similarly, a project using funds that require Davis-Bacon wage rates may have higher costs.

B. Evaluating Cost Effectiveness

The Loan Originator should routinely consider the costs and benefits of the proposed design features in determining if a design is cost effective. A capital needs assessment prepared by the project architect and reviewed by the Agency State Architect or Engineer should be used to determine features and materials that may cost more initially, but reduce operations and maintenance costs over time.

The following methods can be used for evaluating and controlling costs:

- **Materials.** Since most materials and systems are available in a range of qualities and prices, the architect should review construction documents for the stated cost and quality of materials used. If the specifications require qualities or grades higher than necessary, the applicant should provide justification. Projects should utilize low-maintenance materials.

- **Repeat designs.** The use of repeat building designs is encouraged. Applicants whose architects have designed projects previously approved by the Agency should use these. Unique site designs for each project would be required. The use of repeat designs does not mean that "cloned" projects are required or encouraged. Designs should employ standard building material dimensions.

- **Design features.** The following features serve to lower cost:

  ◊ Buildings should not include numerous wall and roof breaks, unusual designs requiring excessive corners and foundation offsets, or more exterior entrances than absolutely necessary.

  ◊ Buildings should not include roof slopes less than 3/12 nor greater than 6/12 unless otherwise required by local authorities or to accommodate severe weather conditions.

- **Appropriate amenities.** Project design should include amenities that are appropriate to the type of project. The following descriptions provide examples:

  ◊ Active outdoor recreation areas are appropriate for family developments and group homes. Passive recreation areas may be sufficient in elderly and congregate housing. Elevators in two-story buildings are not appropriate for family developments but are often needed in elderly and congregate developments.

  ◊ Laundry rooms should be no larger than necessary to accommodate equipment, circulation, and areas for sorting and folding clothes.

◊ The number of parking spaces should be appropriate to the type of housing and meet local requirements.

- **Other amenities.** Designs should include features that are "reasonable and customary" in the area. For example, if local Multi-Family Housing units include patios or balconies, or washer and dryers, these features should be included in the project. The reasonable-and-customary standard improves the marketability of the project to prospective tenants and protects the value of the Agency's investment. Designs must avoid nonessential facilities.

- **Unit size.** Unit size should be economical but allow for variation due to type of housing (e.g., congregate housing, townhouses) and energy conservation.

- **Energy efficiency.** The project design should include measures for energy efficiency because these features will reduce utility cost over the long term.

- **Individually metered utilities.** The unit design should accommodate individually metered gas and electric utilities. This design will allow tenants to pay for their own utilities and will encourage lower energy use.

3.18 ACCESSIBILITY

Program regulations prohibit discrimination against people with disabilities *[7 CFR3560.2]*. In addition, the Multi-Family Housing program is subject to the three following regulations governing the accessibility of Federally assisted buildings, facilities, and programs (also see Exhibit 3-2):

- **Section 504.** Section 504 of the Rehabilitation Act of 1973 prohibits discrimination in Federally assisted programs on the basis of handicap. Section 504 imposes requirements to ensure that persons with disabilities have access to programs and activities that receive Federal funds. Section 504 recipients and subrecipients include any entity that receives Federal funding.

- **Fair Housing Act.** Multi-family dwellings must also meet the design and construction requirements in 24 CFR 100.205 that implement the Fair Housing Act (42 U.S.C. 3601–19).

- **Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225).** This Act provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local Government services, and telecommunications. The Act, also referred to as the ADA, also states that discrimination includes the failure to design and construct facilities (built for first occupancy after January 26, 1993) that are accessible to and usable by persons with disabilities. The ADA also requires the removal of architectural and communication barriers that are structural in nature in existing facilities. Removal must be readily achievable, easily accomplishable, and able to be carried out without much difficulty

or expense. The ADA applies to areas of public accommodation in multi-family housing, such as an onsite office.

Exhibit 3-2

Applicability of Federal Accessibility Regulations

	Section 504		Fair Housing Act		Americans with Disabilities Act	
	Project ready for occupancy on or before June 10, 1982	**Project ready for occupancy after June 10, 1982**	**Project ready for occupancy on or before March 13, 1991**	**Project ready for occupancy after March 13, 1991**	**Project ready for occupancy on or before Jan. 26, 1993**	**Project ready for occupancy after Jan. 26, 1993**
New construction		Must meet UFAS requirements		Must meet UFAS and FHA/AG requirements		Must meet UFAS, FHA/AG, and ADA/AG requirements
Rehabilitation	1. Encouraged to meet 5% requirement 2. Must meet common area requirement, if feasible 3. Must accommodate on request 4. Must have a self-evaluation 5. If required by self evaluation, must have a transition plan	Must meet above requirements or be addressed during rehabilitation	Not applicable	Must meet above requirements or be addressed during rehabilitation	Must meet UFAS, FHA/AG, and ADA/AG requirements or be addressed during rehabilitation	Must meet above requirements or be addressed during rehabilitation
Equity	Prior to the receipt of equity, must meet above requirements	Must meet above requirements or be addressed prior to receipt of equity	Not applicable	Not applicable (not eligible for equity at this time)	Not applicable	Not applicable (not eligible for equity at this time)
Transfer without rehabilitation	Prior to transfer, must meet above requirements	Must meet above requirements prior to transfer	Not applicable	Must meet above requirements prior to transfer	Not applicable	Must meet above requirements prior to transfer
Ongoing project operations monitored by supervisory visits or compliance reviews	Must meet above requirements	Must meet above requirements and must have a self-evaluation and transition plan if found in noncompliance	Not applicable	Must meet above requirements	Not applicable	Must meet above requirements

3.19 RELOCATION

A. Uniform Relocation Assistance and Property Acquisition Act of 1970

Public bodies and agencies that have the power of eminent domain and/or condemnation must comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970. In these cases, Agency loan funds may be increased over and above the appraised value of the property to cover costs incurred in the relocation of displaced persons.

B. Temporary Relocation of Tenants During Rehabilitation

A subsequent loan for the repair and rehabilitation of units may not include expenses incurred for temporary relocation of tenants.

3.20 CONVENTIONAL RENTS FOR COMPARABLE UNITS

A. The CRCU Standard

In evaluating the proposed rents for new projects, the Agency will determine the Conventional Rents for Comparable Units (CRCU) in the market. Sources for determining CRCU include the market data provided by the applicant in the application package; recent appraisals; current rental data from the Census Bureau, HUD, State housing agencies, or other reliable source; and the Agency's review of the market.

CRCU serves as a benchmark to maintain the affordability of program units and avoid situations where project rents are established above local conventional rents, leading to noncompetitive rents and excessive needs for rental assistance.

The CRCU benchmark does not change the method for determining rents. Rents remain cost based, meaning that rents are determined based on the project budget and must be justified by the actual costs of operating the project. The CRCU benchmark simply serves as one of several underwriting tools for evaluating whether the proposed rents are reasonable and realistic, and whether the project is feasible and appropriate for the area. In most cases, the Agency expects that rents will be below the CRCU benchmark.

Similarly, the CRCU benchmark does not significantly alter the Agency's process for underwriting new projects. Loan Originators must consider a number of factors in evaluating each project application and assessing the project's suitability and feasibility. For example, the Agency looks for evidence that there are sufficient eligible tenants to fill the units and that these tenants will be able to pay the rent. See Chapters 4 and 5 for a discussion of the review criteria for initial and final applications, respectively.

The CRCU benchmark is also used in asset management and loan servicing decisions, including loan restructuring and calculating prepayment incentives. HB-2-3560 and HB-3-3560 discuss the CRCU standard in those contexts.

B. Exceptions to the CRCU Standard

The Agency can make an exception to this standard and approve basic rents for a property that are higher than the CRCUs for the area where the property is, or will be located, in limited circumstances when it is in the best interest of the government and the program. The Agency may approve an exception to this standard when it is necessary to allow for decent, safe, and sanitary housing to be provided in market areas where conventional rents are not sufficient to cover necessary operating, maintenance, and reserve costs.

However, in no case, may basic rents exceed CRCUs for a market area by more than 50 percent [*7 CFR 3560.60 (c)(2)*]. This upper limit means that basic rents may never be more than 150 percent of the CRCU for the market area where the property is located. For example, if the CRCU for a two-bedroom unit in a market area was determined to be $300 per month, the Agency could approve an exception to allow basic rents for this unit size up to $450 per month, if there was adequate evidence that a monthly rent of $300 was not sufficient to cover necessary operating, maintenance, and reserve costs for the proposed property in this area. In no case, however, could the Agency approve rents greater than $450 per month for a two-bedroom unit.

In cases where there is clear evidence that market rents are exceptionally low, it is appropriate for Loan Origination to consider whether an exception to the CRCU standard may be needed to operate a project that meets the Agency's decent, safe, and sanitary standards. In such circumstances, the applicant (for new projects) or the borrower (for existing projects) must document the need for an exception with local market data. The Loan Originator or Loan Servicer may grant an exception, allowing rents to exceed the CRCU standard by 10 percent. For higher rents, the State Office must obtain National Office concurrence.

ATTACHMENT 3-A

GUIDE FOR SELECTING AN ENVIRONMENTALLY SOUND SITE

_____	_____	_____
Applicant's Name	Property Address or Location	Review Date

The process for selecting an environmentally sound site consists of two distinct steps: a "Site Reconnaissance" and a "Records Check." The "Site Reconnaissance" is conducted by the Loan Official, State Environmental Coordinator and/or other qualified personnel who visit the site and record their observations. A "Records Check" is conducted by the Loan Official, appraiser, or title company to determine current and former uses of the site.

The following questions are intended as a guide for Agency personnel in this process, but do not preclude obtaining services of environmental professionals whenever uncertainties arise. If the answer is "YES" to any questions in sections 1 or 3-6, or "NO" in section 2, or the reviewer(s) is uncertain about conditions, you must provide comments and discuss with the appropriate State Office program and technical staff (State Architect, Engineer, or State Environmental Coordinator) for further evaluation and guidance. The presence of any of the following conditions should be provided to the appraiser and considered in the appraised value. These conditions may indicate the need for a Transition Screen Questionnaire (TSQ) or a Phase I Environmental Site Assessment (ESA) initiated prior to approval of the site.

The site reconnaissance is best undertaken by multiple staff members with varied expertise, such as the Loan Specialist, State Architect or Engineer, or Appraiser and should be supplemented with photographs of the site conditions found.

1. SITE RECONNAISSANCE – HAZARDOUS MATERIALS

Is there indication on site of:

	Yes	No		Yes	No		Yes	No
Distressed vegetation or stained soils	( )	( )	Oil/chemical spills	( )	( )	Drums, barrels, waste material/containers	( )	( )
Abandoned machinery,	( )	( )	Transformers	( )	( )	Storage tanks or fill/vent pipes	( )	( )
refrigerators, equipment			Automotive batteries	( )	( )			

Are there other unusual conditions on site that might indicate potential for contamination from hazardous waste, hazardous substances, or petroleum products? ( ) Yes ( ) No

2. SITE RECONNAISSANCE – LAND USE COMPATIBILITY

Is the proposed use compatible (does not imply uses are the same) with surrounding area in terms of:

	Yes	No		Yes	No		Yes	No
Land use	( )	( )	Building density	( )	( )	Building type	( )	( )

3. SITE RECONNAISSANCE – NEIGHBORING LAND USE

Are the following uses on or within a mile of the site:

	Yes	No		Yes	No		Yes	No
Dumps/sanitary landfills	( )	( )	Odorous land uses	( )	( )	Incinerators	( )	( )
Chemical tank-car terminals	( )	( )	Quarries or excavations	( )	( )	Power generating plants	( )	( )
						Sewage treatment plants	( )	( )
Chemical storage	( )	( )	Industrial operations	( )	( )	Large overhead transmission lines	( )	( )
Oil refineries	( )	( )	High-pressure gas or liquid	( )	( )	Oil or gas wells	( )	( )

4. SITE RECONNAISSANCE – SITE CHARACTERISTICS

The following conditions may have an adverse effect on site use and building design:

	Yes	No
Is there evidence of slope erosion or unstable slope conditions on or near the site?	( )	( )
Is there evidence of ground subsidence, sinkholes or high water table?	( )	( )
Is there any visible evidence of soil problems (foundations cracking or settling, basement flooding, etc.) on or adjacent to this site?	( )	( )
Is there any indication of off-site cross-lot runoff or drainage flows on to the property?	( )	( )
Are there visual indications of filled ground or mounds of dirt?	( )	( )
Are there streams or gullies on site?	( )	( )
Is the site located near a major noise source, i.e., 3 miles from airport approach and takeoff patterns, .5 miles of major highways or busy roads, or frequently used railroads?	( )	( )

If the site is near noise sources, has a study been conducted in accordance with HUD "Noise Standards"? (24 CFR 51.103)	( )	( )

5. RECORDS CHECK

A check of local ownership records, zoning and building permits by the reviewer, appraiser or title company can provide valuable information on past uses of the site that may be a concern.

	Yes	No
Is current site zoning compatible with the proposed use?	( )	( )
If the Agency environmental review has been completed, is mitigation of impacts indicated that would adversely effect acceptability of the site?	( )	( )
Does review of FEMA flood hazard maps indicate that the site is within the 100-year floodplain (500 year for "critical actions")?	( )	( )
Does review of the property records, or discussions with owners, occupants or neighbors, indicate that the site was previously used for industrial or commercial activities with a potential for contamination?	( )	( )
Do records of current or past use of the site indicate that the site has been used as a dump, sanitary landfill, or waste disposal area?	( )	( )
Does review of EPA's National Priorities List (Superfund) indicate such sites within a mile of the site?	( )	( )
If available for review, do NRCS soil maps, soil studies or borings for the site indicate unsatisfactory soil conditions?	( )	( )
Is the site served by a municipal, or privately owned, water supply?	( )	( )
Is the site served by a municipal, or privately owned, sanitary sewers and waste disposal systems?	( )	( )
Is the site served by a municipal, or privately owned, trash collection and solid waste disposal service?	( )	( )
If the site is not served by a municipal, or privately owned, water or wastewater disposal system has feasibility of on-site well and/or septic systems been documented?	( )	( )

6. OTHER CONDITIONS

	Yes	No
Are there any conditions not specified above that might adversely affect the acceptability of the site?	( )	( )

Comments:

_____

_____

_____

_____

Site Report Preparer (Name and Title)	Date	Other Site Reviewer (Name and Title)	Date
Other Site Reviewer (Name and Title)	Date	Other Site Reviewer (Name and Title)	Date

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ATTACHMENT 3-B

CHECKLIST OF ARCHITECTURAL DOCUMENTS

Schematic Documents:

Site survey (existing conditions)
Site plan(s)
Building plans
Building/wall section showing construction
Exterior elevation(s)
Outline specifications
Development cost estimate
Proposed contract (unsigned, description of documents to be used)

Design Development Documents:

Site survey (existing conditions)

Site location map

Site plans, including location of all buildings, sidewalks, parking and drives, accessibility, utilities, amenities, drainage plan, and other pertinent information

Building plans, including floorplan for each unit type and for each building, and accessibility

Building/wall sections showing construction (further developed)

Exterior elevations showing materials (further developed)

Interior elevations of kitchens and baths showing cabinetry and accessibility

Specifications (further developed) (using Construction Specifications Institute [CSI] format)

Development cost estimate (further developed)

Proposed contract (copy of unexecuted documents with project information)

Working Documents:

Site survey (existing conditions)

Site location map

Detailed site plans, including dimensions to locate all buildings, sidewalks, parking and drives, accessibility, utilities, amenities (mailboxes, trash areas, laundry, community room, etc.), drainage plan, project sign, landscaping, recreation area(s), and other pertinent information

Detailed building plans, including fully dimensioned floorplan for each unit type, dimensioned floorplan for each building, accessibility, plumbing, mechanical, electrical, heating, ventilation, air conditioning, telephone, and other pertinent information

Building/wall section showing construction

Exterior elevations showing materials

Interior elevations of kitchens and baths showing cabinetry and accessibility

Construction details for any unique interior or exterior features

Schedules for windows, doors, or other equipment/materials

Full CSI specifications

Final cost estimate

Complete contract documents ready for bid/construction

ATTACHMENT 3-C

SAMPLE DESIGNATED PLACE LIST FORMAT

DESIGNATED PLACES FOR SECTION 515 NEW CONSTRUCTION APPLICATIONS

Fiscal Year _____

State: _____

Places on this list are considered equal, with no regard to their order on the list. Inclusion on this list does not indicate that a need or demand for Section 515 housing has been established.

Applications for Section 515 new construction loans will be accepted for the following places:

County	Place

[In addition to places selected in rank order, include and identify all high need places that are eligible for 20 points under the loan scoring criteria: Places identified in the State (government) Consolidated Plan or similar State plan or needs assessment that have received National Office concurrence; EZ/ECs; Indian reservations or communities located within the boundaries of tribal allotted or trust land; colonias; and REAP communities. Identify the high need communities by listing under a separate heading or by using an asterisk with appropriate notation.]

The following counties and colonias are eligible to compete for the Underserved Counties and Colonias Set-Aside. Eligible rural places that meet the minimum 250 household threshold and do not have any "build-and-fill" conditions are listed by county.

County	Place

CHAPTER 4: NOFA AND INITIAL APPLICATION PROCESS — STAGE 1

4.1 INTRODUCTION

The basic objective of the Multi-Family Housing program is to provide decent, safe, and sanitary affordable rental housing for very low-, low-, and moderate-income family, elderly, and handicapped households. The Agency has a limited amount of funds to achieve this objective and, therefore, must ensure that the best and most appropriate projects are placed in rural areas of greatest need. It is the Agency's goal to provide the maximum number of units possible without sacrificing the quality of the housing.

Key Origination Activities in Stage 1

- National Office publishes NOFA.
- States accept initial applications.
- States conduct preliminary eligibility review and score and rank initial applications.
- States forward applications to National Office.
- National Office assembles scores to create National ranking.
- National Office informs States of projects that may be selected for further processing.
- States conduct preliminary eligibility and feasibility review.

The Agency has determined that the best way to achieve this objective is to solicit initial applications for funding of projects in designated places through a public Notice of Funding Availability (NOFA). Each State submits their list of ranked proposals to the National Office for nationwide ranking. **Attachment 4-A** is the summary sheet that States must use to provide information to the National Office on applications received. The National Office will notify States of the top-ranked initial applications selected for further processing, and final applications will be solicited and processed by the States through Stage 2 of the application process. Exhibit 4-1 shows a sample timeline for this process.

This chapter discusses the procedures Loan Processing Staff will use in Stage 1, the first step in the loan origination process. Specifically, this chapter presents the Agency's procedures for:

- Publishing the NOFA;
- Accepting initial applications in response to the NOFA;
- Assessing preliminary eligibility of the initial applications;
- Forwarding application scores to the National Office;
- Assembling scores from all states to create a national ranking of initial applications; and
- Conducting preliminary feasibility analysis of initial applications.

Exhibit 4-1 **Loan Origination Sample Timeline** *(Best Case Scenario)*	
November 1	NOFA published.
January 2 (60 days after NOFA published or as specified in NOFA)	Initial applications due.
January 3–31	State Office completes preliminary eligibility, scores and ranks applications, submits list of applications to the National Office, performs site visits, and begins to underwrite for feasibility. **Attachment 4-A** is a sample of the summary sheet that States use to describe the applications received.
February 1–28	National Office ranks applications nationwide and informs State Offices of which applications have been selected for further processing.
March 1	State Office sends out notification to applicants regarding status of initial applications
March 2–April 30	State Office continues underwriting process and orders appraisals.
May 1	State Office invites final applications.
June 1	Final applications and appraisals due.
August 1–15	National pooling of unused funds.
September 30	End of fiscal year; deadline for obligating funds occurs shortly before this date.

The procedures for submitting and reviewing the final loan application package, or Stage 2 of the loan application process, are described in Chapter 5.

While the loan origination process for farm labor housing is very similar to that for multi-family housing, some differences do exist. Chapter 12 details these differences and should be reviewed whenever a Farm Labor Housing loan or grant is being processed.

4.2 OVERVIEW OF STAGE 1, PROCESSING THE INITIAL APPLICATION

During this stage, the National Office publishes the NOFA in the *Federal Register* soliciting housing proposals and setting a deadline by which the initial application must be submitted. Initial applications must describe the loan applicant, the applicant's financial status, evidence that the applicant is unable to obtain credit elsewhere, the applicant's experience in operating rent housing and related business, incorporation information (if applicable), and identity-of interest relationships. In addition, the applicant must provide economic justification for constructing the project with an analysis of the supply and demand for housing in the proposed location of the project, a brief description of the proposed project, a site description, and various disclosure and certifications.

The Loan Originator has 30 days from the published submission deadline to review NOFA responses for preliminary eligibility and then score and rank those responses. The Loan Originator faxes a list of ranked responses to the National Office by close of business on the thirtieth day, which is the deadline for National Office ranking. The National Office will notify the States which applications scored high enough to be considered for funding during this stage of the application process. The Loan Originator will notify the applicants that their initial applications may be considered for funding, and State Offices will conduct their preliminary feasibility reviews of the proposed projects.

SECTION 1: INVITING INITIAL APPLICATIONS

4.3 FUNDING AND RENTAL ASSISTANCE LIMITS

The amount of funds available for new construction and repair and rehabilitation, and rental assistance is established annually both in RD Instruction 1940-L sent to the states by the National Office, and as a NOFA published in the *Federal Register*. The National Office may set a limit on loan sizes in the NOFA. For example, the National Office may limit loan applications to $1.5 million each. This does not mean that the total project cost would have to be limited to $1.5 million. Using the same limits provided in the example, a loan applicant could propose a project with a total appraised value of $3 million, but the Agency loan might fund only half of the project, with other financing funding the remaining $1.5 million.

The National Office ranks all eligible loan applications submitted by the States nationwide to select applications for further processing.

4.4 STATE ACTIONS TO PREPARE FOR THE NOFA

The NOFA appears soon after the start of the fiscal year. Prior to the publication of the NOFA, States must take several steps, including:

- Reviewing and updating the State list of designated places and submitting it to the National Office for concurrence. This list must be available to interested loan applicants upon publication of the NOFA.

- Submitting to the National Office no later than September 1 any State initiatives for which the State wishes to provide points in prioritizing their funding. Such initiatives must be submitted by the State Director for approval by the National Office prior to publication of the NOFA.

- Preparing an initial application package, which includes:

  ◊ The NOFA; and

  ◊ A request for the items listed in Exhibits 4-6 and 4-7.

4.5 THE NOFA

The National Office publishes a NOFA in the *Federal Register* as soon after the start of the Federal fiscal year as possible. The exact timing of this publication depends on the date of Congressional appropriation of funds for the program and the time required to publish RD Instruction 1940-L. Generally, the NOFA should be published on or around November 1.

The NOFA indicates:

- Individual loan limits;
- The information that applicants must submit in their initial application;
- The criteria that the Agency will use to evaluate and rank proposals, including any special National Office initiatives;
- Subsequent information that will be required from any applicants who are invited to submit a final application;
- The deadline for submitting NOFA responses; and
- The State Office address, contact name, and phone number where the following information may be obtained:
  - ◊ A list of designated places for the State; and
  - ◊ A complete initial loan application package including:
    - ♦ A list of authorized loan uses (Exhibits 4-3 and 4-4);
    - ♦ Applicant eligibility requirements (Exhibit 4-5);
    - ♦ Any special conditions or limitations that are being applied on the amount of individual application packages or rental assistance requests;
    - ♦ Any special State Office initiatives that will be awarded points that have been approved by the National Office;
    - ♦ A listing of all of the information required from applicants (Exhibits 4-6 and 4-7); and
    - ♦ The address to which the initial application must be sent.

When the State Office receives a request for a loan application, Loan Processing staff will send the potential applicant a complete application package. *Handbook Letter 103 (3560), Cover Letter to the Initial Application Package,* must include the information in Exhibit 4-2.

Exhibit 4-2

Items to be Included in Cover Letter to the Initial Application Package

- The maximum amount of funds available for the loan if the application is approved.
- A definition of a complete application. A complete application is one in which: (1) all information and forms requested by the initial application package are included, and (2) all necessary forms requested have been signed. The Loan Originator must make clear the effect of applications that are incomplete without acceptable explanation—they will be returned and not considered during the funding cycle. The loan applicant must be informed that if they are unable to provide the necessary information, they must provide with the initial application an acceptable explanation of why the information is not available. The State Director will consider the explanation and decide whether to make an exception to the completeness rule.
- Notice to the applicant that they must be in compliance on all of any other Agency-financed projects they may own or have been in compliance with a workout agreement for at least 6 consecutive months as of the date that the initial application is due. The letter should explain to the applicant that they need to determine their eligibility with respect to this criterion early on so that they do not expend resources developing an initial application only to learn that they are not eligible due to this factor.
- Notice to the applicant that they must submit all requested information within 60 days. The applicant must be warned that any late submissions will be returned and will not be considered in this funding cycle unless the State Director grants an exception due to circumstances beyond the applicant's control.
- A warning to the applicant not to incur any costs that the Agency will not cover and caution that if the application is not approved, none of the costs incurred will be covered.
- A deadline by which any applicant who plans to use other financing or funding must finalize a commitment for that financing or funding. This deadline must be far enough in advance of the National pooling date (generally 90 days beforehand).
- An invitation to the applicant to a preliminary meeting to discuss Agency requirements. The Loan Originator must set a specific time in the near future for the meeting to take place and ask the applicant to respond if the time is not convenient.
- An invitation to the applicant to a preliminary meeting to discuss Agency requirements. The Loan Originator must set a specific time in the near future for the meeting to take place and ask the loan applicant to respond if the time is not convenient.

The letter must include the following clauses:

◊ "The action taken herein is based upon representation made in your loan request. Any changes therein, including but not limited to changes in complex cost, size, or scope of complex, rental rates, or subsidy costs to the Agency, scope of services, sources of funds, etc., may adversely affect this decision and must be reported to and approved by the Agency in writing. Any changes not approved by the Agency will be cause for the Agency to discontinue processing your request. All applicants requesting changes will be required to give full justification for each change and, if Agency approval is not given, written reasons will be given with a 30-day negotiation period to resolve the difference."

continued

Exhibit 4-2 (cont.)

Items to be Included in Cover Letter to the Initial Application Package

◊ "This action should not be construed as a reservation of funds, the availability of funds, or loan approval."

◊ "Loan processing will continue based upon a loan not to exceed the amount specified in this notice."

◊ "If a complete initial application has not been submitted to the Agency by the date specified in this notice, the Agency reserves the right to discontinue processing your loan request."

◊ "You are advised against taking any actions or incurring any obligations which would either limit the range of alternatives to be considered or which would have an adverse effect on the environment. Satisfactory completion of the environmental review process in accordance with RD Instruction 1940-G must occur prior to loan approval. The issuance of this review action does not constitute site approval."

4.6 LOAN PURPOSES

Agency funding may be provided to qualified applicants to supply affordable rural rental or rural cooperative housing to eligible households in designated places.

A. Eligible Loan Purposes *[7 CFR 3560.53]*

Loan funds may be used for the purposes established in 7 CFR 3560.53. Exhibit 4-3 outlines the types of allowable loan purposes. **Attachment 4-B** defines each eligible loan purpose in greater detail.

Exhibit 4-3

Eligible Loan Purposes

A. New construction;
B. Purchase and rehabilitation;
C. Site acquisition and development;
D. Necessary systems;
E. Landscaping/site improvement;
F. Tenant facilities;
G. Management facilities;
H. Customary equipment and appliances;
I. Initial operating capital for nonprofits;
J. Packaging fees for nonprofits;
K. Fees incurred in the formation or incorporation of the loan applicant entity for nonprofits;
L. Technical assistance by nonprofits to nonprofits;
M. Builder's profit, overhead, and general requirements;
N. Legal, technical, environmental, and professional services;
O. Permit fees;
P. Tax credit application;
Q. Educational programs for cooperative boards;
R. Interest and charges on interim financing;
S. Purchase housing from an interim lender;
T. Demonstration projects; and
U. Section 502 conversions.

B. Prohibited Uses of Loan Funds *[7 CFR 3560.54]*

Prohibited uses of loan funds appear in 7 CFR 3560.54 and are summarized in Exhibit 4-4. A detailed description of prohibited loan uses is presented in **Attachment 4-C**.

C. Eligible Applicants *[7 CFR 3560.55]*

Applicant eligibility requirements appear at 7 CFR 3560.55 and are summarized in Exhibit 4-5.

Exhibit 4-4

Prohibited Uses of Loan Funds

A. Housing for temporary or transient tenants (except for migrant labor housing);
B. Nursing homes or assisted living facilities;
C. Facilities not meeting program design requirements;
D. Commercial space;
E. Specialized equipment for training and therapy;
F. Operating costs of a dining facility;
G. Nonaffixed items (except in labor housing);
H. Value of contributed land in excess of equity requirements;
I. Refinancing debt;
J. Fees for referrals;
K. Payments to any members of the applicant entity;
L. Obligations incurred before loan closing except as permitted by 7 CFR 3560.54(b); and
M. Developer's fees.

Exhibit 4-5

Applicant Eligibility Requirements *[7CFR 3560.55]*

To be eligible for Agency assistance, applicants must meet the following eligibility requirements:

A. Be a U.S. citizen or legally admitted alien for permanent residence.

B. Be unable to obtain similar credit elsewhere at rates that would allow for rents within the payment ability of eligible residents.

C. Possess the legal and financial capacity to carry out the obligations required for the loan.

D. Be able to maintain, manage, and operate the Multi-Family Housing project for its intended purpose and in accordance with all Agency program requirements.

E. With the exception of applicants who are nonprofit organizations, housing cooperative, or public bodies, be able to provide the equity contribution from their own resources (this contribution must be in the form of cash, or land, or a combination thereof).

F. Have or be able to obtain a minimum of 2 percent of the total development costs for use as initial operating capital (for nonprofit organizations, cooperatives, or public bodies, this amount may be financed through the loan).

G. Not be suspended, debarred, or excluded based on the "list of Parties Excluded from Federal Procurement and Nonprocurement Programs."

H. Additional requirements for applicants with prior debt:

1. The applicant must be in compliance with any existing loan agreements and with all legal and regulatory requirements, or must have an Agency-approved workout agreement and have been in compliance with the provisions of the workout agreement for a minimum of 6 consecutive months as of the date the initial loan application is received.

2. The applicant must be in compliance with the Civil Rights Act of 1964 and all applicable civil rights laws.

I. Additional requirements for nonprofit organizations (in addition to meeting the requirements of A-H):

1. The applicant must have received a tax-exempt ruling from the IRS designating them as a 501(c)(3) or 501(c)(4) organization.

2. The applicant must include as part of their organization purposes the provision of decent, safe, and sanitary housing that is affordable to very low-, low-, and moderate-income persons.

3. No part of the applicant's earnings may benefit any of their members, founders, or contributors.

4. The applicant must be organized under state and local law.

5. The applicant's board of directors should reflect the demography of the community and be composed of:

- No more than one-third being representatives of the public sector.
- The remaining two-thirds being unrestricted.

J. Additional requirements for limited partnerships:

1. The general partner must be able to meet the equity contribution requirements if the partnership is not able to do so at the time an initial application is submitted.

continued

Exhibit 4-5 (cont.)
Applicant Eligibility Requirements *[7CFR 3560.55]*

2. The general partners must maintain a minimum 5 percent financial interest in the residuals or refinancing proceeds of the partnership.

3. The partnership must agree that new general partners can be brought into the organization only with the prior written consent of the Agency.

K. Additional requirements for Limited Liability Companies (LLCs):

1. The authority of the members of the LLC must be limited, and an authorized agent to act on the LLC's behalf to bind the LLC must be appointed.

2. The management functions of the LLC must be the responsibility of a member who holds at least a 5 percent financial interest in the LLC.

The LLC must agree that any new members to be brought into the organization must have prior consent of the Agency.

3. A single member must commit to meet the equity contribution requirement if the LLC partnership is not able to do so at the time an initial application is submitted.

4.7 CONTENTS OF THE INITIAL APPLICATION PACKAGE

The initial application package must include the necessary forms for the applicant to complete and return and must specify the additional information required from the applicant (as listed in **Attachment 4-D**). Exhibit 4-6 lists the forms required and their purpose. Exhibit 4-7 lists the additional documentation that must be submitted by the applicant in the initial application.

Exhibit 4-6

Items Included in the Initial Application Package

1. *Form SF 424, Application for Federal Assistance, (*include for construction) provides summary information about the project and the applicant, when completed.
2. *Form RD 1924-13, Estimate and Certificate of Actual Costs,* provides detailed cost estimates that the Loan Originator will review to judge reasonableness.
3. *Form RD 1940-20, Request for Environmental Information,* requests the applicant to provide specific environmental information about the proposed project. Instructions to the applicant are part of the form. The form will be used by the Agency to help it complete an environmental review of the proposed project.
4. *Form RD 3560-7, Multiple Family Housing Project Budget/Utility Allowance,* provides a schedule of proposed rents and utilities and anticipated operating and maintenance costs. The form will be used by the Loan Originator to conduct the project feasibility analysis and to determine whether the utility allowance is accurate.
5. *Form RD 3560-25, Initial Request for Rental Assistance or Operating Assistance,* must be completed by the applicant if rental assistance is required for the project.
6. *Form RD 1944-37, Previous Participation Certification,* describes an applicant's prior involvement with Federal assistance.
7. *Form RD 410-9, Statement Required by the Privacy Act,* (for individuals only), and *Form RD 410-7, Notification to Applicant on Use of Financial Information from Financial Institution* (for individuals only), will allow the Agency to verify information provided by a loan applicant.

Exhibit 4-7

Information Requested in the Initial Application Package

A. To establish applicant eligibility:

1. Current financial statements (within 6 months) with the following paragraph signed by someone with the legal authority to do so:

   "I/we certify the above is a true and accurate reflection of my/our financial condition as of the date stated herein. This statement is given for the purpose of inducing the United States of America to make a loan or to enable the United States of America to make a determination of continued eligibility of the applicant for a loan as requested in the loan application of which this statement is a part."

2. A check in the amount of $28 from all individual applicants or $40 from all organizational applicants. This check must be made out to the United States Department of Agriculture, and is used by the Agency to pay for a credit report on the applicant.

3. Statement signed by applicant that they will pay any cost overruns.

4. Proposed limited partnership agreement and certificates of limited partners (if applicable). Agency requirements should be contained in one section of the agreement and their location identified by the applicant or their attorney in a cover sheet.

5. If a limited liability company:
   - Copy of the Articles of Incorporation and all amendments; and
   - Certified copy of the operating agreement and all amendments.

6. If a nonprofit organization:
   - Tax-exempt ruling from the IRS designating them as a 501(c)(3) or 501(c)(4) organization. If the designation is pending, a copy of the designation request must be submitted.
   - Purpose statement, including the provision of low-income housing.
   - Evidence of organization under State and local law, or copies of pending applications.

7. If a trust, organizational documents and attorney opinion letter that the trust is validly formed and identifying the authorized representative to act on the trust's behalf.

B. To establish project feasibility:

1. Market feasibility documentation, including complete market study if required by the Agency. Exhibits 4-10 and 4-11 should be included for specific information on Agency requirements.

2. Location of project.

3. Brief description of nearby services and facilities.

4. Description of site and necessary improvements.

5. Project description (total number of units by bedroom size and square footage), including any related facilities, and development timeline.

6. Proposed rent structures and rental assistance requirements.

7. Evidence of site control.

8. Description of any anticipated environmental issues.

9. Schematic drawings:
   - Site plan, including contour lines;
   - Floor plan of each living unit type and other type spaces;
   - Building exterior elevations;
   - Typical building exterior wall section; and

- Plot plan.

10. Description and justification of related facilities, schedule of separate charges for related facilities.

11. Type and method of construction (owner builder, negotiated bid, or contractor method).

12 Estimated costs (applicant completes *Form RD 1924-13*).

13. Statement of housing experience and proposed management.

14. Congregate services package/plan (if applicable).

15. Statement of support from other government services providers to the project (congregate housing only).

16. Response to the Uniform Relocation Assistance Act, if applicable.

C. To establish project financing:

1. Description of the proposed financing:
   - Requested Agency loan amount;
   - Leveraging sources (amount, type, rates and terms);
   - Agency loan to value (percentage of security value that Agency loan represents);
   - Agency lien position;
   - Statement as to use of low-income housing tax credit (LIHTC); and
   - Statement of budget and cash flow (loan applicant completes *Form RD 3560-7*), including type of utilities and utility allowance, if applicable.

2. Life-cycle cost analysis and reserve account funding.

3. Proposed construction financing (interim or multiple advances; if interim financing, letter of interest from intended lender).

4. Evidence of efforts to obtain leveraged sources, if applicable, including copies of tax credit or loan applications and grant requests.

5. Congregate services charges, if applicable.

D. To help establish environmental compliance:

1. *Form RD 1940-20*.

2. Evidence of compliance with Executive Order 12372, Intergovernmental Review, as applicable. Some States have no single point of contact for processing *SF 424*; in others, the process may have been assumed by regional planning commissions or similar organizations.

3. Any additional forms or documentation, specific to the proposal in question that the Agency requires from the applicant to ensure that an environmental review can be completed.

4. Compliance with historic and architectural laws, if applicable.

5. Comments regarding relevant offsite conditions.

6. Map showing location of support services.

E. Any other information specified in the NOFA.

4.8 PRELIMINARY MEETING WITH APPLICANT

The Loan Originator invites all applicants to meet to discuss the loan application process and borrowers' responsibilities under the Multi-Family Housing program. This invitation is formally extended in the NOFA with the initial application package. This meeting must take

place before the initial application submission deadline and is especially important for first-time loan applicants. It should take place in the Agency offices as a face-to-face meeting, unless the applicant has considerable prior experience with the program, in which case the meeting may take place by telephone.

During this preliminary meeting with the applicant, the Loan Originator covers the following topics:

- **Multi-Family Housing program requirements and application process.** The Loan Originator must explain in general terms the Multi-Family Housing program and the application process and provide the applicant with any clarifications they might request or from which they might benefit. The Loan Originator should take particular care to discuss the extent of the applicant's responsibilities for participation in the Agency's environmental review process. In addition, the key requirements of the market feasibility documentation should be discussed.

- **Loan applicant's responsibilities.** The Loan Originator must explain the applicant's responsibilities during the next stages of the application process. The contents of the initial application package must be reviewed and the importance of submitting a complete package by the deadline must be stressed.

- **Long-term commitments.** The Loan Originator must explain the applicant's long-term commitments as a borrower. First-time applicants, in particular, need to be made aware of the 30-year prepayment prohibition and the reporting requirements to the Agency. This meeting is also an opportunity for the applicant to consider the level of management required and special circumstances that might be involved in the ongoing operation of the project.

- **Availability of alternative financing.** The Loan Originator must ask the applicants whether they can find other financing that would result in the same affordable rents to the tenants as those provided by Agency financing. This inquiry is important because it is a statutory requirement of the program that loans be made only where alternative financing would not result in affordable rents to tenants in the market area. As a condition of loan eligibility, the Loan Originator must make a note in the running record that the applicant is unable to find financing elsewhere.

The Loan Originator must be careful to be consistent in the way these meetings with the applicants are conducted. All applicants must be provided the same information, given sufficient time to cover all issues and have all questions answered, and be treated the same way throughout the loan application process.

4.9 ACCEPTING INITIAL APPLICATIONS

A. Date Stamping Initial Applications

Loan applicants must submit their initial applications by the due date specified in the NOFA. The Loan Originator must date stamp all the initial applications when they are

received. Late applications must be returned to the loan applicant and will not be considered during the funding cycle.

B. 30-Day Agency Review

The Loan Originator must make an assessment of preliminary eligibility of the initial applications and prioritize them within 30 days following the initial application submission deadline. This review process must not begin until after the application submission deadline. The Loan Originator must not discuss any specific application with any applicants or any other outside parties until all initial applications have been reviewed and the National Office has advised the State of which initial applications may be selected for further processing.

SECTION 2: THE REVIEW PROCESS AND SCORING AND RANKING

4.10 OVERVIEW OF THE REVIEW PROCESS

The Loan Originator has 30 days following the initial application submission deadline in which to review the submitted initial applications, perform the required underwriting of the loans, and conduct site visits.

The Loan Originator may request additional supporting documentation from the applicant to establish feasibility, but may not request information that would make an otherwise ineligible application eligible. The Loan Originator must establish a deadline by which the loan applicant must submit this information, and the deadline may not cause the review process to extend beyond 45 days.

4.11 LOAN REVIEW COMMITTEES

The State Director must establish a Loan Review Committee. Loan Review Committees serve an oversight function and assist the Loan Originator in deciding which loan applications move through the loan origination process. The objective of these committees is to guarantee the fair and equitable review and scoring of initial applications.

The State Director appoints or approves members of the committee and determines its role. The Loan Review Committee is made up of at least three Federal employees, including the State staff member in charge of Multi-Family Housing, the staff person with primary responsibility for loan origination, and one or more additional Agency state staff with Multi-Family Housing underwriting experience, rotated annually where staffing permits. State Directors must not be members of this committee since they have the authority to approve all loans.

The role of the Loan Review Committee varies from state to state. In its simplest form, the Loan Review Committee only reviews the scoring and ranking of initial applications. In some states, it also supports or rejects the Loan Originator's recommendations at the following decision points in the loan review process:

- When reviewing initial applications;

- When inviting final applications; or
- When making recommendations for approval to the State Director.

Some states make greater use of their Loan Review Committees and have them actually perform some of the loan origination functions.

4.12 PRELIMINARY ASSESSMENT OF THE INITIAL APPLICATION *[7 CFR 3560.56(b)]*

The preliminary assessment of the initial application conducted by the Loan Review Committee is designed only to assess preliminary eligibility, not project feasibility. Initial applications should clearly and completely respond to the criteria set forth in the NOFA and must be rejected if preliminary eligibility cannot be established. Preliminary eligibility means:

- The initial application was received by the submission deadline;
- The initial application is complete as specified by the NOFA;
- The applicant is an eligible entity type and none of its members are currently debarred, suspended, or in noncompliance with existing Agency loans;
- The applicant indicates the ability to provide the necessary financial resources;
- The applicant shows site control; and
- The project is for an authorized purpose in a designated place.

A. Was the Initial Application Submitted on Time?

The Loan Review Committee refers to the date stamp on the initial application to determine whether the application was received by the submission deadline specified in the NOFA. If not, it must be returned to the applicant.

B. Is the Initial Application Complete?

As a first step in processing initial applications, the Loan Review Committee must establish that the applications are complete. The Loan Review Committee must confirm that the application includes:

- All forms listed in Exhibit 4-6;
- All information identified in Exhibit 4-7; and
- The applicant’s signature on all of the required forms.

If any of these items are not included or incomplete, the applicant must provide an acceptable explanation of why this happened. Acceptable explanations are only those that describe circumstances beyond the applicant’s control. The State Director will make

the final determination as to whether the explanation is acceptable and the completeness rule should be waived.

If during the review the Loan Review Committee finds items in the initial application that require clarification, these should be noted and identified to the applicant if and when the applicant is selected for further processing under Stage 1. These items must not be of a nature that would cause a project to be ineligible. For example, if a certain required partnership clause is missing from the partnership agreement, the applicant will be told in the conditional commitment letter to make sure the clause is inserted into the partnership agreement by a certain time. If the applicant does not meet that deadline and there is no acceptable explanation as to why the item is missing, the package must be considered incomplete and returned to the applicant.

ACCEPTING EXPLANATIONS FOR MISSING INFORMATION

Acceptable explanation for missing information:

- Applicant submitted a timely (i.e., immediately following receipt of notice to submit the initial application) request to another Agency for information and that Agency has not provided it as of the submission deadline.
- Natural disaster.

Unacceptable explanation for missing information:

- Computer broke down.
- Key staff member unavailable to develop application.

C. Establishing Applicant/Project Data

When an initial loan application is reviewed, the Loan Review Committee must take the following steps to establish applicant/project data on Automated Multi-Family Housing Accounting System (AMAS), using the following screens:

- Record Application Data [M1AA]; and
- Record Member Organization Data [M1AM].

D. Is the Applicant Eligible?

The Loan Review Committee must determine that:

- The applicant, or the principles of the applicant entity, is a U.S. Citizen or qualified alien; and
- If an organization, the applicant meets the definition in 7 CFR 3560.11; and
- No members of the applicant entity are debarred or suspended from any Federal programs or in noncompliance with existing Agency loans; and
- The applicant is not delinquent on any other Federal debt.

If any of the above criteria are not met, the applicant is not eligible for a loan, and the package must be returned to the applicant.

The following resources are available to establish the applicant's good standing with the Federal Government:

- The publication *List of Parties Excluded from Federal Procurement and Nonprocurement Programs* provides a monthly listing of all suspended and debarred individuals and is available on the Internet at http://www.epls.gov. Once the site is entered, there are easy-to-follow instructions that will guide the user through the Excluded Parties List System (EPLS) and main menu. A hard copy of this publication is mailed to offices that are not hooked up to the Internet.

- The U.S. Department of Housing and Urban Development's (HUD) Credit Alert Interactive Voice Response System (CAIVRS), identifies all individuals with delinquent Federal debt. CAIVRS can be accessed by dialing 1-888-827-5605 and leaving requested information in the voice mail as prompted. If CAIVRS indicates that the applicant has a delinquent Federal debt, the Loan Review Committee must verify with the point of contact listed that the information regarding the applicant is current. If the information is indeed current and the applicant is delinquent, the Loan Review Committee must reject the applicant as ineligible. The applicant must be informed of the reason for their rejection and be provided with the telephone number CAIVRS lists as a point of contact. Also, the Agency should send *Form RD 1944-37* to HUD for review.

E. Does the Applicant Entity Have the Financial Resources to Commit to the Project?

The applicant must submit a financial statement of net worth and cash resources that indicates that they have the ability to provide the necessary financial resources to the project—either 3 or 5 percent of the loan as equity and, if not a nonprofit, up to 2 percent initial operating capital. For a limited partnership or LLC, if the applicant entity has not been established and funded, then the assets of the individual general partners must be able to meet these program requirements.

F. Does the Applicant Show Site Control?

The applicant must show documentation of site control. At this early stage of loan processing, site control is ideally in the form of an option to purchase from the owner of public record (since the applicant should not have purchased land in anticipation of a loan that may not be forthcoming), but can also be in the form of a deed (ownership), purchase contract, lease, or agreement to lease. Options for the site should be valid for 1 year with the option of extending for an additional sum. The applicant may use *Form RD 440-34, Option to Purchase Real Estate Property,* to show evidence of site control.

G. Is the Project for an Authorized Purpose and in a Designated Place?

The Loan Review Committee must make a preliminary determination regarding project eligibility, which involves a basic analysis of the project proposal to establish that:

- The project is for an authorized purpose; and
- The project is located in a designated place.

To make a determination of preliminary project eligibility, the Loan Review Committee must review the proposed uses of loan funds for the initial application and compare these to **Attachments 4-B** and **4-C**, describing the eligible and prohibited uses of loan funds. If any of the proposed uses in the project proposal are prohibited or not eligible, the initial application must be rejected, returned to the applicant, and not considered during the funding cycle.

The Loan Review Committee checks the list of designated places to make sure that the location in which the project is proposed is a designated place. If not, the housing proposal is not eligible and must be returned to the loan applicant.

H. The Site Review

During the site review, the Loan Originator and other Agency staff actually look at the site to establish eligibility, consider the environmental issues, and perform a civil rights impact analysis. In conducting the site review, the Loan Originator must make sure that the proposed project meets the environmental and site criteria of an Agency-funded project as described in Chapter 3. **Attachment 4-E** provides a checklist that can be used to evaluate a site.

The site review is conducted as soon as possible after the State Office has preliminarily ranked its housing proposals. The site review is conducted to determine that there are no eligibility issues that might prohibit a project from going forward. The major feasibility considerations are enumerated in Chapter 3 and are:

- Environmental factors;
- Costs of site development; and
- Location.

The Loan Originator must solicit the input of the State Architect or State Engineer and the State Environmental Coordinator (SEC) regarding the site and if possible, these individuals should participate in the physical site review. If a site does not meet the standards set forth by the Agency as described in Chapter 3, the initial application must be rejected. *ASTM Standard E-1528 (TSQ)* available through the State Environmental Coordinator, or **Attachment 3-A**, can be completed by Agency staff during the site review to alert them to any contamination issues about which they should be aware.

I. Environmental Review

Form RD 1940-20, completed by the applicant, provides specific environmental information about the proposed project. To begin preparation of the Agency's environmental review, the Loan Originator reviews the information provided with *Form RD 1940-20* and conducts a site visit to gather additional information. The TSQ may be used during the site visit to help the Loan Originator identify potential contamination of the site from hazardous substances, hazardous wastes, or petroleum products. Chapter 3 provides additional information on environmental requirements.

J. Is There a Market for the Project?

The need and demand analysis that the applicant must include as part of the initial application provides a narrative description of the market need and demand for the type of housing being proposed in the area. This analysis may be completed by the applicant personally through telephone surveys and face-to-face interviews. Alternatively, the applicant may hire an independent contractor to conduct the research. However, hiring an independent researcher to analyze the market is not required at this point. A complete market study or market feasibility documentation, depending upon the size of the project, will be required in the next stage of the application process, if the applicant is invited to proceed. Regardless of the method that is used to complete the need and demand analysis, the applicant must certify that they or their representative has visited the site and the market area.

The need and demand analysis should include enough information to provide the Loan Originator with information about the need for the type of project that is being proposed in the area and its sustainability. The Loan Originator should review this analysis carefully at this stage and discuss any concerns about it with the applicant if the applicant is invited to submit an initial application.

For more information about the required contents of a market analysis, refer to **Attachment 4-F**.

4.13 SCORING AND RANKING INITIAL APPLICATIONS

Based on the information contained in the initial application, the Loan Review Committee will score and then rank those proposals determined to be preliminarily eligible. Applicants must not be requested to submit additional information, and any additional information submitted after the deadline date must not be considered. Exhibit 4-8 provides an example of how initial applications are scored and ranked.

Initial applications must be scored in accordance with the priorities identified in the regulation and the NOFA. The Loan Review Committee must use its best judgment in applying points to proposals. In some cases, it may not be entirely clear whether the project or applicant will meet all of the criteria for awarding points. The Loan Review Committee must have some comfort level in applying points and must inform applicants who are invited to submit initial applications that they may be repointed and reranked if subsequent information proves that points were awarded inappropriately. For example, it may not be entirely clear that an applicant

meets all of the conditions necessary for points to be applied for donated land. The Loan Review Committee that gives such points must inform the applicant that the Agency reserves the right to rework them at a later date if necessary. The NOFA will identify some or all of the following factors and list the number of points that will be applied for each factor:

- Leveraged assistance;
- High-need communities;
- Agency initiatives; and
- Donated land.

A. Scoring Leveraged Assistance

1. Eligibility Requirements

Points will be given to initial applications that are enhanced through the use of other financing or which include value contributed by the applicant in excess of their required contribution, such as land value or tax credits. Leveraged assistance may benefit a project either through operating cost savings or through construction cost savings. Several conditions must be met for the points to be applied:

- The applicant must show evidence that application has been made for the additional funds or financing and that this leveraging is reasonably assured to be available by the time the applicant is in Stage 2 of the loan application process.
- Agency funds must only finance units for program income-eligible tenants. If the developer is building a mixed-income complex, only the portion of leveraged assistance that is being used to finance units for program income-eligible tenants will be considered in determining points.
- For those units that are financed by the Agency, the use of the leveraged assistance must not result in project rents that exceed Conventional Rents for Comparable Units (CRCU) in the area. The Agency may only approve rents above the CRCU under limited circumstances, as described in Chapter 3, paragraph 3.20 B.
- There must be reasonable assurance that any leveraged assistance in the form of rental subsidy to tenants will be available for the term of the loan. For example, a State-funded rental subsidy program that is expected to continue to be funded in future years would meet this requirement.
- Leveraged assistance in the form of operating cost savings must be for a minimum of 5 years.
- If the applicant uses value of land in excess of the required contribution as leveraged assistance, the applicant must be advised that if the appraisal shows the land value to be less than estimated, their ranking may be affected and they will have to provide to the project additional funds from their own resources to preserve their position.

2. Calculating the Percentage of Leveraged Assistance and Applying Points

Leveraged assistance is calculated differently, depending upon whether the cost savings are operational cost savings or construction cost savings.

- **Calculating operating cost savings and applying points.**

Operating cost savings, such as tax abatements, tenant subsidies, or donated services, are calculated as a per-unit cost savings for the term of the savings. Savings must be available for at least 5 years.

To calculate the savings, take the total amount of savings and divide it by the number of units in the project that will benefit from the savings to obtain the per unit cost savings. In a mixed income complex that will serve other than Agency income-eligible tenants, use only the number of units that will serve Agency income-eligible tenants. Round percentages to the nearest whole number, rounding up at 0.50 and above and down at 0.49 and below. For example, 25.50 becomes 26; 25.49 becomes 25.

Use the following table to apply points.

Per-Unit Cost Savings	Points
$15,000 and above	20
$10,001–$15,000	18
$7,501–$10,000	16
$5,001–$7,500	12
$3,501–$5,000	10
$2,001–$3,500	8
$1,000 –$2,000	5

- **Calculating construction cost savings and applying points.**

Construction cost savings is calculated as a percentage of the total development cost (TDC), excluding any costs prohibited by the Agency as loan expenses. In a mixed income project that will serve other than Agency income-eligible tenants, use the TDC for only those units that will serve Agency income-eligible tenants and divide that by the number of units that will serve Agency income-eligible tenants. Round percentages to the nearest whole number, rounding up at .50 and above and down at .49 and below. For example, 25.50 becomes 26; 25.49 becomes 25.

Use the following table to award points for leveraged assistance:

Percentage	Points	Percentage	Points
75 or more	20	35–39	12
70–74	19	30–34	11
65–69	18	25–29	10
60–64	17	20–24	9
55–59	16	15–19	8

50–54	15	10–14	7
45–49	14	5–9	6
40–44	13	0–4	0

B. Scoring Other Factors

1. High-Need Communities

Projects to be developed in a colonia, tribal land, Empowerment Zones (EZs), Enterprise Communities (ECs), or Rural Economic and Area Partnership (REAP) communities, or in a place identified in the State Consolidated Plan or State needs assessment as a high need community for multi-family housing will receive points.

Types of Leveraged Assistance

The following types of leveraged assistance are eligible to receive points:

- Grants;
- Loans from other sources, including from the applicant, that have an interest rate such that, when added to all funding sources in the project, results in rents that do not exceed the CRCU standard;
- Contributions (including appraised value of land) from the applicant's own resources above the required contribution indicated by the Sources and Uses Comprehensive Evaluation;
- Non–Agency-financed rental subsidy;
- Tax abatements or other savings in operating costs provided that, without the abatement, the basic rents in the project do not exceed the CRCU standard;
- Tax credit proceeds applied to the project; and
- Tenant subsidies, provided they are appropriate for tenant income levels and are for the term of the loan.

2. National Office Initiative

Initial applications that support a National Office initiative announced in the NOFA will receive points. When an initial application has been awarded MOU or National Office Initiative points, a copy of the MOU or other documentation evidencing the applicant's eligibility for the points must be maintained with the Section 515 Application Review Checklist and Point Score Sheet. These documents are contained in Attachment 2 of the Section 515 Processing UL for the current fiscal year, and are submitted to the National Office on or before the deadline stated in the UL on Processing Section 515 New Construction Loan Requests.

3. State Initiatives

Initial applications in support of an optional factor developed by the State that promotes compatibility with special housing initiatives in conjunction with State-administered housing programs such as HOME funds or low-income housing tax credits will receive priority points. A factor thus developed cannot duplicate factors already included in the NOFA and must be approved by the National Office prior to the NOFA publication.

4. Donated Land

For donated land to be eligible for priority points, all of the conditions listed below must be met. Some of these conditions may have to be confirmed at a later date; the Agency reserves the right to withdraw points if all of the following are not met.

- The land is donated by a State, unit of local government, public body, or a nonprofit organization.
- The land appears to be suitable and meeting Agency requirements.
- Site development costs do not exceed what they would be to purchase and develop an alternative site. (For example, if the site development costs of the donated site are $50,000 and purchasing an alternative site would cost $20,000 and $15,000 to develop, for a total of $35,000, donation of the site would not be cost effective or qualify for additional priority points.) Applicants must be informed that regardless of their investment in the site, the site may not be accepted if the Agency's environmental review indicates the potential for impact on protected resources or other important land uses, or if a potential for contamination exists from hazardous substances, hazardous wastes, or petroleum products.
- Operational costs are not increased by the land (such as would be the case if high insurance premiums for flood insurance were required).
- The overall cost of the project is reduced by the donation of the land.
- The donor of the site has owned it for at least one year. (The State Director may waive these criteria when it can be shown that the purchase was not made to circumvent the intent of this paragraph.)
- The applicant provides the value of the donated land, which must later be confirmed by the Agency. A return on investment (ROI) is not paid to the applicant for the value of the donated land nor is the value of the land considered as part of the applicant's contribution.

C. Ranking Initial Applications

Initial applications must be ranked in order of highest point score. When there are point score ties, the following rules apply:

- Preference must be given in the case of equally pointed initial applications to the applicant that qualifies as a nonprofit applicant according to the following requirements:
  - ◊ The applicant is a local nonprofit organization, public body, or Indian tribe whose principal purposes include the planning, development, and management of low-income housing.
  - ◊ The applicant is exempt from Federal income taxes under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code.

◊ The applicant is not wholly or partially owned or controlled by a for-profit or limited-profit type entity.

◊ The applicant's members, or the entity, do not share an identity-of-interest (IOI) with a for-profit or limited profit type entity.

◊ The applicant is not co-venturing with another entity; and

◊ The applicant entity or its members will not be receiving any direct or indirect benefits pursuant to the LIHTC.

- If the tying initial applications are both from nonprofit organizations who meet the description above, or if neither one is a nonprofit, a lottery must be held and preference given to the first drawn applicant. An acceptable form of selection by lottery would be to throw the names of all of the tying applicants into a hat and draw a name. The Loan Originator should only do this in the presence of the loan review committee so that no charges of favoritism can be leveled against the Loan Originator by any of the applicants who are not drawn first.

Exhibit 4-8

Example of Scoring and Ranking NOFA Responses

Project	Applicant and Project Description		Total Points	Ranking
Green Acres	**Limited Partnership**		65	1
	Leveraged Assistance:	20		
	EZ/EC:	20		
	Agency Initiative:	20		
	Donated Land:	5		
Belrose Place	**Limited Partnership**		55	2
	Leveraged Assistance:	15		
	EZ/EC:	20		
	Agency Initiative:	20		
Meyton Place	**Limited Partnership**		45	3
	Leveraged Assistance:	20		
	Agency Initiative:	20		
	Donated Land:	5		
Awesome Apartments	**Nonprofit**		40	4
	Agency Initiative:	20		
	EZ/EC:	20		
Delaplane Mews	**Limited Partnership**		40	5
	Leveraged Assistance:	20		
	Agency Initiative:	20		

D. Review of Highest Ranked Initial Applications

The Loan Originator must conduct a review of top-ranking initial applications to identify potential issues that will need to be specified as concerns in the letter notifying applicants that their applications have been considered for further processing. The following evaluations must be made:

- Does the applicant have some housing experience, and if not, are they proposing to hire someone who will help them? An applicant who does not have housing experience will not necessarily be disqualified. However, the Loan Originator must advise them that an Agency loan will be contingent upon their hiring someone who does have housing experience.
- Is there a market for the project at the rental rates projected? The market feasibility documentation provided by the applicant at this stage is only cursory; however, if the Loan Originator is familiar with the market and has any concerns about it, these must be raised with the applicant if they are invited to submit an initial application. The market must show the strongest need for the type of units proposed.
- Do rents seem reasonable, and will they cover projected costs? Rents must appear to be affordable to program-eligible applicants within the market area.
- Are there any known or suspected environmental problems that will need to be addressed in the development of the Agency's environmental review?
- What are the other leveraging sources? Are they likely to be obtained and might there be some timing issues in coordinating these sources with Agency funding?
- Is the applicant planning to use the LIHTC? Use of LIHTC will affect the amount of equity required from the applicant.
- Are the proposed security and the Agency's lien position acceptable?

E. Forwarding Initial Applications to National Office for National Ranking

Once the State Offices score and rank the initial applications, they forward their ranking lists with the required attachments to the National Office. The required attachments are those that are listed in the applicable fiscal year's UL on Processing Section 515 New Construction Loan Requests. The National Office will then verify the scoring of each initial application, and then prepare a national ranking to determine which initial applications have the opportunity to move to the next stage of processing. The National Office will forward this list to the State Offices.

4.14 INFORMING THE APPLICANTS OF RESULTS OF INITIAL APPLICATION REVIEW

Once the NOFA responses have been scored and ranked and the National Office has advised States of the proposals selected for further processing, the Loan Originator must respond to all applicants with one of three types of letters:

- *Handbook Letter 106 (3560), Notice of Pre-Application Review Action*. These letters go to the applicants who have top-ranked, fundable projects that will be invited to go on to the next phase of processing. These letters will include a description of the Agency's concerns about issues raised in the application, as described in paragraph 4.13 D.

- *Handbook Letter 107 (3560), A Letter Informing the Applicant of the Lack of Funds*. These letters go to applicants whose projects did not rank high enough to be considered in the current funding cycle. These applicants must be informed that they can resubmit their application in a future funding cycle. The original initial application must be returned to the applicant with the letter, and a copy of the initial application should be kept on file in the event of an appeal.

- *Handbook Letter 108 (3560), Letter Denying Funding due to Ineligibility*. These letters go to applicants who have submitted applications for an unauthorized purpose or who are ineligible applicants. Their initial applications must be returned to them with the reason(s) for their rejection specified, and the applicants must be given appeal rights in accordance with 7 CFR Part 11 (Appendix 2). A copy of the initial application must be retained by the Loan Originator in the event of an appeal.

SECTION 3: PROJECT FEASIBILITY REVIEW

4.15 UNDERWRITING THE PROPOSED PROJECT

Through the underwriting process, the Loan Originator evaluates an applicant's circumstances and the value of the property to determine whether making a particular loan is a prudent use of Agency funds. Underwriting also identifies factors that may affect the performance of the loan over the term or at maturity.

Underwriting has both objective and subjective elements. For example, project eligibility is an objective factor—if the project is located in a floodplain zone with no insurance, the project is not eligible and the loan applicant cannot receive a program loan. On the other hand, analyzing an applicant's financial statements and estimating the value of the property both involve some degree of judgment. The underwriter's challenge is to make both objective and subjective decisions in a fair and impartial manner for all applicants.

This paragraph provides a broad overview of the key decisions and special considerations that the Loan Originator must make in the underwriting process. The remainder of this chapter goes into further detail about loan underwriting.

A. Key Decisions

The Loan Originator must make the following key underwriting decisions in evaluating the initial application:

- Is the applicant eligible?

- Is the project eligible?
- Does the project appear economically feasible?
- Do the project costs appear reasonable?
- Does the project comply with Agency environmental standards?
- Do the Agency's interests appear to be secure?

These questions, when answered in the affirmative, set the standards by which loans requests are evaluated. The questions are answered by analyzing the initial application package, conducting a site visit, and completing the environmental review. The Loan Originator reviews current credit reports and organizational documents to determine if the applicant is eligible, looks at preliminary plans and cost estimates to see if the project is feasible, analyzes market feasibility documents to determine that the project is needed, conducts a site visit, and completes the appropriate level of environmental review. The Agency staff will complete a civil right impact analysis as a further project eligibility test.

The environmental review process is a vital part of the underwriting process and may take longer to complete than any other component of the underwriting process. Chapter 3 provides further details on the environmental review process.

The Loan Originator does not have to reject an initial application that is weak in a particular area and requires some improvement. The Loan Originator must consider the results of the underwriting process as a whole to determine whether to move the initial application to the final application stage. However, should the results of a review show the answer to one of the five above-listed underwriting standards to be an unequivocal "no," meaning that the applicant cannot or will not correct the deficiency, then that initial application must be rejected.

B. Ordering the Appraisal

The Loan Originator must order the appraisal as soon as the applicant has submitted the schematic drawings for the proposed housing. The appraisal is important because it is used to determine the maximum loan limits for the proposed project.

The appraisal may be done by an in-house Agency appraiser. In all likelihood, however, the appraisal will have to be ordered either from a list of appraisers used by the state or by sending out a bid proposal to the known appraisers in the state. Chapter 7 provides the specifics on ordering and reviewing appraisals. Paragraph 3.13 of Chapter 3 provides additional guidance to appraisers regarding potential contamination from hazardous substances, hazardous wastes, and petroleum products.

C. Documenting Underwriting

The Loan Originator must provide documentation of the underwriting process to the Loan Approval Official or Loan Review Committee. This is the evidence of how and

why the Loan Originator reached a decision on whether to recommend funding a loan and at what level. The Loan Approval Official makes the final decision based on the information presented by the Loan Originator and the Loan Review Committee.

4.16 APPLICANT ELIGIBILITY *[7 CFR 3560.55]*

To be eligible for Agency assistance, the applicant must meet the following eligibility requirements:

A. Citizenship Requirements

Individual applicants and organizational applicants must provide acceptable evidence of being U.S. citizens or qualified aliens. The Loan Originator must review the original document and make legible photocopies of both the front and back. If there is a question about the authenticity of the information provided, the Loan Originator must contact the Department of Homeland Security (DHS) for verification. Immigration forms and a list of the offices and addresses of the U.S. Citizenship and Immigration Services (USCIS), a bureau of the DHS, can be obtained from the following website: http://uscis.gov.

B. Organizational Requirements

In addition to meeting the above requirements, organizational entities have additional requirements that they must meet. Once the Loan Originator has established that the applicant entity's organizational documents appear to be in order, the Loan Originator submits the organizational documents to the Office of General Counsel (OGC) for final verification of their acceptability.

1. Limited Partnerships

The Loan Originator must determine whether the organizational requirements of limited partnerships are met by analyzing the partnership agreement, certificate of limited partnership, and applicant financial statements that must have been included in the initial application to ensure that they meet the criteria identified below. The partnership agreement and certificate of limited partnership must also be forwarded to the OGC for their review.

- **Partnership term.** The term of the partnership must be at least equal to the term of the mortgage that is, 30 years, or until the Agency debt is satisfied.

- **Five percent general partnership interest.** The terms of the limited partnership agreement must require that the general partners maintain a minimum of 5 percent financial interest in the residual or refinancing proceeds of the partnership. The general partner will not be required to have a minimum 5 percent interest in current profits, losses, and cash distributions of the partnership. For example, an agreement where the general partners have such a 5 percent interest in a limited partnership and receive only 1 percent of the profits while the limited partners receive 99 percent of the profits is allowable.

- **Prior Agency consent.** The limited partnership agreement must contain a clause that provides for obtaining prior consent from the Agency when any of the following actions are taken:

  ◊ Withdrawing a general partner;

  ◊ Adding a general partner;

  ◊ Substituting or deleting a general partner;

  ◊ Amending the limited partnership agreement or the partnership's certificate of limited partnership;

  ◊ Selling all or substantially all assets of the partnership;

  ◊ Dissolving or terminating the partnership; and

  ◊ Borrowing funds from general partners or third parties.

- **Program contribution requirements.** Limited partnerships must deposit into an account the required 2 percent initial operating capital and the equity contribution requirement. The certified financial statements of the general partners must confirm that the assets of the general partners are sufficient to meet this contribution requirement. Paragraph 4.16 C provides further information on financial requirements.

2. Nonprofit Organizations

The Loan Originator must verify the status of any nonprofit organization applicants since they may have received a preference in ranking and are eligible to receive a larger loan that covers the 2 percent initial operating capital and the equity requirements for which other types of applicants are not eligible. A description of the information that a nonprofit applicant must submit as part of the initial application and guidance to the Loan Originator in reviewing this information to establish eligibility follows:

- **Tax-exempt ruling from the IRS designating the nonprofit as a 501(c)(3) or 501(c)(4) organization.** If the designation is pending, a copy of the letter requesting the designation must be submitted. The Loan Originator must verify that the request for designation has been submitted to the IRS if the designation has not already been received.

- **Purpose statement.** The Loan Originator must ensure that the nonprofit organization's purpose statement includes the provision of decent housing that is affordable to low- and moderate-income persons.

- **Evidence of organization under State and local law, such as articles of incorporation or copies of pending applications.** The Loan Originator must ensure that these are current and match the applicant entity.

- **List of Board of Directors.** The Loan Originator must verify that the loan applicant's Board of Directors reflects the demography of the community and is composed of:

  ◊ No more than one-third being representatives of the public sector; and

  ◊ The composition of the remaining two-thirds being unrestricted.

If the board is unable to satisfy these requirements, the nonprofit organization must provide a written explanation to the Loan Originator indicating why it is not feasible to meet these requirements. The Loan Originator will review the circumstances and the board's explanation and determine whether the board represents the best possible composition reflecting the community.

3. Limited Liability Companies (LLC)

The Loan Originator must review the LLC's proposed operating agreement to ensure that the following conditions are met:

- Individual members do not have the authority to act on behalf of the LLC. An authorized agent to act on the LLC's behalf to bind the LLC must be appointed.

- The management functions of the LLC are the responsibility of a member who holds at least a 5 percent financial interest in the LLC.

- The LLC has agreed that any new members may be brought into the organization only with prior consent of the Agency.

- The financial statement of the single member who has committed to meet the equity contribution requirements demonstrates that the person is financially able to do so.

4. Trusts

If the applicant entity is a trust, the Loan Originator must review:

- The trust's organizational documents to ensure that it is validly formed under federal and State law; and

- The opinion letter from the trust's attorney certifying that the trust is validly formed and identifying the representative of the trust who is authorized to act on its behalf.

C. Financial Requirements

The Loan Originator must review the individual financial statements and credit reports of the principals provided in the initial application to establish that the loan applicant is not a credit risk and has the financial ability to meet the requirements of the loan.

1. The Credit Report

Upon receipt of the initial application, the Loan Originator must immediately order a credit report on the individual applicant or the principals of a partnership, as appropriate.

Any indications of unacceptable credit must be explained by the applicant or the applicant must be rejected due to unacceptable credit. When this occurs, appeal rights in accordance with 7 CFR Part 11 (Appendix 2) must be given.

Exhibit 4-9 provides indicators of unacceptable credit.

2. Analysis of Financial Documents

The Loan Originator must verify that the loan applicant's financial documents show that the applicant possesses the financial capacity to carry out the following obligations:

- With the exception of nonprofit applicants, the applicant is able to provide the equity contribution from their own resources in the form of cash, land, or a combination thereof.

- With the exception of nonprofit applicants, the applicant has or is able to obtain a minimum of two percent of the total development costs for use as initial operating capital. Nonprofit organizations may have this amount funded through the loan.

3. Assets

In evaluating a corporation/partnership's assets, the Loan Originator must consider the assets of each member or stockholder. The partnership must have the financial ability to meet the program financial requirements (equity contribution and 2 percent initial operating capital); if the partnership is unable to do so at this point, the general partners must be able to meet this requirement.

Exhibit 4-9

Indicators of Unacceptable Credit

- A foreclosure that has been completed in the last 36 months.
- An outstanding IRS tax lien or any other outstanding tax liens with no satisfactory arrangement for payment.
- Outstanding collection accounts with a record of irregular payments with no satisfactory

arrangement for repayment, or collection accounts that were paid in full within the last 6 months, unless the applicant had been making regular payments previously.

- Non–Agency debts written off within the last 36 months, unless the debt was paid in full at least 12 months ago. In situations where the Agency debt has been considered for debt settlement or a Rural Development property has been foreclosed on, the State Director may determine the applicant, including principals, in compliance if the file is documented to show that the borrowers acted in good faith but are in noncompliance through circumstances beyond their control, including substantial local economic downturn, natural disaster, assuming responsibility for a troubled loan through substitution of the general partners, or assuming a loan with an existing workout plan.
- Agency debts that were settled within the past 36 months, or are being considered for debt settlement.
- Delinquency on a Federal debt.
- A court-created or court-affirmed obligation or judgment caused by nonpayment that is currently outstanding or has been outstanding within the last 12 months, except when a bankruptcy occurred:

  ◊ In which debts were discharged more than 36 months prior to the date of application;

  ◊ Where an applicant successfully completed a bankruptcy debt restructuring plan and has demonstrated a willingness to meet obligations when due for the 12 months prior to the date of application; or

  ◊ Where a judgment was satisfied more than 12 months before the date of application.

4. Cost Overruns [7 CFR 3560.63(f)]

As a final financial condition, the applicant must provide as part of the initial application package a statement agreeing to pay cost overruns after the maximum debt limit is reached at no cost to the project, and without pledging the project as security.

D. Compliance Requirements for Current or Previous Borrowers

1. Previous Participation Form

As a further indication of eligibility, the applicant must submit *Form RD 1944-37*. This form identifies any current or prior participation in Federal housing projects that the applicant may have had and identifies any problems such as defaults, noncompliance, or suspensions that may have occurred. The Loan Originator must send this form to the HUD for their review and comment.

The Loan Originator should also contact HUD staff directly to verify the applicant's status with HUD. If the applicant has had any problems with payment on a HUD loan or management of a HUD project, further explanation is required of the applicant. If the applicant is found to be in default, serious noncompliance, or suspended, the applicant must be rejected. In such a case, the loan applicant will be provided with appeal rights in accordance with 7 CFR Part 11.

2. Suspension or Debarment

Individuals who are suspended, debarred, or voluntarily excluded from participation in Federal programs are not eligible for assistance. Such applicants should have been rejected as a first step when the preliminary assessment of the initial application was made (see Paragraph 4.12). If applicants are found to be suspended or debarred at any stage of the process, their application must be rejected and they must be given appeal right in accordance with 7 CFR Part 11.

3. Complete Compliance or Workout Agreement

The applicant must be in compliance with any existing Agency debts in all states and in accordance with all legal and regulatory requirements and agreements. If not, the applicant must have an Agency-approved workout agreement and must have been in compliance with the provisions of the agreement for at least 6 months as of the date the initial application was due to the Agency. Loan Originators must telephone their Agency counterparts in other states where an applicant has projects to verify the applicant's status with their loans in those States. If the Loan Originator discovers noncompliance with the provisions of a workout agreement or that the applicant has been in compliance with a workout agreement for less than 6 months as of the due date of the initial application, the applicant must be rejected.

4. Compliance with Civil Rights Laws

For an applicant entity to be considered eligible to receive new loan funds from the Agency, the following must apply:

- The applicant, including the principal partners, must be in compliance with applicable civil rights laws in all projects where they are either a borrower or principal partner. For a borrower to be considered in noncompliance with civil rights laws for loan eligibility purposes, the borrower's project must be coded on the Multi-Family Housing Information System (MFIS) as being in nonmonetary default. In accordance with Agency policy a nonmonetary default on MFIS when the Loan Servicing Office has notified the borrower of a violation using the three servicing letter process, and the borrower has not addressed the violation to the satisfaction of the Loan Servicing Office within 60 days of the first servicing letter.

- For a borrower to be considered eligible to receive rehabilitation or equity funds, the project to be funded must either be in compliance, or be brought into compliance with applicable civil rights laws or physical accessibility standards with the receipt of loan funds.

4.17 PROJECT ELIGIBILITY *[7 CFR 3560.58, 3560.59, and 3560.60]*

The Loan Review Committee assesses the preliminary eligibility of the project by determining that the project is located in a designated place, and will be completed for an authorized purpose, and that the applicant shows true evidence of site control. The underwriting now goes a step further when the Loan Originator ensures that the applicant has submitted

adequate documentation to show that the project meets all applicable site and design requirements.

A. Civil Rights Impact Analyses

The Agency conducts civil rights impact analyses to determine whether proposed actions will negatively and disproportionately affect minorities, women, or persons with disabilities who are employees, program beneficiaries, or applicants for employment or program benefits in USDA-conducted or assisted programs, by virtue of their race, color, sex, national origin, religion, age, disability, or marital or familial status. At the time of the site visit, a trained staff member completes *Form RD 2006-38*. The State Civil Rights Coordinator and, as necessary, the State Environmental Coordinator, are consulted if problems are noted. RD Instruction 2006-P provides further guidance on these requirements.

B. Working with the State Historic Preservation Office (SHPO)

Applicants must work with the SHPO to determine the site's and/or building's archaeological or historical significance. Refer to RD Instruction 1940-G for further information.

C. Flood Hazard Determination

At this time, the Loan Originator must complete *Form FEMA 81-93*. This form documents whether the site is in a Special Flood Hazard Area (SFHA) identified by FEMA and, if so, states the availability of flood insurance for this property through FEMA's National Flood Insurance Program (NFIP). Property in a SFHA is not eligible for Federal financial assistance unless flood insurance is purchased through the NFIP. The information regarding floodplains on this form will assist in the preparation of the environmental review document.

D. Design Review

The Loan Originator must submit all project plans and drawings to the State Architect/Engineer who will review the design and determine if it meets program requirements. Paragraph 4.21 provides further details on the role of the State Architect.

E. Prohibited Conditions

In accordance with 7 CFR 3560.57(d), the Loan Originator at this point must confirm that no conditions that would prohibit the Agency from processing the loan request have developed in the area in which the project is being located. The existence of the following conditions would result in an application being rejected:

- The Agency has selected another Multi-Family Housing proposal in the designated place for processing. An exception may be made to this when a group home is being proposed for persons with disabilities in an area where the existing multi-family housing is insufficient or unavailable for their needs, or where there is a need for

additional multi-family housing and the housing proposed would provide a different type of housing than that already selected.

- A previously funded Agency, HUD, LIHTC or other similar assisted multi-family housing in the designated place has not been completed or has not reached projected occupancy level.

- Existing assisted multi-family housing in the designated place is experiencing high vacancy levels. High vacancy is considered to be 5 percent or higher. If a State wishes to apply a different standard for high vacancy rates, that standard must be published in a State notice.

- A Special Note Rent (SNR) or other loan servicing tool is pending or in effect for other assisted housing in the designated place; or

- The need in the market area is for additional rental assistance and not for additional units.

The Loan Originator must confirm that none of the above conditions exist by checking with the HUD Area Office, State agencies, and the local Field Office.

4.18 PROJECT FEASIBILITY

Project feasibility is determined by:

- Feasibility of security as evidenced by an appraisal that shows the Agency's lien position is secure.

- Market feasibility as evidenced by specified data on the market that show a clear need and demand for the proposed units.

- Financial feasibility as evidenced by anticipated project income being sufficient to meet projected costs.

A. Feasibility of Agency's Security

The Agency conducts an appraisal to establish whether the Agency's loan will be secured by the real estate to be developed. If the appraisal shows the project to be of lower value than the total development cost, and therefore, does not support the Agency's lien position, the Agency must inform the applicants that they must reduce their costs or find the funds to make up the difference between the appraised value and the total development cost. Chapter 7 provides additional details on appraisals and establishing security.

B. Market Feasibility

The applicant must provide market feasibility documentation that shows that the need and demand in the market area in which a project is located is greatest for the proposed

type of multi-family housing (i.e., elderly or family) and unit mix of bedroom sizes. The market area is considered to be the community in which a project is to be located and only those outlying rural areas that will be affected by the project (excluding all other established communities). Except in specific cases of congregate housing projects where an expanded market may be justified, the market area will not include the entire county (or parish, township, or other similar subdivision).

The project type, number of units, and unit mix must be based on the housing need and demand from eligible prospective tenants who are permanent residents of the community. The market feasibility documentation must be based on information obtained from current census reports and other reliable sources such as state or county data centers, individual employers, local realtors, public housing agencies, and chambers of commerce.

1. Market Survey or Market Study?

Market feasibility documentation will consist of a professional market study for projects of 12 units or more.

The State Director may authorize a market survey, which is a less formal analysis, to document market feasibility in the following circumstances:

- There is an overwhelming market demand evidenced by waiting lists and a housing shortage confirmed by local housing agencies and realtors; or

- For projects of less than 12 units.

Market surveys can be prepared through the use of telephone inquiries, mailed or door-to-door surveys, and interviews, but, like a market study, must include a site visit by the applicant or their representative.

2. Evidence of Reliable Markets

In looking at the market feasibility documentation, the Loan Originator must be able to answer the following questions in the affirmative in order to conclude that there is a reliable market for the project:

- Is there a demand in the area? For example, do other Multi-Family Housing projects in the area have waiting lists with names of people who are currently interested or have recently applied for housing, and are vacancy rates low?

- Is the greatest demand for the type of housing project proposed (i.e., family or elderly)?

- Does the market finding confirm the proposed unit mix of bedroom sizes?

- Is the vacancy rate of units in comparable housing within the State's acceptable range?

Market Study Methodology

- Mathematical calculations must not be expressed in percentages alone, but must be backed up by the actual numbers that resulted in those percentages.
- Source references must be identified for each table or section of the market study.
- A brief statement of the methodology used in the study must be included.

3. Requirements of Market Feasibility Documentation

The market feasibility documentation for both market surveys and market studies must clearly show that the following requirements have been met or it will be rejected as unacceptable and the initial application will be rejected.

- **Site visit.** The results of the survey or study must be based on the analyst's visit to the site and interviews with knowledgeable members of the community. There must be a list of names of people interviewed with a brief description of their qualifications as knowledgeable community members and a summary of the comments they made.

- **Conventional Rents for Comparable Units.** The analyst must address the CRCU and how they compare with the proposed unit rents for other housing projects in the immediate area. Chapter 3 provides further guidance on CRCU.

- **Single-family housing.** A discussion of the existing housing supply must include reference to the single-family housing rental and sale units available.

- **Low-income housing tax credits.** If the applicant is requesting LIHTC, the market feasibility documentation must provide the number of LIHTC units and the maximum LIHTC incomes and rents by unit size. If rental assistance is not being requested for use in the project, the study must show that there are tax credit-eligible households that could pay the rent without rental assistance.

- **Eligible permanent residents.** Since the intent of the Multi-Family Housing program is to provide housing for the eligible permanent residents of the community, temporary residents of a community, such as college students, military personnel, or others not claiming their current residence as their legal domicile, may not be included in determining need and project size.

- **Homeowners.** The market feasibility documentation must include a discussion of the current market for single family houses and how sales, or the lack of sales, will affect the demand for elderly rental units. The market study may discuss how elderly homeowners may reinforce the need for rental housing, but only as a secondary market and not as the primary market.

- **Items Covered in Market Surveys.** All market surveys must include those items listed in Exhibit 4-10 and a signed statement by the analyst indicating that:

  ◊ The information presented is accurate to the best of the analyst's knowledge;

◊ Reliable sources were used to collect the information and data presented; and

◊ A site visit was made by the analyst or their representative.

- **Items Covered in Market Studies.** Market studies must include those items listed in Exhibit 4-11, a table of contents, and the following:

  ◊ The analyst's statement of qualifications;

  ◊ Certification as to the accuracy of the study;

  ◊ Certification that the analyst visited the site;

  ◊ Affirmation that the analyst will not receive any fees that are contingent upon approval of the project by the Agency; and

  ◊ Certification that the analyst will have no interest in the project.

Attachment 4-F provides guidance on verifying that the market study and survey show these requirements are met.

Exhibit 4-10
Required Contents of a Market Survey

- A complete description of the proposed site and a map showing the site, location of services, and their distances from the site.
- Names and qualifications of members of the community interviewed during the site visit and a discussion of their comments.
- Major employers in the area and year established.
- Employment opportunities and rates for the area for the past 5 years.
- Services available in the area, including shopping, schools, and medical facilities as well as community services such as recreational, transportation, and day care that are available.
- Population by year plus the annual increase or decrease for the past 5 years.
- Population characteristics by age.
- Number of households by year and number of persons per household for the past 5 years.
- Historical breakdown of households by owners and renters.
- Households by income groups.
- A survey of existing or proposed rental housing, including complex name, location, number of units, bedroom mix, family or elderly type, year built, rent charges, vacancies, waiting lists, amenities, and the availability of RA or other subsidies.
- Available mobile homes, if part of housing stock.
- The existing vacancy rate of all available rental units in the community, including houses.
- Proportionate need for project type.
- Building permits issued per year for the last 3 years for single and multiple unit dwellings.
- For proposals where the applicant is requesting LIHTCs, the number of LIHTC units and the maximum LIHTC incomes and rents by unit size. This information will determine the levels of incomes in the market area, which will support the basic rents while also qualifying the applicant for tax credits.
- The amount of RA necessary to ensure the project's success.

Exhibit 4-11
Required Contents of a Market Study

1. All of the items required for a market survey (see Exhibit 4-10).
2. Major employment data including the name, location, and date of establishment of any major employers within the community; the product or service of each employer; the number of employees; and salary range for each employer; and business permits issued.
3. Housing stock as defined by total number of units: one-unit buildings, two- or more unit buildings, mobile homes, and the number of these lacking some or all plumbing facilities (substandard housing).
4. Number of rent-overburdened households.
5. An expanded analysis of existing vacancy rates for all available rental units in the community, including mobile homes. The analysis must make a distinction between "owned properties," "available for rent," and "for sale—not available for rent," as well as available apartments and other rental units.
6. Population characteristics by age.
7. A projection of housing demand based on:
   (a) Household growth;
   (b) Units constructed since the last U.S. Census;
   (c) Number of owned and rented units;
   (d) Number of replacements; and
   (e) Number of households in the eligible-income range.
8. All market studies or market surveys must provide a summary of the sample of farm workers used to document the need for off-farm labor housing. This summary should quantify eligible tenants according to 7 C.F.R. part 3560 subpart L section 3560.577 within the farm worker demographics sample and provide the reference/source of the information.

C. Financial Feasibility

The Loan Originator must analyze sources and uses of funds identified in the initial application to make the following determinations:

- The income (i.e., rent stream) in a proposed project matches up with anticipated debt service and costs.

- The proposed project costs are reasonable. If too high, the loan applicant may be including unnecessary or ineligible items, and the project becomes unaffordable. If too low, the low costs might be due to inferior quality materials and could create deferred maintenance problems later on. Paragraph 4.21 provides further details on project costs and Chapter 3 of HB-2-3560 provide guidance on analyzing a budget.

- The availability of any proposed leveraged funds is realistic.
- The Agency will not be providing excess assistance to the project. This is determined by conducting a subsidy layering review at this stage, and then again at Stage 2 of the loan origination process. Paragraph 4.19 provides details on the subsidy layering review process.
- Construction financing has been arranged.

1. Will Project Income Cover Expenses?

The Loan Originator must review several items in the initial application to assess adequacy of project income and acceptable expenses. The primary document available to the Loan Originator that provides information to determine project feasibility is the project budget, *Form RD 3560-7*.

The operating budget must show a schedule of proposed rental rates for the first year and a typical year's operation. The first year covers the period from the date of the loan closing to the end of the first year's operation. This first year's budget must show that the applicant has sufficient operating capital on hand to pay all operating costs and meet scheduled loan payments during the construction period and prior to occupancy. A typical year's budget must show that once the project is fully operational, there is sufficient income to pay all operating costs, make loan payments, and accumulate reserves.

The first year's budget may include an allowance of up to 10 percent for vacancies, nonpayment of rent, and contingency expenses for a new housing project. This allowance can be adjusted for future budgets based on past project history. The budget must also provide for accumulating a reserve equal to what the life-cycle capital needs analysis shows will be necessary (see discussion below). All real estate taxes, utility costs, and other operating expenses must be identified. The Loan Originator must carefully review *Form RD 3560-7* to establish that utility allowances and projected utility costs are reasonable.

2. Is the Contribution to the Reserve Account Appropriate and Adequate?

The loan applicant's architect should include as part of the Stage 1 application submission a capital needs assessment (CNA) for use in determining annual contribution to the reserve account. The Loan Originator should send this assessment to the State Architect/Engineer for review.

The CNA will be reviewed to determine if the recommended reserves are sufficient to cover the expected needs without driving project rents above CRCUs. The Agency may grant exceptions to the CRCU in limited circumstances, as described in Chapter 3, paragraph 3.20 B.

Annual contributions to the reserve will be at a minimum of 1 percent of the total development cost and no more than the higher of the required amount as shown by the

CNA or that which brings rents up to the CRCU. The aggregate, fully funded reserve amount must equal at least 10 percent of the greater of the total development cost or appraised value. If the reserve contribution at 1 percent of total development cost results in rents that are above the CRCU standard as discussed in Chapter 3 and the applicant is unable to modify the proposal to meet the minimum reserve requirement without exceeding the CRCU standard, the project must be rejected as infeasible.

3. Are Rents Reasonable?

The Loan Originator must confirm that basic rents are not in excess of CRCU in the area. If they are, the project must be rejected as infeasible. Chapter 3 provides details on establishing CRCU.

Rents for a project must be proportionate, based on square footage. **Attachment 4-G** provides an example of how to establish whether rents are proportionate.

4. Is the Project Assured of Receiving Proposed Leveraged Funds?

The Loan Originator will have already given the applicants a deadline by which they must demonstrate their intent to apply for leveraged funds. The Loan Originator should verify with any other financing or funding sources known at present, if any, any information the applicants provide regarding the status of such funds and also begin to work with any other lender(s) to develop the participation, or intercreditor agreement. Chapter 6 provides additional guidance on working with other funding sources.

5. Has Construction Financing Been Arranged? [7 CFR 3560.71]

Applicants must describe in their initial application how they will finance the construction of the project. If using interim financing, the applicants must include in their initial application a letter of intent or a letter of interest from the interim lender that the applicants intend to use. The Agency requires the applicant to seek interim financing for any construction that will require more than one payment. Interim financing from an interim lender is the preferred method of construction because it minimizes the administrative burden to the Agency.

When interim financing is unavailable at reasonable rates from another lender and multiple advances are assessed to be in the best interest of the Government and are necessary to make the project feasible, the Agency may agree to provide multiple advances for construction financing.

When interim financing is used, the applicant must include in their final application a copy of the interim lender's commitment letter with evidence of the lender's license to do business in the state. The applicant entity or its IOI entities may not provide interim financing to its own project.

When multiple advances are used, the following requirements apply to protect the Agency's investment during the construction process:

- The Agency will provide financing at the market interest rate during construction. The borrower receives no interest credit until the construction is completed and the Agency loan has been closed.

- The Agency will withhold a percentage of the loan from the general contractor until construction is complete in accordance with the contract.

4.19 SUBSIDY LAYERING *[7 CFR 3560.63]*

The Agency has an obligation under law to make sure that the total funds provided to any project by all sources do not exceed the minimum amount necessary to make the project feasible.

A. Fee Norms

1. Acceptable Fee Norms

In evaluating the amount of financing that is necessary for a project, the Loan Originator must use the following fee norms:

- Builder's profit: Take up to 10 percent of the construction contract.

- General overhead: Take up to 4 percent of the construction contract.

- General requirements: Take up to 7 percent of the construction contract.

- Developer's fee: Take up to 15 percent of the total development costs for tax credit purposes for new construction and rehabilitation costs; up to 8 percent of the acquisition costs only for the acquisition rehabilitation costs.

These fee norms may differ if the State agency allocating LIHTCs and the Agency have agreed to different levels in the Memorandum of Understanding (MOU). (**Attachment 6-B** provides a sample of the MOU.) However, in no case may the builder's profit, general overhead, and general requirements total more than 21 percent of the construction contract.

In cases where there is no MOU with the State authority that allocates LIHTCs, housing tax credits, the above fee norms, or those used by the State, whichever are less, will be used in analyzing the amount of subsidy proposed for the project.

2. Deviation from Fee Norms

Any deviation in the MOU over the 21 percent cap for builder's profit, general overhead, and general requirements or over the developer's fee norm on new construction or acquisition cost must be submitted by the State Director to the National Office with

justification and documentation for the Administrator's review and concurrence. The Administrator will consider:

- An explanation of the data being used to justify the deviation;
- The applicability of the deviation (i.e., to the entire jurisdiction, or for specific markets, or for project types within a jurisdiction);
- Sources of conventional development information that support the deviation;
- The position of the State agency on the requested deviation;
- The effect of not granting the deviation; and
- The history of rental housing development in rural areas, developer's fee levels, and effect of developer's fees on development in the rural area of the state.

3. Review of Fee Norms

The Loan Originator must review the fee norms:

- Annually, if there is no MOU in place with the State agency allocating the LIHTC; or
- As needed if there is an MOU in place with the State agency allocating the LIHTC.

B. Excess Assistance

The Agency defines excess assistance to a project as allowable sources exceeding allowable uses by more than $25,000. In all cases where the results of the analysis indicate that there will be excess assistance, the Loan Originator must consult with the applicant, as well as with the State agency, and reach an agreement for reducing the excess assistance by taking one of the following actions:

- Reduce the number of tax credit units requested;
- Reduce the level of assistance provided by one or more of the sources of funds;
- For participation loans, revise the uses to include additional costs that enhance the project, are allowed by participating partners, are consistent with the intent of the multi-family housing program, and will assist the resident population being served by the housing; or
- As a last resort, reduce the amount of equity contribution through the reduction of the loan amount. If the loan amount is reduced, the Loan Originator must provide the loan applicant with formal notification and inform the State agency and the National Office.

4.20 INITIAL APPLICATIONS WITH RENTAL SUBSIDY

Special consideration must be given to initial applications that include rental subsidy.

A. Agency-Funded Rental Assistance

Initial applications that include a request for Agency rental assistance must include market documentation that shows the need for such subsidy. The number of rental assistance units requested must be based on the market feasibility documentation, the proposed rental rates as reflected in the budget for the project, and the income levels of the prospective tenants.

B. Non–Agency Rental Subsidy

If non–Agency rental subsidy is to be provided with the project, the requirements of Chapter 8 in HB-2-3560 must be met.

As evidence of market feasibility for projects that are expected to use rental subsidy from sources other than the Agency, applicants are required to demonstrate that:

- The assistance will be provided for the term of the loan;
- A market exists for persons and families eligible for the assistance (the amount of rental subsidy to be provided must be considered when determining the number of families that would be income-eligible for the project); and
- During the term of the rental subsidy contract, the provider will make available the amounts required at least annually.

4.21 PROJECT COSTS

The Loan Originator must establish that the project meets economical development requirements and project costs are reasonable. Operating costs and debt service and the contribution to reserves must equate to rents that are at or below the CRCU standard for the market area, or the application must be rejected. Preliminary plans must be in conformance with Agency goals to contain costs without jeopardizing quality and causing increased maintenance in the long term. The initial application must also show that maximum consideration has been given to energy conservation. Loan Originators should refer to Paragraph 3.17 for additional guidance in evaluating project costs. Other technical resources, within the Agency, such as the State Architect/Engineer, may assist the Loan Originator in making these determinations.

A. The State Architect’s Role

The Loan Originator must submit all project drawings, specifications, cost estimates, and analysis to the State Architect/Engineer. The State Architect will:

- Complete an evaluation of a project’s preliminary planning documents and an evaluation of the proposed construction costs. During this evaluation, the architect

will compare the proposed construction costs to similar costs in the same geographic area and make a determination as to whether the proposed costs are reasonable and customary.

- Consult with the State Environmental Coordinator and Loan Originator if either have noted any issues of environmental concern.

- Send a written evaluation of the project to the applicant, with a copy to the Loan Originator for the case file.

B. Cost Databases

There are several databases available to Agency staff that are useful in determining reasonable construction costs. Exhibit 4-12 provides a brief explanation of these databases and how they can be used to assist in the underwriting process and in establishing reasonableness of cost.

Exhibit 4-12

Tools Available to Assist in Underwriting

NAME	FUNCTION	LOCATION
Marshall & Swift System 84 (New Construction)	PC-based construction cost database with information by zip code used to evaluate new construction costs.	The Agency Appraiser or the Agency Architect should have this program. It may be shared without restriction.
Sources and Uses Comprehensive Evaluation (SAUCE)	PC-based (Excel spreadsheet) underwriting tool used to evaluate the sources and uses of funds proposed for a project.	The State Office Specialist or Multi-Family Housing Coordinator has this disk. The program should be shared with developers and State housing finance agencies.
Automated Multi-Family Housing Accounting System (AMAS)	A database that contains construction cost information on all projects financed by the Agency.	Each Field Office has online access through the St. Louis Office. Contact AMAS Coordinator. Cost data may be used for analysis by Agency staff.
FOCUS	A database extracted from information stored in AMAS, which can be used to create reports. There are also several menu-driven reports for multi-family housing.	Each Field Office has online access to FOCUS.

C. Acceptable and Unacceptable Legal Costs

Loan applicants must have written contracts for any legal services that are to be paid for out of loan funds. This does not include the services provided by a title company. The Loan Originator must review these contracts to ensure that:

- All costs are for an authorized purpose;
- All costs are reasonable; and
- All costs match estimates.

Authorized Legal Costs

- Organizational costs for nonprofit applicants;
- Owners and mortgage title insurance premiums;
- Escrow fees;
- Appropriate attorney fees for loan closing;
- Recording fees;
- Construction contract reviews;
- UCC opinion;
- Interim loan closing costs;
- Waiver of mineral lease ownership; and
- Review of lease and certification that it meets the law.

Prohibited legal costs include:

- Services related to developing a loan application, except in the case of a nonprofit applicant;
- Services related to getting land zoned; and
- Tax credit consultation.

D. Unacceptable Construction Costs

The results of these analyses can be used by the Loan Originator to talk with the applicant about any unacceptable proposed construction costs. Unacceptable costs may be costs that are too high or those that are too low. Projects must not come in using materials that are below average quality as defined by Marshall & Swift; doing so is likely to lead to excessive long-term maintenance costs.

4.22 ADEQUATE SECURITY

The Loan Originator must not recommend for funding any applications that do not have adequate security. Security is determined by an appraisal, which the Loan Originator must order as one of the first steps in Stage 2 of the loan origination process. Chapter 7 covers security requirements in detail.

All initial applications for congregate housing, group homes, manufactured housing, and cooperative housing must be reviewed by the National Office to move on to the final application stage unless a statewide exception is authorized by the Deputy Administrator, Multi-Family Housing. Since this additional step means additional time may be required to process special property type applications, Loan Originators should process any special property type applications before others. The State Director must submit to the National Office the initial application for the special property type. The application must be accompanied by the State's review comments and a written recommendation on the loan.

4.23 COMPLETING THE INITIAL APPLICATION REVIEW

A. Notifying Applicants of Their Status

Following the Loan Originator's 30-day review of the initial applications, loan applicants must be informed of the status of their loans. The Loan Originator will send one of three types of letters to the applicants:

- *Handbook Letter 106 (3560), Notice of Pre-application Review Action.* These letters go to applicants whose initial applications have been determined to be eligible and feasible. Once the environmental review is complete, this letter can be a letter of conditional commitment. This letter specifies the additional information and forms required in the final application and the deadline for submission of this information. Details on the letter inviting final applications appear in Chapter 5.

- *Handbook Letter 108 (3560), Letter Denying Funding due to Ineligibility*. These letters go to applicants whose initial applications are not eligible or feasible. Such letters will state the reason(s) for rejection and inform the applicant of their appeal rights under 7 CFR Part 11.

- *Handbook Letter 109 (3560), Letter Informing of National Office Review*. If the initial application for a special property type is still under review at the National Office after 30 days, the applicant must be informed that the application is under review at the National Office and that the applicant will be advised of the results of the review as soon as it is completed. The National Office should take no more than 30 days to complete its review of the initial application.

B. Returning Unused Funds

The State Office must notify the National Office immediately if funds are not going to be used so that the funds can be reallocated by the National Office in a timely manner.

C. Withdrawing and Rejecting Applications

The Loan Originator must reject any initial applications that do not meet the Agency's underwriting standards for eligibility and feasibility. The letter notifying the applicant of the rejection must specify the reasons for the rejection and offer the applicant appeal rights in accordance with 7 CFR Part 11.

Applicants may withdraw their initial applications at any time by notifying the Agency in writing.

4.24 CONDITIONAL LETTERS OF COMMITMENT

Loan applicants who are requesting a participation loan from the Agency may request *Handbook Letter 102 (3560), Letter of Conditions, Loan Approval, or Obligation of Funds* from the Agency to help them to obtain other financing or funding. Such a letter is often requested from the applicant by other lenders as a sign of the commitment of funds from the Agency and assurance that the Agency will actually make the loan and the project will go forward.

The Agency is unable to provide such a letter to the applicant until the environmental review has been completed. The letter must identify all mitigation measures required in the environmental review and addressed in designs and cost estimates. Where mitigation requires an ongoing effort, these measures shall be included in management agreements. However, an applicant may be helped by the letter sent to them by the Agency inviting them to submit the final application. This letter states the loan funds that the Agency has available to fund the particular project should all of the requirements for loan approval be met. Once the loan has been approved at Stage 2, the Agency will send to the loan applicant a conditional letter of loan commitment, stating the loan terms the Agency is offering and the conditions which must be met in order to go to loan closing. This conditional letter of loan commitment is discussed in Chapter 5, Paragraph 5.21.

Loan Originators will be assisted during Stage 1 by the Loan Review Committee and other key staff, such as the State Architect/Engineer. If the initial application is for a participation loan, the Loan Originator at this stage will begin working closely with the entity providing other funds or financing. Chapter 6 provides additional information about processing participation loans. Approved special property type applications, such as those for congregate housing, must be forwarded to the National Office for their review. Chapter 11 provides additional details on special property types.

ATTACHMENT 4-A

STATE NOFA RESPONSE SUMMARY SHEET

RURAL HOUSING SERVICE
SECTION 515 RURAL RENTAL HOUSING NOFA
APPLICATIONS
STATE _____
FY_____

RANK	SCORE	APPLICANT NAME/ LOCATION	RACE/ETHNIC CODE: 1=White 2=Black/AA 3=A/NH/PI 4=AI/NA 5=Hispanic/L	HIGH NEED BY TYPE EZ/EC/ REAP, TRIBAL, COLONIA	TYPE FAM/ ELD/ CG	PROJ CONG DIST	RHS TOTAL DEV COST (TDC)	RHS LOAN REQUEST	RHS LEVERAGED ASSISTANCE	% LEVER-AGING	TOTAL NO. OF UNITS	NO. OF TAX CREDIT UNITS	NO. OF RA UNITS	ALSO ELIG. FOR NPSA EZ/EC/REAP, OR UNDERSRVD SETASIDE (BY TYPE)
SECTION 515														
NONPROFIT SET-ASIDE														
HIGH NEED AREA														
UNDERSERVED COUNTIES AND COLONIA SET-ASIDE														
EZ/EC/REAP SET-ASIDE														
STATE RA RESERVE														
GROUP HOME														
CO-OP HOUSING														

ATTACHMENT 4-B

ELIGIBLE LOAN PURPOSES

1. Construct new multi-family housing.

2. Purchase and rehabilitate existing buildings that have not been previously financed by the Agency. In such an event, the rehabilitation must meet the definition of either moderate or substantial rehabilitation as defined in RD Instruction 1924-A. The building or project to be rehabilitated must be structurally sound, and the improvements to the project must be necessary to meet the requirements of decent, safe, and sanitary living units. The TDC for the purchase and rehabilitation of existing buildings must not be more than the estimated TDC for construction of a similar type and unit size property in the same area.

3. Develop housing in a downtown area provided the project is part of the community's comprehensive plan.

4. Purchase and improve the project site. The amount of the loan funds used to purchase the site may not exceed the appraised market value of the site in its present condition. Loan funds may be used to purchase land in excess of what is needed only when:

   - The applicant cannot acquire only the needed land at a fair price and agrees to sell the excess land as soon as practical and apply proceeds to the loan; and

   - Program site density requirements are met in accordance with Chapter 3.

5. Develop and install necessary systems such as streets; a water supply; sewage disposal; heating and cooling systems, and electric, gas, solar, or other power sources for lighting and other features necessary for the housing. If such facilities are located offsite, the following additional requirements must be met:

   - The applicant will hold title to the facility or have a legal right to use the facility for a period of at least 50 percent longer than the life of the loan, and the title or right is transferable to any subsequent owner of the site.

   - The facilities will be provided for the exclusive use of the project. If not, Agency funds must be limited to the prorated part of the total cost of the facility according to the use and benefit to the project. In such cases, the applicant will agree in writing to apply, as extra payments on the loan, any subsequent collection by the loan applicant from other users or beneficiaries of the facility.

6. Landscaping and all site development related to the project such as lighting, walks, fences, parking areas, and driveways.

7. Tenant-related facilities which the loan applicant can document are needed by prospective tenants, such as a community room; central laundry facility; central cooking and dining in

congregate housing and group homes; and passive recreation or active facilities, such as outdoor seating for elderly and tot lots for family projects.

8. Management-related facilities such as a maintenance workshop, storage facilities, and office and living quarters for the resident manager and other operating personnel.

9. Purchase and install equipment and appliances as customary and appropriate for the area in which the project is located.

10. For farm labor housing Section 514/516 only, funds may be used to purchase household furnishings.

11. Initial operating capital for any state or political subdivision thereof or Indian tribe or any broad-based public or private nonprofit applicant who is not receiving low income housing tax credits. Loan funds may be used to pay initial operating expenses up to 2 percent of the total development cost.

12. Builder's profit, overhead, and general requirements as follows:

    - Builder's profit: up to 10 percent of the construction contract.
    - General overhead: up to 4 percent of the construction contract.
    - General requirements: up to 7 percent of the construction contract.

13. Legal, technical, environmental and professional services related to the project.

14. Application and permit fees related to the project. These include market studies; tax credit application and monitoring fees; legal (costs pertaining to the closing of the Agency loan only), archeological, architectural, engineering, environmental, and other appropriate technical and professional services.

15. Reimbursement to nonprofit organizations and public bodies. Loan funds may be used to reimburse a nonprofit organization or public body, up to 2 percent of total development cost, for:

    - Development and packaging of a loan application and a multi-family housing proposal, including legal, technical and professional fees incurred in the applicant's formation or incorporation; or

    - Technical assistance from another nonprofit organization to assist in formation or incorporation and development and packaging of a loan application and multi-family housing proposal.

16. Educational programs. The National Office may approve, on a case-by-case basis, during the first year of a cooperative's housing operation, the use of loan funds to pay for the members of the cooperative to attend educational programs relative to the function and responsibilities of cooperatives.

17. Interest accrued and customary charges necessary to obtain interim financing, up to the maximum debt limit (MDL).

18. Purchase housing from an interim lender. Loan funds may be used to purchase housing from an interim lender that holds fee simple title to an Agency-financed project upon which construction had commenced and a letter of commitment had been issued by the Agency, but the original applicant for whom funds were obligated will not or cannot continue with the project. In order for the purchase to take place, there must be no unpaid obligations outstanding in connection with the project.

19. Relocation costs. Loan funds may be used to pay for necessary costs incurred to comply with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970.

20. Demonstration projects involving innovative housing units and systems which do not meet existing published standards, rules, regulations, or policies, but do meet the intent of providing decent, safe, and sanitary rural housing when the Agency authorizes loan funds for this purpose. Such project applications must be forwarded to the National Office for its review.

21. Conversion of 502 properties. In accordance with program regulations, loan funds may be used to finance the conversion of real estate owned units originally financed under Section 502 single family homeownership program to Section 515 multi-family housing.

22. Expenses incurred before loan approval when the project is funded and the conditions listed in **Attachment 4-C**, item 11 are met.

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ATTACHMENT 4-C

PROHIBITED LOAN USES

1. Housing to serve primarily temporary and transient residents (except migrant farm labor housing), nursing homes, special care facilities, or institutional-type homes. Group homes are not included in this prohibition.

2. Facilities that are not consistent with the design requirements specified in Chapter 3.

3. Any costs associated with space in a project that is leased for commercial use or any commercial facilities except essential service-type facilities when otherwise not conveniently available.

4. Specialized equipment for training and therapy.

5. Operating expenses for a central dining facility, or items that do not become affixed to the property, except for the household furnishings permitted by farm labor housing.

6. Compensation to a for-profit loan applicant for value of land contributed in excess of the initial equity contribution.

7. Refinancing of an applicant's debt, except (a) to take out interim financing; or (b) when it is necessary to obtain a release of an existing lien on land owned by a nonprofit organization.

8. Payment of any fee, charge, or commission to a broker or anyone else for referral of a prospective applicant or solicitation of a loan.

9. Payment to any officer, director, trustee, stockholder, member, or agent of an applicant except for those payments made to a nonprofit organization providing technical assistance to another nonprofit applicant.

10. Developer's fees.

11. Obligations incurred before loan approval. Any expense incurred by an applicant prior to loan approval is at the applicant's own risk. Loan funds may be used for expenses incurred before loan approval only when the project is funded and all of the following conditions are met:

    - The debts were incurred for eligible loan purposes;

    - Contracts, materials, construction, and any land purchased meet Agency standards and requirements; and

- Payment of the debts will remove any liens that have been attached and any basis for liens that may be attached to the property on account of such debts.

12. In accordance with *RD Instruction 1924-A*, contractors will not be allowed to obtain a profit and overhead unless they are performing actual construction. "Actual construction" means "work" as defined in American Institute of Architects (AIA) documents: ". . . labor, materials, equipment, and services provided by the contractor to fulfill the contractor's obligations." Under this definition, contractors with an identity of interest with the applicant who choose to subcontract out construction of the project to another contractor will not obtain a builder's fee (general overhead and profit) when:

    - More than 50 percent of the contract sum in the construction contract is subcontracted to one subcontractor, material supplier, or equipment lessor, and/or

    - Seventy-five percent or more with three or fewer subcontractors, material suppliers, and/or equipment lessors.

If two or more subcontractors have common ownership, they are considered as one subcontractor.

ATTACHMENT 4-D

CONTENTS OF INITIAL APPLICATION PACKAGE

Stage 1 - Forms to be Included in Initial Application Package

A. *Form SF 424, Application for Federal Assistance* (when completed, this form provides the summary information about the project and the applicant);

B. *Form RD 1940-20, Request for Environmental Information*;

C. *Form RD 3560-7, Multiple Family Housing Project Budget/Utility Allowance;*

D. *Form RD 1944-37, Previous Participation Certification;*

E. *Form RD 1924-13, Estimate and Certificate of Actual Costs;*

F. *Form RD 410-9, Statement Required by the Privacy Act* (for individuals only); and

G. *Any other information specified in the NOFA.*

Stage 1 - Information Requested in Initial Application Package

I. To establish applicant eligibility:

A. Current (within 6 months) financial statements with the following paragraph certified by someone with the legal authority to do so:

"I/we certify the above is a true and accurate reflection of my/our financial condition as of the date stated herein. This statement is given for the purpose of inducing the United States of America to make a loan or to enable the United States of America to make a determination of continued eligibility of the applicant for a loan as requested in the loan application of which this statement is a part."

B. Check for $28 from individual applicants and $40 from organizational applicants made out to United States Department of Agriculture. This will be used to pay for credit reports obtained by the Agency.

C. Statements signed by applicants that they will pay any cost overruns.

D. Proposed limited partnership agreement and certificates of limited partners, if applicable. (Agency requirements should be contained in one section of the agreement and their location identified by the applicants or their attorney in a cover sheet.)

E. If a nonprofit organization:

1. Tax-exempt ruling from the IRS designating them as a 501(c)(3) or 501(c)(4) organization. If the designation is pending, a copy of the designation request must be submitted.

2. Purpose statement, including the provision of low income housing.

3. Evidence of organization under state and local law, or copies of pending applications.

4. List of Board of Directors.

F. If a limited liability company, proposed operating agreement and the authorized agent who has the authority to complete the loan application and loan closing documents.

G. If a trust, organizational documents and attorney opinion letter that the trust is validly formed and identifying the authorized representative to act on the trust's behalf.

II. To establish project feasibility:

A. Market feasibility documentation: Either a market study or a market survey, as appropriate.

B. Type of project and structures proposed (total number of units by bedroom size, size of each unit type, size and type of other facilities).

C. Schematic drawings:

1. Site plan, including contour lines;

2. Floor plan of each living unit type and other spaces, such as laundry facilities, community rooms, stairwells, etc.;

3. Building exterior elevations;

4. Typical building exterior wall section; and

5. Plot plan.

D. Description and justification of related facilities, schedule of separate charges for related facilities.

E. Type and method of construction (owner builder, negotiated bid, or contractor method).

F. Estimated costs (*Form RD 1924-13)*.

G. Statement of proposed management.

H. Congregate services package/plan (if applicable).

I. Statement of support from other Government services providers to the project (congregate only).

J. Response to the Uniform Relocation Assistance Act (if applicable).

III. To establish project financing:

A. Statement of budget and cash flow (applicant completes *Form RD 3560-7*), including type of utilities and utility allowance, if applicable and contribution to reserves.

B. Congregate services charges (if applicable).

C. Status of efforts to obtain leveraged funds.

D. Proposed construction financing (interim or multiple advance; if interim financing, letter of interest from intended lender).

IV. To understand environmental and site information:

A. Environmental information (applicant completes *Form RD 1940-20*).

B. Evidence of compliance with Executive Order 12372 (A-95) (if applicable) *Form SF 424* is sent to a clearinghouse for intergovernmental review.

C. Phase I due diligence (Environmental Site Assessment; see Chapter 3).

D. Map showing location of support services.

E. Evidence of submission of project description to SHPO with request for comments.

F. Comments regarding relevant offsite conditions.

Stage 2 - Forms and List of Necessary Information Provided to Applicant in Initial Application Package, But Not Due Until Stage 2

A. *Form RD 1924-13; Estimate and Certificate of Actual Costs;*

B. *Form HUD-935.2, Affirmative Fair Housing Marketing Plan;*

C. *Form RD 3560-30, No IOI;*

D. *Form RD 3560-31, Identity of Interest Disclosure/Qualification Certificate;*

E. *Form RD 1910-11, Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts;*

F. *Form RD 3560-13, Owner's and Management Agent's Certification;*

G. *Form AD 1047, Certificate Regarding Debarment;*

H. *Form RD 400-1, Equal Opportunity Agreement* ;

I. *Form RD 400-4, Assurance Agreement;*

J. Guide 1 of RD Instruction 1924-A;

K. Exhibit C of RD Instruction 1924-A;

L. Final planning, bidding, and contract documents;

M. Agreements/Documents: architectural/engineering, legal;

N. State or local approvals (zoning, utilities);

O. Confirmation of SHPO evaluation and comments;

P. Preliminary title report;

Q. Management plan with attachments;

R. Relocation plan (if relevant);

S. Schedule of charges for nonshelter services (congregate);

T. Services agreement (congregate);

U. Executed copy of a limited equity agreement (RCH; **Attachment 11-E**);

V. Completed subscription agreement (RCH; **Attachment 11-I**);

W. Disclosure of any change in financing;

X. Detailed operating budget showing a typical year's operation (shown on *Form RD 3560-7*), the first year's budget (also *Form RD 3560-7*) and use of 2 percent initial operating capital;

Y. Description of construction financing, including interim lender's commitment letter with evidence of license to do business in state;

Z. Land survey;

AA. Final organizational documents or Certificate of Good Standing, if existing organization; and

BB. Attorney's opinion letter that entity is in conformance with program requirements.

ATTACHMENT 4-E

SITE EVALUATION CHECKLIST

DATE OF REVIEW: _____ REVIEWED BY: _____

PROJECT: _____

LOCATION: _____

INTENDED USE: ELDERLY _____ FAMILY _____ CONGREGATE _____ GROUP HOME _____
OFF-FARM LABOR HOUSING _____

PRESENT USE OF SITE: _____

REVIEWER'S DETERMINATION OF HIGHEST AND BEST USE OF SITE:
_____
_____

RELOCATION REQUIRED: YES____ NO_____ IF YES, TYPE: _____ FAMILY
_____ BUSINESS

DIMENSIONS:_____ AREA:_____ SQ. FT. OR ACRES

ZONING (classification, uses, and densities permitted):_____
_____

SITE IMPROVEMENTS:

_____ Public Water	_____ Private Well	_____ Public Sewer
_____ Septic Tank	_____ Storm Sewer	_____ Sidewalk
_____ Curb	_____ Gutters	_____ Alley
_____ Street Lights	_____ Electricity	_____ Gas
_____ Underground Electricity & Telephone		

PRESENT IMPROVEMENTS _____ DO _____ DO NOT CONFORM TO ZONING REGULATIONS

ACCESS BY: _____ Public Street _____ Private Road _____Surface Street

MAINTAINED BY: _____ Municipality _____ Private Association (attach summary of association documents)

INGRESS AND EGRESS (adequacy and safety):_____
_____

TOPOGRAPHY, VIEW AMENITY, LOT DRAINAGE, FLOOD CONDITION, SLOPES, ETC.:
_____
_____

Lot sketch showing lot dimensions, distance to nearest corner, and the location of any detrimental conditions:

EASEMENTS OR ENCROACHMENTS ON-SITE AND OFF-SITE (if any): _____
_____

IS THE PROPERTY LOCATED WITHIN AN IDENTIFIED FLOOD HAZARD AREA? YES ____ NO: ____

FAVORABLE OR UNFAVORABLE CONDITIONS NOT MENTIONED ABOVE INCLUDING ANY NONCONFORMING USE(S) OF PRESENT IMPROVEMENTS:_____
_____
_____

CONTIGUOUS LAND USE (Not Zoning)
NORTH: _____
SOUTH: _____
EAST: _____
WEST: _____

(NOTE: IF RESIDENTIAL UNITS, SPECIFY APPROXIMATE AGE, COST, ETC.)

SHOPPING

1. FOOD:

A. Type: Full service _____ Convenience_____

_____

B. Distance: Full service_____ (Miles/Blocks)

Convenience_____ (Miles/Blocks)

C. Sidewalks to shopping: Yes _____ No _____

D. Controlled intersections: Yes _____ No _____

E. Excessive grades to food shopping: Yes _____ No _____

2. MAJOR:

A. Type: Mall _____ Central Business District _____ Strip _____ Other _____

_____

B. Specify types of stores, etc. _____

_____

C. Distance:_____ (Miles/Blocks)

D. Sidewalks to shopping: Yes _____ No _____

E. Controlled intersections: Yes _____ No _____

F. Excessive grades to major shopping: Yes _____ No _____

SCHOOLS (Family Projects Only)

1. Distance:

A. Elementary: _____ (Miles/Blocks) Name: _____

B. Middle: _____ (Miles/Blocks) Name: _____

C. Sr. High: _____ (Miles/Blocks) Name: _____

2. If within walking distance, is the route safe (i.e., sidewalks, controlled intersections, etc.)? Yes ____ No _____

If no, please explain: _____

3. If schools are not within safe walking distance, is school bus transportation available?

A. Elementary: Yes _____ No _____

B. Middle: Yes _____ No _____

C. Sr. High: Yes _____ No _____

TRANSPORTATION (PUBLIC)

1. Is public transportation available? Yes _____ No _____

2. If yes, distance from site: _____ (Miles/Blocks)

3. Must excessive grades be traversed to reach public transportation? Yes _____ No ____

4. Destinations of public transportation (check all that apply):

Food shopping _____ Medical facilities_____
Convenience shopping_____ Religious institutions_____
Other shopping_____
Recreational facilities _____

Recreational Facilities Available

1. _____ 2. _____

3. _____ 4. _____

Medical Facilities Available

1. _____ 2. _____

3. _____ 4. _____

Religious Institutions Available

1. Name: _____ Distance: _____ (Miles/Blocks)

2. Name: _____ Distance: _____ (Miles/Blocks)

3. Name: _____ Distance: _____ (Miles/Blocks)

DOES THE SITE ISOLATE THE ELDERLY? Yes _____ No _____

Adverse Environmental Conditions

1. Excessive noise: Yes _____ No _____ Cause: _____

2. P.O.L. storage: Yes _____ No _____ Distance: _____

3. R.R. tracks: Yes _____ No _____ Distance: _____

4. Highway: Yes _____ No _____ Distance: _____

5. Manufacturing: Yes _____ No _____

6. Substandard dwelling units: Yes _____ No _____

Does the site have good visibility from major roadway? Yes_____ No _____

Is the site located in an area of minority concentration? Yes _____ No _____

Is the site located in an area of high concentration of subsidized housing? Yes _____ No _____

If yes, specify type: _____
_____

Does the site have residential character? Yes _____ No _____

Comments: _____
_____

Recommendation: Accept site _____ Reject site _____

If rejection, reasons why: _____
_____

_____

ATTACHMENT 4-F

ANALYZING THE MARKET FEASIBILITY DOCUMENTATION

This checklist is an aid to the Loan Originator in understanding the market feasibility documentation. It is designed so that if all items are checked off, the Loan Originator should be confident that the market feasibility documentation was prepared properly and that there is a need and demand for the housing proposed.

PART I: Required Elements of Market Feasibility Documentation (MFD)

Complete Information:

1. _____ The MFD includes all of the information as required by Exhibits 4-10 and 4-11.

Site and Services:

2. _____ Services available in the area include shopping, schools, and medical facilities as well as community services such as recreational, transportation, and day care. Services appear to be appropriate for the project type and within reasonable proximity of the site.

Viability of the Community:

3. _____ Building permits issued during the past 3 years and new employment opportunities show the community to be growing, rather than declining.

4. _____ Major employers in the area provide employment opportunities sufficient to support a population base of renters for the proposed project.

5. _____ Employment rates for the area have been high over the past 5 years.

Realistic Recommendations:

6. _____ The analyst makes realistic recommendations supported by the statistical information provided:

    _____ Population characteristics and household data for the community are stable or show an increase during the past 5 years.

    _____ Population characteristics by age shows support for the type of project being proposed and the type of complex proposed reflects the greater proportionate need and demand of the community. To establish this, compare the share or percentage of the community's total rental units that are designated for the elderly (62 years or older or disabled) to the community's share of elderly households, and the share of total rental units for families to the share of family households in the community.

For mixed projects, the unit mix must reflect the proportionate need of each household type.

_____ Statistical data showing households by income group shows that there are households in the eligible income group that could rent in the project.

_____ Historical breakdown of households by owners and renters shows that there is a tradition of renters.

_____ The MFD addresses the need for more than just one and two bedroom units.

_____ The bedroom mix of the proposed units is proportional to the need in the market area based on renter household size and the bedroom mix of existing units.

_____ The bedroom mix of fully accessible units (5 percent) is comparable to the bedroom mix of nonaccessible units.

Housing Demand:

7. _____ The MFD shows evidence of need for the housing in that there are rent overburdened households and/or households in substandard housing.

8. _____ A discussion of existing housing supply includes reference to the single-family housing rental and sale units available and shows these to be inadequate.

9. _____ Temporary residents of a community, including college students, military personnel, or others not claiming their current residence as their legal domicile, have not been included in determining need and project size.

10. _____ The MFD includes a discussion on the current market for single-family houses and how sales, or the lack of sales, will affect the demand for elderly rental units. If the market study discusses how elderly homeowners reinforce the need for rental housing, it does so only as a secondary market and not as the primary market.

11. _____ The vacancy rates in existing rental housing, including available single-family housing and mobile homes, is 5 percent (or the State-approved vacancy standard, if different) or less, or there is an acceptable explanation where higher rates occur. Existing rental complexes should also show waiting lists.

Conventional Rents for Comparable Units:

12. _____ The CRCU shown is less than or equal to the rents proposed for the project.

Low Income Housing Tax Credit:

13. _____ For proposals where the applicant is requesting LIHTCs, the number of LIHTC units and the maximum LIHTC incomes and rents by unit size are provided. Statistical

data provided show that there are households in the tax credit-eligible income group to rent in the project. If not, rental assistance is requested.

Rental Assistance:

14. _____ The MFD makes clear the amount of RA that is necessary to ensure the project's success.

COMMENTS ON MISSING OR INCOMPLETE ITEMS:

PART II: Certifications

For both surveys and studies, the analyst certifies that:

_____ The information presented is accurate to the best of the preparer's knowledge;

_____ Reliable sources were used to collect the information and data presented (for a study, the analyst has included a statement of qualifications); and

_____ A site visit was made by the preparer or their representative.

For studies, the analyst also certifies that:

_____ The analyst will not receive any fees that are contingent upon approval of the project by the Agency; and

_____ The analyst will have no interest in the project.

COMMENTS ON MISSING OR INCOMPLETE ITEMS:

Part III: Methodology for Market Studies

_____ A brief statement of the methodology used in the study has been included.

_____ All mathematical calculations are expressed in actual numbers, including percentages.

_____ Source references are identified for each table or section of the market study.

COMMENTS ON MISSING OR INCOMPLETE ITEMS:

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ATTACHMENT 4-G

EXAMPLE OF INTEREST CREDIT DETERMINATION FOR RURAL RENTAL HOUSING

$260,000 LOAN - APPROVED DURING 1987 FISCAL YEAR

PROJECT CONTAINS FOUR 1-BEDROOM UNITS (600 SQ. FT. EACH)

AND FOUR 2-BEDROOM UNITS (700 SQ FT. EACH)

TOTAL FLOOR AREA = 5200 SQ. FT.

BUDGET FOR NOTE RATE RENT**-a/	BUDGET FOR BASIC RENT**
Operating, maintenance, vacancy and contingency allowance, reserve and return to investor, if applicable $10,560	Operating, maintenance, vacancy and contingency allowance, reserve and return to investor, if applicable $10,560
Loan repayment at 9 1/2% interest	Loan repayment at 1% interest
$260 M x $95.88 b/ $24,929	$260 M x $25.44 b/ $6,615
TOTAL ANNUAL COST $35,489	TOTAL ANNUAL COST $17,175
$35,489 ./. 12 = $2958* cost/month	$17,175 ./. 12 = $1432* cost/month
One bedroom rent: 600/5200=.1154x2958=341.35	One bedroom rent: 600/5200=.1154x1432=165.25
Two bedroom rent: 700/5200=.1346x2958=398.15	Two bedroom rent: 700/5200=.1346x1432=192.75
(341.35x4)+(398.15x4)=$2,958 monthly income	(165.25x4)+(192.75x4)=$1432 monthly income
$35,489 ./. 12 = $2958* cost/mo.	$17,175 ./. 12 = $1432* cost/mo.

a/ One budget form reflecting two rent levels must be prepared; one level for the note rate rent and another level for the basic rent. (The expense items in the budgets shown in this illustration are only for illustration purposes and are not itemized.)

b/ Annual amount using monthly amortization factor for 50 years. If the regular installment on the note was amortized using a factor for less than 50 years, substitute the appropriate factor for a corresponding number of years.

* Rounded to the nearest dollar.

** In cooperatives, the term "rent" shall mean "occupancy charge."

CHAPTER 5: PROCESSING FINAL APPLICATIONS — STAGE 2

5.1 INTRODUCTION

In the second stage of the application process, the Agency completes and confirms its underwriting of those applications that passed beyond Stage 1—the Notice of Funding Availability (NOFA) initial application process—and completes its environmental review. During this stage, applicants must submit additional information about the proposed project, project construction or improvements, other financing, a subsidy layering reviews using Sources and Uses Comprehensive Evaluation (SAUCE) or similar documentation approved by the National Office, and the proposed entity and procedures for managing the project. Agency staff use this information to make a final determination about the feasibility of the project, establish that the applicant has adequate systems to successfully develop and operate the project under the program, and set the terms of Agency financing. Applicants also sign the loan agreement or resolution, as applicable, which becomes their legal obligation to comply with all Agency program requirements.

5.2 OVERVIEW OF STAGE 2, FINAL APPLICATIONS

In the final application stage, or Stage 2 of the loan origination process, the Loan Originator requests final applications from those loan applicants who have met the tests of eligibility and feasibility and passed the underwriting analysis conducted in the initial application stage. The environmental review is completed, and the Loan Originator generally meets with the loan applicant to discuss any outstanding issues and how to assemble the loan docket. As soon as the final application is requested, the Loan Originator will once again contact any other States in which the applicant has loans to confirm that the applicant is in compliance with those loans.

Once the final applications are submitted, the Loan Originator conducts a final analysis of the loan applications to confirm project eligibility and feasibility and to ensure that compliance with environmental requirements is accomplished. The Loan Originator then makes a recommendation to the State Director as to whether to approve and fund the loan. The State Director, or the State Director's designee, will make the final decision on the loan.

Required Affirmative Fair Housing Marketing Plan (AFHMP) Attachments

- Request final application;
- Confirm that applicant is in compliance with other states;
- Meet with loan applicant;
- Perform final analysis to confirm eligibility and feasibility;
- Run SAUCE program;
- Work with loan review committee as appropriate;
- Make recommendation for loan approval or rejection to State Director; and
- Obligate funds and Rental Assistance (RA) (if appropriate).

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SECTION 1: REQUESTING FINAL APPLICATIONS AND MEETING WITH APPLICANTS

5.3 REQUESTING FINAL APPLICATIONS

A. Invitation to Submit Final Application

The Loan Originator must send *Handbook Letter 106 (3560), Notice of Pre-application Review Action* to all loan applicants who are to proceed to the final application stage of the loan origination process, reminding them of the information and forms that they are required to submit as a final application, and telling them they have 30 days from the date of the notification letter to do so. These letters must be sent immediately following the notification by the National Office for selection to provide for new construction or review of the information submitted in Stage 1 for other requests. The letter should also include an invitation to applicants to attend another meeting with the Loan Originator to discuss final application requirements and establish the loan docket.

The cover letter to the invitation to submit a final application must include the following statement:

> "The action taken herein is based upon representation made in your loan request. Any changes therein, including but not limited to changes in complex cost, size, or scope of complex, rental rates, or subsidy costs to the Agency, scope of services, sources of funds, etc., may adversely affect this decision and must be reported to and approved by the Agency in writing. Any changes not approved by the Agency will be cause for the Agency to discontinue processing your request. All applicants requesting changes will be required to give full justification for each change and, if Agency approval is not given, written reasons will be given with a 30-day negotiation period to resolve the difference."

B. Content of Final Application

The final application from a loan applicant consists of additional information about a proposed project that confirms and documents a project's eligibility and feasibility. The initial application package sent to the applicant by the Agency included the required forms and listed the information that would be due at Stage 2. As a result, some applicants may have already submitted some of the information that is now requested from them. Regardless, the Loan Originator must send the loan applicant another letter that includes the forms and lists the information that is due within 30 days. Exhibit 5-1 lists the forms and information that must be sent to and returned by the applicant, and Exhibit 5-2 lists the information that the Agency must identify to the applicant as required at Stage 2.

Exhibit 5-1

Contents of Final Application Package Sent to Loan Applicant and Forms to be Returned by Applicant at Final Application

1. *Form RD 3560-30, Certification of No Identity of Interest (IOI)*
2. *Form RD 3560-31, Identity of Interest Disclosure/Qualification Certificate;*
3. *Form RD 1910-11, Applicant Certification Federal Collection Policies for Consumer or Commercial Debts;*
4. *Form RD 3560-13, Management Certification;*
5. *Form HUD 935.2, Affirmative Fair Housing Marketing Plan;*
6. *Form RD 1924-13, Estimate and Certificate of Actual Cost;*
7. *Form RD 400-1, Equal Opportunity Agreement;*
8. *Form RD 400-4, Assurance Agreement*; and
9. *AD 1047, Certification Regarding Debarment.*

Other Materials Provided to the Loan Applicant

10. *Form RD 3560-33, Loan Agreement* or *Form RD 3560-35, Loan Resolution*, as applicable.

Exhibit 5-2

Information Required at Final Application

1. Attorney's opinion letter that entity is in conformance with program requirements;
2. Final organizational documents or Certificate of Good Standing, if existing organization;
3. Land survey;
4. Interim lender's commitment letter with evidence of license to do business in state (if interim financing is being used);
5. Detailed operating budget showing typical year's operation (as shown on *Form RD 3560-7, Multiple Family Housing Project Budget/Utility Allowance*), the first year's budget (also on *Form RD 3560-7*), and use of 2 percent initial operating capital;
6. Final cost estimates (on *Form RD 1924-13*);
7. Final planning, bidding, and contract documents as listed in Guide 1 of RD Instruction 1924-A, Planning and Performing Construction and Other Development;
8. Environmental review;
9. Agreements/documents (architectural/engineering, legal);
10. State or local approvals (zoning, utilities);
11. Preliminary title report;
12. Confirmation of SHPO evaluation and comments;
13. Disclosure of any change in financing;
14. Management plan with attachments;
15. Schedule of charges for nonshelter services (congregate);
16. Services agreement (congregate);
17. Executed copy of a limited equity agreement (**Attachment 11-E**, cooperative housing);
18. Completed subscription agreement (**Attachment 11-I**, cooperative housing);
19. Relocation plan, if relevant; and
20. Appraisal.

C. Construction Bidding and Contract Documents

The invitation to submit final applications should also include the following information to assist applicants with their development plans and documents:

- Guide 1 to RD Instruction 1924-A. This guide specifies the required documents and modifications thereto. All contract documents may not be available by the specified final application deadline, as they may depend upon loan approval. If all documents

are not available, any missing documents must be identified as due before loan closing in the letter of conditions sent at loan approval.

- Exhibit C of RD Instruction 1924-A.

5.4 MEETING WITH THE APPLICANT AND PREPARING THE LOAN DOCKET

The Loan Originator should meet with all loan applicants in individual meetings within a week after the letter inviting final application has been mailed. It is recommended that this meeting be held in person, even if the applicant has experience with prior Rural Development Multi-Family Housing loans, but the meeting may be conducted by phone in the case of such experienced loan applicants.

At this meeting, the Loan Originator will:

- Discuss any outstanding issues with the loan applicant, including the status of the environmental review;
- Provide loan applicants with copies of appropriate exhibits and forms, including *Form RD 3550-6, Notice of Special Flood Hazards, Flood Insurance Purchase Requirements, and Availability of Federal Disaster Relief Assistance*;
- Furnish guidance necessary for orderly application processing;
- Initiate a processing checklist for use in establishing a schedule for completion of docket items (this item is to be provided to the loan applicant); and
- Provide any other guidance to the applicant upon request and answer any of their questions.

The Loan Originator must explain to the loan applicants that they are responsible for providing the necessary information to develop the docket and that all items must be submitted by the final application deadline. Extensions of the deadline may be granted on a case-by-case basis. **Attachment 5-A** provides a list of Agency-required docket items and their positions in the docket.

The Loan Originator must confirm decisions made at this meeting in a follow-up letter to the loan applicant. The original processing checklist and a copy of the letter to the loan applicant must be retained in the Loan Servicing Office and a copy of each must be sent to the State Office.

It is important for the Loan Originator to remember that if a face-to-face meeting is not held with an experienced loan applicant, then the docket, processing checklist, deadlines, and all forms mentioned above must be mailed to the applicant. The cover memo sent with these items will serve as confirmation that the Agency has provided the applicant with the necessary information required to continue processing the application.

5.5 APPLICANT'S COMPLIANCE WITH OTHER AGENCY DEBT

At this time, the Loan Originator must contact any other states in which the applicant has existing loans to verify that the applicant is either in compliance with those loans, or has been in compliance with a workout agreement for 6 months as of the date the initial application was due. If the applicant was not in compliance as of that date, the Loan Originator must contact the applicant immediately to reject their application and give them appeal rights in accordance with 7 CFR Part 11. The Loan Originator must also immediately notify the National Office so funds can be redistributed.

SECTION 2: REVIEWING THE FINAL APPLICATION

5.6 OVERVIEW

The Loan Originator reviews all submitted final loan applications for completeness and adequacy. Final applications that are not submitted on time or are not complete are rejected and returned to the applicant, unless the Loan Originator grants an extension for unforeseen circumstances.

The analysis conducted at this stage is one that:

- Verifies and documents feasibility and eligibility;
- Confirms that the project still complies with the basis upon which it was originally scored and ranked; and
- Verifies environmental compliance.

Any changes to the loan application in terms of financing, applicant entity, or project design must be reviewed carefully to ensure that the project continues to be eligible and feasible and the original basis upon which the project was scored and ranked has not changed. To establish continued eligibility and feasibility, it may be necessary for the Loan Originator to repeat some of the underwriting tests conducted in Stage 1 of the loan origination process.

5.7 APPLICANT ELIGIBILITY

The Loan Originator reviews the following documents submitted by the applicant and confirms that they establish that the applicant meets the eligibility criteria of 7 CFR 3560.55.

A. Acceptable Borrower Entity

The Loan Originator ascertains whether the loan applicant is an acceptable borrower entity by taking the following actions when reviewing the final application documents.

1. Organizational Documents

The Loan Originator reviews the final organizational documents or Certificate of Good Standing if the applicant is an existing organization to confirm that all documents

have been properly signed, that they include the correct citation for the organization, and that the State documentation and all necessary recording information is included. If the applicant is a nonprofit organization, the Loan Originator confirms that the purpose includes the provision of affordable housing. Once the Loan Originator has established that the organizational documents meet these criteria, they are sent to Office of the General Counsel (OGC) for its review.

2. Attorney Opinion Letter

The Loan Originator sends the applicant's attorney's opinion letter that states that the entity is in conformance with the program requirements to OGC for its review.

3. Certification Regarding Debarment

The Loan Originator confirms the signed submission of *Form AD 1047*, which is the applicant's certification that there are no debarment issues with their loan application. The Loan Originator will have already checked the list of debarred individuals when the project proposal was first submitted and contacted other States in which the applicant has projects, so receipt of this form will further document that the applicant is a borrower in good standing with the Government.

B. Identity-of-Interest Disclosure

The Loan Originator reviews the identity-of-interest (IOI) disclosures to determine existing IOI relationships involving the applicant entity. *Forms RD 3560-30*, and *RD 3560-31* must be crosschecked. *Form RD 3560-30* must disclose all IOI companies and the Loan Originator must verify that each such disclosed company has completed a *Form RD 3560-31*.

C. Applicant Certification Regarding Debt Collection

The applicant must sign *Form RD 1910-11*, to certify to their understanding of the collection policies that will be taken by the Agency to recover delinquent or defaulted debts. The Loan Originator makes sure that the signed form is included in the final application.

5.8 FINAL PROJECT ELIGIBILITY

During the final project eligibility review stage, the Loan Originator must establish that the project continues to meet all program requirements.

A. Property Requirements

In reviewing the final application, the Loan Originator must determine that:

- Any concerns about environmental, site, or design issues identified in the initial application stage have been resolved;

- The appropriate level of environmental review has been completed in full (to include applicable public notices and their review periods) and the applicant has agreed to any mitigation measures contained in the environmental review; and

- No other changes in project site or design have occurred since the last review. If so, these changes need to be evaluated to make sure the project still meets program requirements.

The final planning, bidding, and contract documents must be provided to the State Architect who will review them to see that any required changes have been made and that applicable Agency requirements have been met.

B. Acceptable Agreements and Contracts

The Loan Originator or appropriate Agency staff must review all architectural, engineering, environmental, and legal documents to determine that they are acceptable.

C. Concurrence with Construction Contracts

All construction contracts between the loan applicant and contractor for development of a project must contain a provision that the contract is not in full force and effect until the State Director concurs in writing with the contract. Before loan closing or before the start of construction, whichever occurs first, the State Director or delegate must concur with the contract by including the following paragraph at the end of the contract:

> "The Agency, as a potential lender or insurer of funds to defray the costs of this contract, and without liability for any payment thereunder, hereby concurs with the form, content, and execution of this contract."

Date _____ Rural Housing Service:

By: _____

Title: _____

D. Clear Title and Necessary Local Approval

1. Clear Title

The preliminary title report is a part of the final application. The Loan Originator must make sure that it does not show any unacceptable exceptions. Examples of unacceptable exceptions include outstanding liens, unresolved estates, easements, restrictions on minority individuals living on the land, and outstanding mining rights.

2. State and Local Approvals

The Loan Originator must ensure that the final application shows that all the necessary State or local approvals have been obtained for site development and construction. These would include proper zoning, necessary utility rights, and building permits.

E. Prohibited Conditions

The Loan Originator must make a final confirmation that no conditions that would prohibit the further processing of the loan have come up for the area in which the project is being located. Paragraph 4.17 explains these conditions and the procedures for making sure that such conditions do not exist.

5.9 FINAL PROJECT FEASIBILITY ANALYSIS

The Loan Originator reviews the applicable documents in the final application to verify that project costs are indeed going to be as proposed and that there are no impediments to finalizing the project. A final subsidy layering review is also conducted to confirm that the Agency is not providing any more assistance than is necessary to make the project feasible. Section 3 of this chapter provides further details on this review.

A. Are Final Costs Acceptable?

As the final analysis of project costs, the Loan Originator must establish that:

- Any concerns about project costs identified in the initial application stage have been resolved; and
- No other changes in project costs have occurred since the last review. If so, these changes need to be evaluated to make sure the project still meets program requirements.
- The final Form RD 1924-13 is consistent with the successful construction bid and signed by the applicant and contractor in accordance with the FMI.

B. Matching Income Stream with Projected Costs

The SAUCE program will show whether the projected income stream will match projected costs. This program should be rerun as a final feasibility analysis. If the projected income and costs do not match, the project costs and rent structure must be reassessed for changes that can be made to either the costs or the rents to bring the two in line with each other.

C. Failure to Obtain Leveraging

If the applicants have not been able to confirm the leveraging they anticipated in the initial application by this time, they will be given 10 days in which to find alternative

leveraging. An application involving low-income housing tax credits, or other sources of leveraged financing would be considered to have met this requirement if they have filed or intend to file the appropriate application and are awaiting an award letter. If the applicant has not filed the application yet, a letter confirming the applicant's intent to file an application must be provided to the Agency. If none is available, the application must be rejected and the National Office informed immediately of the availability of unallocated funds.

D. Adequacy of the Initial Operating Capital

For initial loans, all applicants, except nonprofits, must contribute from their own resources adequate initial operating capital. *Form RD 3560-7* will indicate the estimated initial operating capital that is needed. An additional amount will be contributed for materials and equipment not generally shown on *Form RD 3560-7*.

Loan applicants must provide with their final application a list of materials and equipment that need to be funded by the 2 percent initial operating capital. These items may include, but are not limited to, property and liability insurance premiums, fidelity bond premiums when the applicant is an organization, utility hook-up charges and deposits, maintenance and other equipment, lease forms, loan payments that may become due during construction, purchase of office equipment and furniture, community room furnishings, other movable equipment and furnishing, advertising expenses, management fees, etc.

For the Loan Originator to approve the list, the Loan Originator must conclude that:

- The items shown are necessary for the project; and
- The costs identified are comparable to other comparable projects in the area.

E. Management Systems

The Loan Originator must evaluate whether the applicant has proposed adequate systems to manage the property successfully in accordance with Agency requirements.

1. Acceptable Project Management

For a final application to be approved, loan applicants must show that they will provide professional management to ensure the successful operation of the project. The Loan Originator will evaluate the acceptability of the following management documents provided by the loan applicant at this stage:

- The management certification form, which describes the relationship between the management agent, the loan applicant, and the Agency and certifies that the management agent will comply with Agency requirements and contract obligations.
- The management plan, which provides the details of how the management agent intends to operate the project. The Loan Originator must review all attachments to

the management plan, including proposed leases, waiting lists, etc., to make sure that everything is in compliance with program rules.

Chapter 3 in HB-2-3560 provides details on how to evaluate these management documents.

2. Affirmative Fair Housing Marketing Plans (AFHMP)

As part of the final application, loan applicants must submit *Form HUD 935.2* to describe their marketing plans for the project. The intent of this plan is to ensure that all eligible tenants are made aware of the Multi-Family Housing project.

The Loan Originator or designated Agency staff must approve and sign this form. It is, therefore, the Agency's responsibility to ask the loan applicant to make revisions to the plan if the Agency review shows such revisions to be necessary.

Required AFHMP Attachments

- Copies of the specific page(s) from the census report on which the plan was based;
- Photograph or drawing of the project sign;
- Copies of the newspaper advertisement or sample of proposed advertisement;
- Sample community contact letters;
- Brochures, leaflets, or handouts used; and
- Written instructions provided to staff concerning Federal, State, and local fair housing laws and regulations, as well as concerning the AFHMP.

The Loan Originator can use Exhibit 5-3 when reviewing AFHMPs. This exhibit describes each part of the plan and provides guidance on what to look for in each part.

Exhibit 5-3

Contents of the Affirmative Fair Housing Marketing Plan

A. **Part 1** of the AFHMP provides general information about the loan applicant and the project's location.

1. Make sure that the blank for the U.S. Census tract is completed. Copies of the specific page(s) from the U.S. Census report on which the plan was based must be attached and the areas considered to be the market area should be identified (highlighted) by the loan applicant. By doing so, both the market and the source of the market data will be identified.
2. In the blanks for the rental rates, indicate the lowest to the highest rents. If there is rental assistance, the lowest rent should be shown as zero.

B. **Part 2** of the AFHMP indicates whether the market area is a minority, nonminority, or mixed area. Verify that what is checked in this part corresponds directly to the U.S. Census data.

C. **Part 3** of the AFHMP indicates the groups toward which the marketing efforts are going to be directed. It should also correspond directly with the U.S. Census data and the community contacts that are identified.

D. **Part 4** describes the marketing program.

1. Ensure that the loan applicant has indicated that they will advertise on an annual basis.
2. Check to see if minority newspapers have been considered as part of the advertising plan.
3. Make sure that the loan applicant has attached a sample of the proposed advertisement.
4. Review any copies of brochures, leaflets, or handouts that the loan applicant intends to use. Review them to ensure the equal housing opportunity statement, logo, or slogan is used.
5. Make sure that a photo or rendering of the project sign has been provided. The dimensions of the project sign must be indicated and described in terms of feet and/or inches. The logo and the words "Equal Housing Opportunity" must be distinguishable in the photo or rendering. The accessibility logo and a TDD number must also appear.
6. Ensure that the proposed community contacts reflect efforts directed toward groups identified in block 3. Ensure each blank in this section is completed (address, phone numbers, etc.). The frequency of contacts must be stated, at a minimum, as "at least once annually" or "(date) and annually thereafter." Sample community contact letters must be attached.

E. **Part 5** describes future marketing activities. Make sure that the loan applicant has indicated future marketing activities that include, as a minimum, "Newspapers, site sign, and community contacts."

F. **Part 6** describes the loan applicant's experience and the instructions given to staff regarding fair housing marketing. Make sure that the loan applicant has attached the instructions given to staff concerning Federal, State, and local fair housing laws and regulations, as well as instructions concerning the Affirmative Fair Housing Marketing Plan.

G. **Part 7** describes additional considerations that are planned to outreach to groups not previously mentioned in the AFHMP or to groups identified as least likely to apply for the housing. If this plan is for an elderly project, the loan applicant must have included community contacts for the handicap/disabled, who are also eligible to reside at the project. If the plan is for a family project, loan applicants must include efforts to make the units with special design features known to provide accessibility to impaired persons.

H. **Part 8** is the signature block. It must be signed by the legal applicant or by the applicant's agent.

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SECTION 3: DETERMINING LOAN LIMITS, RATES, AND TERMS

5.10 DETERMINING LOAN LIMITS *[7 CFR 3560.63]*

The Agency applies a maximum debt limit to every project that is based on the value of the project and the type of applicant entity. **Attachment 5-B** provides several loan calculation worksheets and examples of different types of loans.

A. Determining Maximum Debt Limit and Equity Contribution

The maximum amount the Agency will lend for a project is based on the lesser of a project's total development cost (TDC) or appraised value minus any other loans on the project. This is referred to as the loan basis.

Example

$1,000,000	TDC
950,000	Appraised value
200,000	Other loans
750,000	Agency's loan basis ($950,000 – $200,000)

The Agency will use $750,000 as the loan basis on which it will determine its loan amount.

The loan basis is then multiplied by 95 percent, 97 percent, or 102 percent, depending upon the applicant entity. The applicants must make up any difference as the equity requirement from their own resources. Exhibit 5-4 shows the Agency loan limits and applicant contribution requirements.

Exhibit 5-4

Agency Loan Limits and Applicant Contribution Requirements

Agency Loan Limit	Applicant Contribution	Operating Capital	Qualifications
97% loan	3% applicant contribution	2% initial operating capital provided by the applicant	Individuals, corporations, or partnerships that do not receive low-income housing tax credits (LIHTCs)
95% loan	5% applicant contribution	2% initial operating capital provided by the applicant	Individuals, corporations, or partnerships that do receive LIHTCs
100% loan 102% loan	contribution not required	2% initial operating capital provided by the applicant or included in the loan	Nonprofit organizations or public bodies

For all applicants, the amount of loan after capitalized construction interest is considered will not exceed the loan limits set forth in Exhibit 5-4. However,

Predetermined Amortization Schedule System (PASS) loans closed with multiple advances may exceed that amount when the loan is closed other than on the first of the month. In this case, the interest is capitalized to the first of the following month and is added to the loan amount.

B. Land or Cash Equity Contribution

Loan applicants may make their equity contribution only in the form of land or cash.

If a borrower uses owned land as equity contribution and the land value is more than the equity requirement, the additional value of the land will not be covered by loan funds. However, the borrower may receive a return to owner on the additional value of the land up to the value of the land provided that:

- The value of the land on which the return is paid, when added to the loan and grant amounts from all sources, does not exceed the security value of the housing project; and

- Payment of the additional return does not cause rents to exceed Conventional Rents for Comparable Units (CRCU).

Land that has been donated and received points in the scoring process as donated land may not be considered equity contribution nor may a return on the value of the land be allowed.

Any borrower contribution that is cash will be used first as project development commences; then the rest of any leveraged funds will be used in lien priority. In most cases, the interim lender will collect all funds and distribute them, but the Agency must nevertheless track these disbursements and their sources as they occur.

C. Subsidy Review

The loan applicant must identify any changes in sources and uses. If there are any, the Loan Originator must make sure that they still meet the program requirements by rerunning the SAUCE program to confirm that the amount of Government assistance is no more than necessary to make the project feasible.

If sources of financing exceed proposed uses by more than $25,000, then Government assistance to the project must be reduced. When the Loan Originator must reduce the loan amount, the Loan Originator will provide the loan applicant with formal notification and inform the State agency (if there are LIHTCs being applied to the project), any other financing source, and the National Office.

The Loan Originator will consult with the applicant, as well as with the State Agency or any other financing sources, to reach an agreement on reducing the excess assistance by taking one of the following steps:

- Reducing the number of LIHTCs requested;
- Reducing the level of assistance provided by one or more of the other sources of funds (if applicable);
- Revising the uses to include eligible costs for any funding participants, provided that the project enhancement is consistent with the intent of the Multi-Family Housing program and will assist the resident population being served by the housing; or
- As a last resort, reducing the amount of equity contribution through the reduction of the loan amount.

5.11 SETTING LOAN RATES AND TERMS *[7 CFR 3560.67]*

A. Interest

Loans are closed at the lower of the interest rate in effect at the time of loan approval or that in effect at the time of loan closing. The Agency specifies interest rates periodically in RD Instruction 440.1. The Loan Originator refers to this Instruction to make a note of the interest rate at the time a loan is approved, compares this rate with the interest rate in effect at loan closing, and inserts whichever rate is lower into *Form RD 3560-52, Promissory Note.*

B. Interest Credit

The Agency provides interest credit to subsidize the interest rate shown in *Form RD 3560-52* to a payment rate of one percent for all loans. *Form RD 3560-9, Interest Credit and Rental Assistance Agreement,* is used to establish the credit at loan closing. This form amends *Form RD 3560-52*.

C. Loan Term and Amortization Period

Initial loans are amortized over 50 years and paid over a period not to exceed 30 years, except for manufactured housing that is amortized and paid for over a period of 30 years. The amortization period is shown in the *Form RD 3560-52*.

Subsequent loans for repair and rehabilitation are amortized over 50 years or the remaining economic life of the project, whichever is less. The loan term is 30 years or the economic life of the project, whichever is less.

5.12 ESTABLISHING PROFIT BASE AND RETURN ON INITIAL INVESTMENT *[7 CFR 3560.68]*

A. Return on Required Investment

Limited-profit applicants are permitted a return not to exceed 8 percent on their initial required investment (the equity contribution of 3 percent or 5 percent of the Rural Development loan amount; see Paragraph 5.10 for details).

The return to owner is shown as an operational cash use on budget *Form RD 3560-7* and approved by the Loan Originator as part of the budget approval process.

B. Return on Additional Investment

A return will be allowed on additional contributions of the loan applicant's own resources, provided and to the extent that:

- The additional contribution, when added to the Agency loan amount and all sources of project funding or financing, does not exceed the security value of the project; and

- The additional return does not result in an increase in rents beyond the CRCU. The return on the additional investment may be less than 8 percent if necessary to keep rents below CRCU.

Thus, for example, a return will not be allowed on any proceeds contributed by the applicant to cover total development costs that exceed appraised value.

C. Tax Credit Proceeds

Proceeds received by the loan applicant from the syndication of LIHTC and contributed to the project may be considered funds from the loan applicant's own resources for the portion of the proceeds that exceeds:

- The allowable developer's fee determined by the State agency administering the LIHTCs; and

- The amounts expected to be contributed to the transaction, as determined by the State agency administering the low-income housing tax credit.

D. Building Sites

A building site contributed to meet the equity requirement by the loan applicant will be appraised by the Agency to determine its value. A return may be allowed on the amount above the required equity contribution up to the value of the land that is needed for the project and so long as project rents do not exceed CRCU when the return is allowed.

If the appraisal shows a lower value than originally estimated and is less than the required contribution, applicants will have to contribute additional funds from their own resources to make up the difference. If points were given for the value that was not realized, the National Office must be contacted for guidance.

SECTION 4: REJECTING AND APPROVING FINAL APPLICATIONS

5.13 REJECTING FINAL APPLICATIONS

If a loan is disapproved after the docket has been developed, the Loan Originator will take the following steps:

- Change the current stage code in Automated Multi-Family Housing Accounting System (AMAS) to reflect rejected or withdrawn applicant;
- Handle the disapproved docket in accordance with RD Instruction 2033-A; and
- Notify the applicant of the reason(s) for rejection. If rejection is not at the applicant's request or mutual agreement, the applicant will be notified of the right to request a further review of the decision in accordance with 7 CFR Part 11. Any notice of rejection or adverse action must include the following paragraph:

> "The Federal Equal Credit Opportunity Act (ECOA) prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income is derived from any public assistance program, or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers compliance with this law is the Federal Trade Commission. If any person believes they were denied assistance in violation of this law, they should contact the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580."

5.14 RECOMMENDING PROJECTS FOR FINAL APPROVAL

A. Preparing the Recommendation for Approval

In preparing the recommendation for approval, the Loan Originator will:

- Ensure that the appropriate level of environmental review has been completed in full, including the review and concurrence of the State Environmental Coordinator and all applicable public notices and associated review periods;
- Obtain the analysis and recommendations of the Loan Review Committee, if appropriate; and
- Conduct a complete review of the proposed management and occupancy procedures to ensure compliance with Title VI of the Civil Rights Act of 1964 and the Rehabilitation Act of 1973. The USDA Office of Civil Rights can assist the Loan Originator in conducting this review.

B. Submitting the Completed Docket

The Loan Originator will submit the completed docket with a cover memo recommending approval to the Loan Approval Official. The cover memo will detail the proposed conditions of loan approval and indicate if construction will be financed by interim financing or multiple advances.

5.15 ACTION BY THE LOAN APPROVAL OFFICIAL

A. Reviewing of Docket by Loan Approval Official

The State Director may redelegate loan approval authority in writing to State Office employees.

The Loan Approval Official must review the docket to confirm that the proposed loan complies with established policies and all pertinent regulations. In making this review, the Loan Approval Official will verify that:

- The applicant is eligible and has legal authority to contract for a loan and enter into the required agreements;
- The location of the housing meets program requirements;
- The funds are requested for an authorized purpose;
- The proposed loan is sound;
- The commitment of leveraged funds has been obtained;
- The security is adequate (see Chapter 7);
- All preapproval documents required for a complete loan application have been executed;
- The proposal is in compliance with all environmental requirements; and
- If applicable, flood insurance requirements have been met and *Form RD 3550-6* has been executed by the applicant.

B. Approving Loans

When the final analysis is complete and the Agency is ready to approve the loan, the Agency must first obtain two documents from the applicant:

- The Agency must complete and deliver to the applicant for signature and date *Form RD 3560-51, Obligation Fund Analysis*. Once this form has been returned, the Agency will execute the form and send a copy of it to the applicant.
- The applicant must provide the Agency with a signed copy of the Loan Agreement or Resolution, as appropriate.

Loans will be approved in accordance with 7 CFR part 3560, subpart B and RD Instruction 1901-A.

5.16 LETTER TO INTERIM LENDER

When the loan has been approved, the Loan Originator will send *Handbook Letter 104 (3560), Letter To Interim Lender*, informing them of the amount and terms of the loan that Rural Development is preparing to close for the loan applicant.

5.17 OBLIGATING FUNDS

Once the Agency approves a loan, the loan funds must be obligated.

A. Initial Obligation

When the loan has been approved, the Loan Originator must take the following steps to obligate the funds:

- Complete *Form RD 3560-51*, and
- In AMAS, complete the screen **[M1A],** Obligate Loan/Grant Funds. The number of months entered in the **[M1A]** should be the number of months for loan amortization (e.g., 600), not loan term.

B. Changing the Loan Amount

1. Decreasing the Loan Amount

It may, at times, be necessary to decrease the amount of a loan obligation prior to loan closing. For example, if the loan applicant changes from interim financing to multiple advances, the interest costs designated for the interim lender must be subtracted from the loan amount.

In these cases, the extra loan funds must be deobligated and all paperwork and AMAS records corrected. The Loan Originator must notify the National Office so that funds may be redistributed when possible.

- To change the loan amount in the application record, use screen **[M1AA]**.
- To change the obligation amount, deobligate the excess funds in AMAS using the screen **[M1D]**, Cancel Loan/Grant Obligation.
- Forms to be updated when funds are deobligated include:
  - ◊ *Form RD 3560-51*, and
  - ◊ *Form RD 3560-33, Loan Agreement, 3560-34, Loan Agreement, or 3560-35, Loan Resolution.*

2. Increasing the Loan Amount

The Agency rarely allows the amount of the loan to be increased. In cases in which the borrower can justify the need for extra funds (e.g., for circumstances beyond the borrower's control), and it is in the same fiscal year in which the loan was obligated, the Agency may deobligate the loan and obligate a larger loan if approved by the National Office. If the funds are required in a fiscal year following that in which the loan was originally obligated, the Agency may approve a subsequent loan. See Chapter 10 for details on subsequent loans.

3. Ordering Checks

The Loan Originator must take into account that it will take approximately 5 days to receive the check after ordering it.

- **Multiple advances.** AMAS is used to order, disburse, and track multiple advances. Monitoring multiple advances is especially important to ensure that:

  ◊ Accrued interest does not cause the maximum debt limit to be exceeded; and

  ◊ Any funds not needed for the final draw are deobligated before the final check is drawn, otherwise the Amortization Effective Date (AED) will not be established.

  The following screens are used to process multiple advances:

  ◊ To order checks for multiple advances, complete the screen **[M1C]**, Issue Loan/Grant Check;

  ◊ To see all disbursed checks, use screen **[M8CI]**, Loan/Grant/Cost Checks***;***

  ◊ Use screen **[M1AI]**, Inquiry on Loan/Grant Obligations for maximum debt limit;

  ◊ Use screen **[M1XI]**, Accrual Calculation Request, for disbursed amount and accrued interest to ensure that the maximum debt limit is not exceeded.

- **Interim financing.** If interim financing is used, a single check must be ordered to pay off the interim financier. Use the screen **[M1C]**, Issue Loan/Grant Check.

5.18 FOLLOW-UP TO OBLIGATIONS

To ensure that obligated funds are used promptly, the Loan Originator should make periodic checks to verify that project construction is progressing. If after 12 months construction on an approved project has not begun or is significantly behind schedule, the Loan Originator must document in the case file that the project has been reviewed and that one of the following decisions has been made regarding the continued obligation of funds.

- The Loan Originator may choose to cancel the loan and deobligate the funds. If the deobligation occurs during the same fiscal year in which the obligation was initiated,

the funds are returned to the National Office. If the obligation was made in a prior fiscal year, the deobligated funds revert to the U.S. Treasury.

- The Loan Originator may choose to allow the borrower another 12 months to make progress on the construction.

5.19 TRANSFER OF FUND OBLIGATION

The transfer of fund obligations may occur only when:

- The organizational entity remains the same. The entity remains legally the same but a substitution of the member occurs. All or part of the membership may change as long as eligibility is not affected. The project site location and market must remain the same;

- The organizational entity changes. The membership and their interest remain identical, the project site location and market are the same, but the legal entity changes;

- There is a monetary default by the original applicant/entity. An obligation may be transferred to any person or applicant eligible to receive an Agency loan when the original applicant/entity is in monetary default, which has or may result in foreclosure by the interim lender, and:

  ◊ The applicant/entity assuming the obligation, or the interim lender, removes any liens filed against the property;

  ◊ There have been no deviations from the Agency-approved plans and specifications;

  ◊ The transferee will not be composed of any principals of the transferor;

  ◊ The transfer will be in the best interest of the Agency and prospective tenants;

  ◊ The applicant/entity and all members thereof whose obligations are transferred will not be considered eligible for further participation in the Agency's Multi-Family Housing programs for at least five years from the date of the transfer of the Agency loan obligation; and

  ◊ Prior approval is obtained from the National Office.

5.20 CANCELING AN OBLIGATION

In some cases, it may be necessary to cancel an obligation prior to closing either because the borrower withdraws from the process or the Agency receives new information that disqualifies the borrower. In these cases, the Loan Originator must:

- Notify the applicant and closing agent of the cancellation. In situations where the cancellation is not the applicant's choice, the Loan Originator must inform the borrower of any action that can be taken to correct or appeal the decision. (It is the applicant's responsibility to notify other interested parties, such as any contractors, of the cancellation.)

- Notify the National Office so that funds may be redistributed when possible.

- Deobligate the loan. This involves the following steps.

  ◊ In AMAS, cancel the obligation using screen **[M1D]**, Cancel Loan/Grant Obligation; and

  ◊ Complete *Form RD 3560-53, Multi-Family Housing Cancellation of U.S. Treasury Check and/or Obligation*.

- Void the check, if necessary. If the check has already been ordered and received by the Field Office, it must be voided and returned to the St. Louis Office.

The Loan Originator must document the Agency's or applicant's decision to cancel the obligation in the running record or project case file.

5.21 LETTER OF CONDITIONS

When a loan is approved, the Loan Approval Official must send the applicant *Handbook Letter 102 (3560), Letter of Conditions, Loan Approval, or Obligation of Funds* that must be met in order for loan closing to occur. This letter describes the rates and terms at which the loan has been approved, restates program requirements to which the applicant must adhere, specifies the construction requirements, and lists any conditions which the applicant must meet prior to loan closing. The loan applicant must sign and return this letter to the Agency within 5 days. The Loan Approval Official must send a copy of this letter to the Loan Originator since it provides all the details of the approved loan and the construction requirements. The information to be included in the letter is listed in Exhibit 5-5.

Exhibit 5-5

Information to be Included in the *Handbook Letter 102 (3560), Letter of Conditions, Loan Approval, or Obligation of Funds*

The following information should be included in the letter of conditions:

To describe loan rates and terms:

- The debt limit approved, the applicable interest rate, the loan term, and the amortization term;
- Equity contribution requirements;
- Initial 2 percent operating capital requirement;
- A request for confirmation that the borrower will pay cost overruns;
- Security requirements;
- Any changes required to the management profile, certification, or plan;
- All mitigation measures required by the environmental review;
- Allowed rents; and
- Rental assistance, if any, and associated requirements.

To summarize program requirements:

The letter of conditions should include a brief summary of each of the following requirements:

- Tenant eligibility requirements (see *7 CFR 3560.152*);
- Accounting requirements (see *7 CFR 3560.302*);
- Annual financial examination requirements (see *7 CFR 3560.308*);
- Annual budgets and other reporting requirements (see *7 CFR 3560.303*);
- Compliance with applicable civil rights laws, regulations, and Agency policies (see *7 CFR 3560.2* and *7 CFR 3560.104*);
- Insurance requirements (see *7 CFR 3560.105* and paragraph 5.22);
- Other conditions (agreement to allow Agency access, agreement to keep records, identity of person keeping records and accounts); and
- Required covenant in instrument of conveyance or deed of trust concerning civil rights as follows:

  > "The property described herein was obtained or improved with federal financial assistance and is subject to the provisions of Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973 and the regulations issues thereto. This covenant is in effect for as long as the property continues to be used for the same or similar purpose for which the financial assistance was extended, or for as long as the above recipient owns it, whichever is longer."

To describe construction and development requirements:

- Public bid requirements;
- Construction accounting requirements; and
- Cost certification requirements.

To accept letter of conditions:

- Space for applicant's signature of agreement; and
- Return address.

5.22 INSURANCE REQUIREMENTS

The loan applicant must have certain insurance in place at loan closing. The loan applicant is notified of these requirements at loan approval in *Handbook Letter 102 (3560), Letter of Conditions, Loan Approval, or Obligation of Funds*. At a minimum, the following types of insurance must be carried:

- Fire and extended coverage on all buildings included in the security for the loan;
- Suitable worker's compensation insurance carried by the applicant for all employees;
- Flood insurance on all buildings located in or to be located in special flood or mudslide prone areas; and
- Liability insurance.

Chapter 3 in HB-2-3560 covers these requirements in greater detail.

5.23 ASSIGNING CASE NUMBERS, PROJECT NUMBERS, AND LOAN CODES

The Loan Approval Official assigns the borrower's case number using the State and county codes where the project will be located and the borrower's tax identification number. If the borrower does not have a tax identification number, the state assigns a temporary number from the block of numbers assigned to the state. When the Borrower receives a tax identification number, the state must replace the temporary number. *Form 3560-51*, provides the details on how these numbers are assigned.

Each project will be assigned a project number by AMAS. When the tax identification number is identified in a future case number anywhere in the nation, AMAS will assign project numbers sequentially.

When the total number of units financed are built or purchased at one place at one time, the loan will be coded as the initial loan on the project.

ATTACHMENT 5-A
AGENCY DOCKET CHECKLIST

ITEM	Agency	Applicant	Docket Position	Date Due	Date Received
1. *Form RD 3560-51, Multi-Family Housing Obligation — Fund Analysis*	X		2		
2. *SF 424, Application for Federal Assistance (For Construction)*		X	3		
3. *Form RD 1944-37, Previous Participation Certification*		X	3		
4. *Form RD 3560-30, Certification of No Identity of Interest (IOI)*		X	3		
5. *Form RD 3560-31,Identity of Interest Disclosure/Qualification Certificate*		X	3		
6. *Form RD 1910-11, Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts*		X	3		
7. *Form RD 400-4, Assurance Agreement*		X	3		
8. *Form RD 440-25, Financing Statement*		X	1		
9. *Form RD 400-1, Equal Opportunity Agreement*		X	6		
10. ***Form RD 400-3, Notice to Contractors and Applicants*		X	6		
11. *Form RD 400-6, Compliance Statement*		X	6		
12. *Form RD 1922-7, Appraisal Report for Multi-Unit Housing*	X		8		
13. *Proof of organization (certified copy of charter or articles of incorporation)		X	5		
14. *Certified copies of bylaws or regulations		X	5		
15. *List of names and addresses of officers, directors and members, and membership interests held by each		X	5		
16. **Form RD 3560-35*, Certified copy of Loan Resolution		X	2		

ITEM	Agency	Applicant	Docket Position	Date Due	Date Received
17. Interim lender's commitment letter with evidence of license to do business in state, if applicable		X	2		
18. *Forms RD 3560-33, 3560-34, or 3560-35*, Loan Agreement or Resolution, as applicable		X	5		
19. **Survey of land given as security, plans, specifications, cost estimates, and proposed manner of construction		X	6		
20. *Form RD 3560-7, Multiple Family Housing Project Budget/Utility Allowance* (first year)		X	3		
21. *Form RD 3560-7, Multiple Family Housing Project Budget/Utility Allowance* (typical year)		X	3		
22. *Form RD 1940-20, Request for Environmental Information*, if applicable		X	3		
23. *Form RD 1940-22, Environmental Checklist for Categorical Exclusions, Form RD 1940-21, Environmental Assessment for Class I Actions, or Environmental Assessment for Class II Actions*, or Exhibit H, RD Instruction 1940-G		X	3		
24. Phase 1 Environmental Site Assessment		X	8		
25. *FEMA Form 81-93, Standard Flood Hazard Determination*		X	6		
26. *Form RD 3550-6, Notice of Special Flood Hazards, Flood Insurance Purchase Requirements, and Availability of Federal Disaster Relief Assistance*		X	6		
27. Relevant information from SHPO		X	3		
28. Market feasibility documentation		X	3		
29. SAUCE input data and analysis		X	6		
30. Appraisal		X	8		
31. Management certification		X	3		

ITEM	Agency	Applicant	Docket Position	Date Due	Date Received
32. Management plan		X	3		
33. A preliminary title insurance commitment/binder and final title insurance policy		X	5		
34. AFHMP		X	3		
35. Mortgage title insurance policy		X	5		
36. Copy of deed, purchase contract, or other instrument of ownership		X	5		
37. A copy of the lease to be used between borrower and public housing authority or other authorized lessees, report of lien search, option or foreclosure notice agreement, and items of information concerning prior mortgage, if applicable		X	1		

* When applicant is an organization.
** One copy for contractor.

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ATTACHMENT 5-B

LOAN CALCULATION WORKSHEETS

(Not for proposals with donated land, applicant owned sites, or 102 percent loans)

_____
(Applicant Name)

$_____ Total Development Cost (**TDC**) (Line 58 of *Form RD 1924-13, Estimate and Certificate of Actual Cost*, including site cost on Line 50, and Line 27 of *Form RD 3560-51, Obligation - Fund Analysis.*)

$_____ Security Value (**SV**) (Recent Rural Development or Rural Development-contracted appraisal, including the appraised value of the site.)

$_____ Adjusted Total Development Cost (**ATDC**):

$_____ **TDC**
-_____ Minus site cost, line 50 of *Form RD 1924-13*
+_____ Plus appraised value of site "as is"
$_____ **ATDC**

$_____ Loan Basis Value (**LBV**) (Lower of **SV** or **ATDC** or **TDC.**)

==========

CALCULATIONS

Low Income Housing Tax Credit (LIHTC): LIHTC or similar tax incentive pursuant to Section 42 of the Internal Revenue Code.

Determining Maximum Loan (**ML**): (**LBV** x **.95** or **.97**)

$_____ x .95 = $_____ LIHTC proposals

$_____ x .97 = $_____ Non-LIHTC proposals

Determining Applicant Contribution: (**TDC** minus **ML**)

$_____ - $_____ = $_____ LIHTC proposals

$_____ - $_____ = $_____ Non-LIHTC proposals

Determining Return on Investment: (**LBV** minus **ML**)

$_____ - $_____ = $_____ LIHTC proposals

$_____ - $_____ = $_____ Non-LIHTC proposals

CALCULATIONS BY _____ _____
(Rural Development employee) (Date)

EXAMPLE A
WORK SHEET FOR LOAN CALCULATION

Security value is greater than total development cost and value of site is greater than cost of site

_____
(Applicant Name)

$ 980,000 Total Development Cost (**TDC**) (Line 58 of *Form RD 1924-13*, including site cost on Line 50, and Line 27 of *Form RD 3560-51*.)

$1,000,000 Security Value (**SV**) (Recent Rural Development or Rural Development-contracted appraisal, including the appraised value of the site.)

$ 990,000 Adjusted Total Development Cost (**ATDC**):

$ 980,000 TDC
- 40,000 Minus site cost, line 50 of *Form RD 1924-13*.
+ 50,000 Plus appraised value of site "as is"
$ 990,000 ATDC

$ 980,000 Loan Basis Value (**LBV**) (Lower of **SV** or **ATDC** or **TDC**)

==========

CALCULATIONS

Low Income Housing Tax Credit (LIHTC): LIHTC or similar tax incentive pursuant to Section 42 of the Internal Revenue Code.

Determining Maximum Loan (**ML**): (**LBV x .95 or .97**)

$980,000 x .95 = $931,000 LIHTC proposals
$980,000 x .97 = $950,600 Non-LIHTC proposals

Determining Applicant Contribution: (**TDC** minus **ML**)

$980,000 - $931,000 = $49,000 LIHTC proposals
$980,000 - $950,600 = $29,400 Non-LIHTC proposals

Determining Return on Investment: (LBV minus ML)

$980,000 - $931,000 = $49,000 LIHTC proposals
$980,000 - $950,600 = $29,400 Non-LIHTC proposals

CALCULATIONS BY _____ _____
(Rural Development employee) (Date)

EXAMPLE B
WORK SHEET FOR LOAN CALCULATION

Total development cost is greater than security value and value of site is greater than cost of site

_____
(Applicant Name)

$1,000,000 Total Development Cost (**TDC**) (Line 58 of *Form RD 1924-13*, including site cost on Line 50, and Line 27 of *Form RD 3560-51*.)

$ 980,000 Security Value (**SV**) (Recent Rural Development or Rural Development-contracted appraisal including the appraised value of the site.)

$1,010,000 Adjusted Total Development Cost (**ATDC**):

$1,000,000	**TDC**
- 40,000	Minus site cost, line 50 of *Form RD 1924-13*
+ 50,000	Plus appraised value of site "as is"
$1,010,000	**ATDC**

$ 980,000 Loan Basis Value (**LBV**) (Lower of **SV** or **ATDC** or **TDC**)

==========

CALCULATIONS

Low Income Housing Tax Credit (LIHTC): LIHTC or similar tax incentive pursuant to Section 42 of the Internal Revenue Code.

Determining Maximum Loan (**ML**): (**LBV x .95 or .97**)

$980,000 x .95 = $931,000 LIHTC proposals
$980,000 x .97 = $950,600 Non-LIHTC proposals

Determining Applicant Contribution: (TDC minus ML)

$1,000,000 - $931,000 = $69,000 LIHTC proposals
$1,000,000 - $950,600 = $49,400 Non-LIHTC proposals

Determining Return on Investment: (LBV minus ML)

$980,000 - $931,000 = $49,000 LIHTC proposals
$980,000 - $950,600 = $29,400 Non-LIHTC proposals

CALCULATIONS BY _____ _____
(Rural Development employee) (Date)

EXAMPLE C
WORK SHEET FOR LOAN CALCULATION

Total development cost is greater than security value
and value of site is less than cost of site

_____
(Applicant Name)

$1,000,000 Total Development Cost (**TDC**) (Line 58 of *Form RD 1924-13*, including site cost on Line 50, and Line 27 of *Form RD 3560-51*.)

$ 950,000 Security Value (**SV**) (Recent Rural Development or Rural Development-contracted appraisal including the appraised value of the site.)

$ 985,000 Adjusted Total Development Cost (**ATDC**):

$1,000,000	**TDC**
- 60,000	Minus site cost, line 50 of *Form RD 1924-13*
+ 45,000	Plus appraised value of site "as is"
$ 985,000	**ATDC**

$ 950,000 Loan Basis Value (**LBV**) (Lower of **SV** or **ATDC** or **TDC**.)

==========

CALCULATIONS

Low Income Housing Tax Credit (LIHTC): LIHTC or similar tax incentive pursuant to Section 42 of the Internal Revenue Code.

Determining Maximum Loan (**ML**): (**LBV x .95 or .97**)

$950,000 x .95 = $902,500 LIHTC proposals
$950,000 x .97 = $921,500 Non-LIHTC proposals

Determining Applicant Contribution: (**TDC** minus **ML**)

$1,000,000 - $902,500 = $97,500 LIHTC proposals
$1,000,000 - $921,500 = $78,500 Non-LIHTC proposals

Determining Return on Investment: (**LBV** minus **ML**)

$950,000 - $902,500 = $47,500 LIHTC proposals
$950,000 - $921,500 = $28,500 Non-LIHTC proposals

CALCULATIONS BY _____ _____
(Rural Development employee) (Date)

WORK SHEET FOR LOAN CALCULATION
(**Donated land only**)

_____
(Applicant Name)

$_____ Total Development Cost (**TDC**) (Line 58 of *Form RD 1924-13*) (Line 58 should include value of site.)
-_____ Appraised value of site

$_____ Adjusted TDC (**ATDC**)

$_____ Security value (Recent Rural Development or Rural Development-contracted appraisal)

-_____ Appraised value of site

$_____ Adjusted Security Value (**ASV**)

$_____ Loan Basis Value (**LBV**) (Lower of **ASV** or **ATDC**.)

==========

CALCULATIONS

Low Income Housing Tax Credit (LIHTC): LIHTC or similar tax incentive pursuant to Section 42 of the Internal Revenue Code.

Determining Maximum Loan (**ML**): (**LBV x .95 or .97**)

$_____ **x .95 = $**_____ LIHTC proposals
$_____ **x .97 = $**_____ Non-LIHTC proposals

Determining Applicant Contribution: (**ATDC** minus **ML** plus appraised value of site)

$_____ **- $**_____ **= $**_____ LIHTC proposals
+ $_____ Appraised value of site
$_____ Total contribution

$_____ **- $**_____ **= $**_____ Non-LIHTC proposals
+ $_____ Appraised value of site
$_____ Total contribution

Determining Return on Investment: (**LBV** minus **ML**) (**Not to exceed SV**)

$_____ **- $**_____ **= $**_____ LIHTC proposals
$_____ **- $**_____ **= $**_____ Non-LIHTC proposals

CALCULATIONS BY _____ _____
(Rural Development employee) (Date)

EXAMPLE A
WORK SHEET FOR LOAN CALCULATION
(**Donated land only**)

_____
(Applicant Name)

$1,000,000 Total Development Cost (**TDC**) (Line 58 of *Form RD 1924-13*.)
(Line 58 should include value of site.)
- 100,000 Appraised value of site
$ 900,000 Adjusted TDC (**ATDC**)

$1,000,000 Security value (Recent Rural Development or Rural Development-contracted appraisal)
- 100,000 Appraised value of site
$ 900,000 Adjusted Security Value **(ASV)**

$ 900,000 Loan Basis Value (**LBV**) (Lower of **ASV** or **ATDC**.)
==========

CALCULATIONS

Low Income Housing Tax Credit (LIHTC): LIHTC or similar tax incentive pursuant to Section 42 of the Internal Revenue Code.

Determining Maximum Loan (**ML**): (**LBV x .95 or .97**)

$900,000 x .95 = $855,000 LIHTC proposals
$900,000 x .97 = $873,000 Non-LIHTC proposals

Determining Applicant Contribution: (**ATDC** minus **ML** plus appraised value of site)

$900,000 - $855,000 = $ 45,000 LIHTC proposals
+ $100,000 Appraised value of site
$145,000 Total contribution

$900,000 - $873,000 = $ 27,000 Non-LIHTC proposals
+ $100,000 Appraised value of site
$127,000 Total contribution

Determining Return on Investment: (**LBV** minus **ML**) (**Not to exceed SV**)

$900,000 - $855,000 = $45,000 LIHTC proposals
$900,000 - $873,000 = $27,000 Non-LIHTC proposals

CALCULATIONS BY _____ _____
(Rural Development employee) (Date)

EXAMPLE B
WORK SHEET FOR LOAN CALCULATION
(**Donated land only**)

_____
(Applicant Name)

$ 900,000 Total Development Cost (**TDC**) (Line 58 of *Form RD 1924-13*.)
(Line 58 should include value of site.)
- 100,000 Appraised value of site
$ 800,000 Adjusted TDC (**ATDC**)

$1,000,000 Security value (Recent Rural Development or Rural Development-contracted appraisal)
- 100,000 Appraised value of site
$ 900,000 Adjusted Security Value (**ASV**)

$ 800,000 Loan Basis Value (**LBV**) (Lower of **ASV** or **ATDC**.)
==========

CALCULATIONS

Low Income Housing Tax Credit (LIHTC): LIHTC or similar tax incentive pursuant to Section 42 of the Internal Revenue Code.

Determining Maximum Loan (**ML**): (**LBV x .95 or .97**)

$800,000 x .95 = $760,000 LIHTC proposals
$800,000 x .97 = $776,000 Non-LIHTC proposals

Determining Applicant Contribution: (**ATDC** minus **ML** plus appraised value of site)

$800,000 - $760,000 = $ 40,000 LIHTC proposals
+ $100,000 Appraised value of site
$140,000 Total contribution

$800,000 - $776,000 = $ 24,000 Non-LIHTC proposals
+ $100,000 Appraised value of site
$124,000 Total contribution

Determining Return on Investment: (**LBV** minus **ML**) (**Not to exceed SV**)

$800,000 - $760,000 = $40,000 LIHTC proposals
$800,000 - $776,000 = $24,000 Non-LIHTC proposals

CALCULATIONS BY _____ _____
(Rural Development employee) (Date)

EXAMPLE C
WORK SHEET FOR LOAN CALCULATION
(**Donated land only**)

_____
(Applicant Name)

$ 900,000 Total Development Cost (**TDC**) (Line 58 of *Form RD 1924-13*.)
(Line 58 should include value of site.)
- 50,000 Appraised value of site
$ 850,000 Adjusted TDC (**ATDC**)

$1,000,000 Security value (Recent Rural Development or Rural Development-contracted appraisal)
- 50,000 Appraised value of site
$ 950,000 Adjusted Security Value (**ASV**)

$ 850,000 Loan Basis Value (**LBV**) (Lower of ASV or ATDC.)
==========

CALCULATIONS

Low Income Housing Tax Credit (LIHTC): LIHTC or similar tax incentive pursuant to Section 42 of the Internal Revenue Code.

Determining Maximum Loan (**ML**): (**LBV x .95 or .97**)

$850,000 x .95 = $807,500 LIHTC proposals
$850,000 x .97 = $824,500 Non-LIHTC proposals

Determining Applicant Contribution: (**ATDC** minus **ML** plus appraised value of site)

$850,000 - $807,500 = $42,500 LIHTC proposals
+ $50,000 Appraised value of site
$92,500 Total contribution

$850,000 - $824,500 = $25,500 Non-LIHTC proposals
+ $50,000 Appraised value of site
$75,500 Total contribution

Determining Return on Investment: (**LBV** minus **ML**) (**Not to exceed SV**)

$850,000 - $807,500 = $42,500 LIHTC proposals
$850,000 - $824,500 = $25,500 Non-LIHTC proposals

CALCULATIONS BY _____ _____
(Rural Development employee) (Date)

EXAMPLE D
WORK SHEET FOR LOAN CALCULATION
(**Donated land only**)

_____
(Applicant Name)

$ 900,000 Total Development Cost (**TDC**) (Line 58 of *Form RD 1924-13*.)
(Line 58 should include value of site.)
- 200,000 Appraised value of site
$ 700,000 Adjusted TDC (**ATDC**)

$1,000,000 Security value (Recent Rural Development or Rural Development-contracted appraisal)
- 200,000 Appraised value of site
$ 800,000 Adjusted Security Value (**ASV**)

$ 700,000 Loan Basis Value (**LBV**) (Lower of **ASV** or **ATDC**.)
==========

CALCULATIONS

Low Income Housing Tax Credit (LIHTC): LIHTC or similar tax incentive pursuant to Section 42 of the Internal Revenue Code.

Determining Maximum Loan (**ML**): (**LBV x .95 or .97**)

$700,000 x .95 = $665,000 LIHTC proposals
$700,000 x .97 = $679,000 Non-LIHTC proposals

Determining Applicant Contribution: (**ATDC** minus **ML** plus appraised value of site)

$700,000 - $665,000 = $ 35,000 LIHTC proposals
+ $200,000 Appraised value of site
$235,000 Total contribution

$700,000 - $679,000 = $ 21,000 Non-LIHTC proposals
+ $200,000 Appraised value of site
$221,000 Total contribution

Determining Return on Investment: (**LBV** minus **ML**) (**Not to exceed SV**)

$700,000 - $665,000 = $35,000 LIHTC proposals
$700,000 - $679,000 = $21,000 Non-LIHTC proposals

CALCULATIONS BY _____ _____
(Rural Development employee) (Date)

WORK SHEET FOR LOAN CALCULATION
(**Applicant Owned Sites**)

_____
(Applicant Name)

(When value of site is equal to or greater than required applicant contribution)

$_____ Total Development Cost (**TDC**) (Line 58 of *Form RD 1924-13*)
(Line 58 should include cost of site.)

$_____ Security Value (**SV**) (Recent Rural Development or Rural Development-contracted appraisal.)
$_____ appraised value of site

$_____ Adjusted Total Development Cost (**ATDC**):
$____ **TDC**
-_____ Minus site cost
+_____ Plus appraised value of site "as is"
$____ **ATDC**

$_____ Loan Basis Value (**LBV**) (Lower of **ATDC** or **SV**)

==========

CALCULATIONS

Low Income Housing Tax Credit (LIHTC): LIHTC or similar tax incentive pursuant to Section 42 of the Internal Revenue Code.

Determining Maximum Loan (**ML**): (**LBV** minus site value)

$_____ - $_____ = $_____ LIHTC proposals
$_____ - $_____ = $_____ Non-LIHTC proposals

Determining Applicant Contribution: (**ATDC** minus **ML** minus site value)

$_____ - $_____ = $_____ LIHTC proposals
site value - $_____
cash $_____

$_____ - $_____ = $_____ Non-LIHTC proposals
site value - $_____
cash $_____

Determining Return on Investment: (**LBV** minus **ML**)

$_____ - $_____ = $_____ LIHTC proposals
$_____ - $_____ = $_____ Non-LIHTC proposals

CALCULATIONS BY _____ _____
(Rural Development employee) (Date)

EXAMPLE A
WORK SHEET FOR LOAN CALCULATION
(**Applicant Owned Sites**)

_____
(Applicant Name)

$1,000,000 Total Development Cost (**TDC**) (Line 58 of *Form RD 1924-13*)
(Line 58 should include cost of site.)

$ 900,000 Security Value (**SV**) (Recent Rural Development or Rural Development-contracted appraisal.)
$ 10,000 appraised value of site

$ 910,000 Adjusted Total Development Cost (**ATDC**):
$1,000,000 **TDC**
- 100,000 Minus site cost
+ 10,000 Plus appraised value of site "as is"
$ 910,000 **ATDC**

$ 910,000 Loan Basis Value (**LBV**) (Lower of **ATDC** or **SV**)
==========
CALCULATIONS

Low Income Housing Tax Credit (LIHTC): LIHTC or similar tax incentive pursuant to Section 42 of the Internal Revenue Code.

Determining Maximum Loan (**ML**): (**LBV** minus site value)

$910,000 - $10,000 = $900,000 LIHTC proposals
$_____ - $_____ = $_____ Non-LIHTC proposals

Determining Applicant Contribution: (**ATDC** minus **ML** minus site value)

$910,000 - $900,000 = $10,000 LIHTC proposals
site value - **$10,000**
cash $ -0-
$_____ - $ _____ - $_____ Non-LIHTC proposals
site value - $_____
cash $_____

Determining Return on Investment: (**LBV** minus **ML**)

$910,000 - $900,000 = $10,000 LIHTC proposals

$_____ - $_____ = $_____ Non-LIHTC proposals

CALCULATED BY _____ _____
(Rural Development employee) (Date)

EXAMPLE B
WORK SHEET FOR LOAN CALCULATION
(**Applicant Owned Sites**)

_____
(Applicant Name)

$1,000,000 Total Development Cost (**TDC**) (Line 58 of *Form RD 1924-13*)
(Line 58 should include cost of site.)

$1,400,000 Security Value (**SV**) (Recent Rural Development or Rural Development-contracted appraisal.)
$500,000 appraised value of site

$1,400,000 Adjusted Total Development Cost (**ATDC**):
$1,000,000 **TDC**
- 100,000 Minus site cost
+ 500,000 Plus appraised value of site "as is"
$1,400,000 **ATDC**

$1,400,000 Loan Basis Value (**LBV**) (Lower of **ATDC** or **SV**)
==========
CALCULATIONS

Low Income Housing Tax Credit (LIHTC): LIHTC or similar tax incentive pursuant to Section 42 of the Internal Revenue Code.

Determining Maximum Loan (**ML**): (**LBV** minus site value)

$1,400,000 - $500,000 = $900,000 LIHTC proposals
$_____ - $_____ = $_____ Non-LIHTC proposals

Determining Applicant Contribution: (**ATDC** minus **ML** minus site value)

$1,400,000 - $500,000 = $500,000 LIHTC proposals
site value - $500,000
cash $ -0-
$_____ - $_____ = $_____ Non-LIHTC proposals
site value - $_____
cash $_____

Determining Return on Investment: (**LBV** minus **ML**)

$1,400,000 - $900,000 = $500,000 LIHTC proposals
$_____ - $_____ = $_____ Non-LIHTC proposals

CALCULATIONS BY _____ _____
(Rural Development employee) (Date)

EXAMPLE C
WORK SHEET FOR LOAN CALCULATION
(**Applicant Owned Sites**)

_____
(Applicant Name)

$1,000,000 Total Development Cost (**TDC**) (Line 58 of *Form RD 1924-13*)
(Line 58 should include cost of site.)

$ 750,000 Security Value (**SV**) (Recent Rural Development or Rural Development-contracted appraisal.)
$100,000 appraised value of site

$ 600,000 Adjusted Total Development Cost (**ATDC**):
$1,000,000 **TDC**
- 500,000 Minus site cost
+ 100,000 Plus appraised value of site "as is"
$ 600,000 **ATDC**

$ 600,000 Loan Basis Value (**LBV**) (Lower of **ATDC** or **SV**)
==========
CALCULATIONS

Low Income Housing Tax Credit (LIHTC): LIHTC or similar tax incentive pursuant to Section 42 of the Internal Revenue Code.

Determining Maximum Loan (**ML**): (**LBV** minus site value)

$600,000 - $100,000 = $500,000 LIHTC proposals
$_____ - $_____ = $_____ Non-LIHTC proposals

Determining Applicant Contribution: (**ATDC** minus **ML** minus site value)

$600,000 - $500,000 = $100,000 LIHTC proposals
site value - $100,000
cash $ -0-
$_____ - $_____ = $_____ Non-LIHTC proposals
site value - $_____
cash $_____

Determining Return on Investment: (**LBV** minus **ML**)

$600,000 - $500,000 = $100,000 LIHTC proposals
$_____ - $_____ = $_____ Non-LIHTC proposals

CALCULATIONS BY _____ _____
(Rural Development employee) (Date)

WORK SHEET FOR LOAN CALCULATION
(**Applicant Owned Sites**)

_____
(Applicant Name)

(When value of site is less than the required applicant contribution)

$_____ Total Development Cost (**TDC**) (Line 58 of *Form RD 1924-13*)
(Line 58 should include cost of site.)

$_____ Security Value (**SV**) (Recent Rural Development or Rural Development-contracted appraisal.)

$_____ appraised value of site

$_____ Adjusted Total Development Cost (**ATDC**):
$____ **TDC**
-____ Minus site cost
+____ Plus appraised value of site "as is"
$____ ATDC

$_____ Loan Basis Value (**LBV**) (Lower of **ATDC** or **SV**)

==========

CALCULATIONS

Low Income Housing Tax Credit (LIHTC): LIHTC or similar tax incentive pursuant to Section 42 of the Internal Revenue Code.

Determining Maximum Loan (**ML**): (**LBV** minus site value)

$_____ - $_____ = $_____ LIHTC proposals
$_____ - $_____ = $_____ Non-LIHTC proposals

Determining Applicant Contribution: (**ATDC** minus **ML** minus site value)

$_____ - $_____ = $_____ LIHTC proposals
site value - $_____ - **THIS IS LESS THAN REQUIRED CONTRIBUTION**
cash $_____
Reduce loan amount by $_____; new loan amount $_____
$_____ - $_____ = $_____ Non-LIHTC proposals
site value - $_____
cash $_____

Determining Return on Investment: (**LBV** minus **ML**)

$_____ - $_____ = $_____ LIHTC proposals
$_____ - $_____ = $_____ Non-LIHTC proposals

CALCULATIONS BY _____ _____
(Rural Development employee) (Date)

EXAMPLE A
WORK SHEET FOR LOAN CALCULATION
(**Applicant Owned Sites**)

_____
(Applicant Name)

$1,000,000 Total Development Cost (**TDC**) (Line 58 of *Form RD 1924-13*)
(Line 58 should include cost of site.)

$ 800,000 Security Value (**SV**) (Recent Rural Development or Rural Development-contracted appraisal.)

$10,000 appraised value of site

$1,000,000 Adjusted Total Development Cost (**ATDC**):
$1,000,000 **TDC**
- 100,000 Minus site cost
+ 10,000 Plus appraised value of site "as is"
$ 910,000 **ATDC**

$ 800,000 Loan Basis Value (**LBV**) (Lower of **ATDC** or **SV**)

==========

CALCULATIONS

Low Income Housing Tax Credit (LIHTC): LIHTC or similar tax incentive pursuant to Section 42 of the Internal Revenue Code.

Determining Maximum Loan (**ML**): (**LBV** minus site value) *

$800,000 - $10,000 = $790,000 LIHTC proposals
$_____ - $_____ = $_____ Non-LIHTC proposals

Determining Applicant Contribution: (**ATDC** minus **ML** minus site value)

$910,000 - $790,000 = $120,000 LIHTC proposals
site value - $ 10,000 - **THIS IS LESS THAN REQUIRED CONTRIBUTION**
cash $110,000

Reduce loan amount by $110,000; new loan amount $680,000 *

Determining Return on Investment: (**LBV** minus **ML**)

$800,000 - $790,000 = $10,000 LIHTC proposals
$_____ - $_____ = $_____ Non-LIHTC proposals

CALCULATIONS BY _____ _____
(Rural Development employee) (Date)

EXAMPLE B
WORK SHEET FOR LOAN CALCULATION
(**Applicant Owned Sites**)

_____
(Applicant Name)
(When value of site is less than the required applicant contribution)

$1,000,000 Total Development Cost (**TDC**) (Line 58 of *Form RD 1924-13*)
(Line 58 should include cost of site.)

$ 500,000 Security Value (**SV**) (Recent Rural Development or Rural Development-contracted appraisal.)

$100,000 appraised value of site

$ 850,000 Adjusted Total Development Cost (**ATDC**):
$1,000,000 **TDC**
- 250,000 Minus site cost
+ 100,000 Plus appraised value of site "as is"
$ 850,000 **ATDC**

$ 500,000 Loan Basis Value (**LBV**) (Lower of **ATDC** or **SV**)
==========
CALCULATIONS

Low Income Housing Tax Credit (LIHTC): LIHTC or similar tax incentive pursuant to Section 42 of the Internal Revenue Code.

Determining Maximum Loan (**ML**): (LBV minus site value) *

$500,000 - $100,000 = $400,000 LIHTC proposals
$_____ - $_____ = $_____ Non-LIHTC proposals

Determining Applicant Contribution: (**ATDC** minus **ML** minus site value)

$850,000 - $400,000 = $450,000 LIHTC proposals
site value - $100,000 - **THIS IS LESS THAN REQUIRED CONTRIBUTION**
cash $350,000
Reduce loan amount by $350,000; new loan amount $50,000 *
$_____ - $_____ = $_____ Non-LIHTC proposals
site value - $_____
cash $_____

Determining Return on Investment: (**LBV** minus **ML**)

$500,000 - $400,000 = $100,000 LIHTC proposals
$_____ - $_____ = $_____ Non-LIHTC proposals

CALCULATIONS BY _____ _____
(Rural Development employee) (Date)

WORK SHEET FOR LOAN CALCULATION
(**102 percent loans with donated land**)

_____
(Applicant Name)

$_____ Total Development Cost (**TDC**) (Line 58 of *Form RD 1924-13*)
(Line 58 should include value of site.)

$_____ Security Value (**SV**) (Recent Rural Development or Rural Development-contracted appraisal.)

$_____ Loan Basis Value (**LBV**) (Lower of **SV** or **TDC**.)

==========

CALCULATIONS

Maximum Loan (**ML**): $_____ (**LBV**)

Determining Applicant Contribution: The amount of funds that applicant must contribute beyond the value of the site. (**TDC** minus **ML**)

$_____ - $_____ = $_____

CALCULATIONS BY _____ _____
(Rural Development employee) (Date)

EXAMPLE A
WORK SHEET FOR LOAN CALCULATION
(**102 percent loans with donated land**)

_____
(Applicant Name)

$1,000,000 Total Development Cost (**TDC**) (Line 58 of *Form RD 1924-13*.)
(Line 58 should include value of site.)

$1,200,000 Security Value (**SV**) (Recent Rural Development or Rural Development-contracted
appraisal.)

$1,000,000 Loan Basis Value (**LBV**) (Lower of **SV** or **TDC**.)

==========

CALCULATIONS

Maximum Loan (**ML**): $1,000,000 (LBV)

Determining Applicant Contribution: The amount of funds the applicant must contribute beyond the value of the site. (**TDC** minus **ML**)

$1,000,000 - $1,000,000 = $ 0

CALCULATIONS BY _____ _____
(Rural Development employee) (Date)

EXAMPLE B
WORK SHEET FOR LOAN CALCULATION
(**102 percent loans with donated land**)

_____
(Applicant Name)

$1,000,000 Total Development Cost (**TDC**) (Line 58 of *Form RD 1924-13*.)
(Line 58 should include value of site.)

$ 900,000 Security Value (**SV**) (Recent Rural Development or Rural Development-contracted appraisal.)

$ 900,000 Loan Basis Value (**LBV**) (Lower of **SV** or **TDC**.)

==========

CALCULATIONS

Maximum Loan (**ML**): **$900,000** (**LBV**)

Determining Applicant Contribution: The amount of funds the applicant must contribute beyond the value of the site. (**TDC** minus **ML**)

$1,000,000 - $900,000 = $ 100,000

CALCULATIONS BY _____ _____
(Rural Development employee) (Date)

EXAMPLE C
WORK SHEET FOR LOAN CALCULATION
(102 percent loans with site purchase)

_____
(Applicant Name)

$1,000,000 Total Development Cost (**TDC**) (Line 58 of *Form RD 1924-13*.)
(Line 58 should include value of site.)

$1,000,000 Security Value (**SV**) (Recent Rural Development or Rural Development-contracted
appraisal.)

$1,000,000 Loan Basis Value (**LBV**) (Lower of **SV** or **TDC**.)

==========

CALCULATIONS

Maximum Loan (**ML**): **$1,000,000** (**LBV**)

Determining Applicant Contribution: The amount of funds the applicant must contribute beyond the value of the site. (**TDC** minus **ML**)

$1,000,000 - $1,000,000 = $ 0

CALCULATIONS BY _____ _____
(Rural Development employee) (Date)

WORK SHEET FOR LOAN CALCULATION
(**102 percent loans with applicant owned site**)

_____
(Applicant Name)

$_____ Total Development Cost (**TDC**) (Line 58 of *Form RD 1924-13*)
(Line 58 should include cost of site.)

$_____ Security Value (**SV**) (Recent Rural Development or Rural Development-contracted appraisal.)

$_____ Loan Basis Value (**LBV**) (Lower of **SV** or **TDC**.)

==========

CALCULATIONS

Maximum Loan (**ML**): $_____ (**LBV**)

Determining Applicant Contribution: (**TDC** minus **ML**)

$ _____ - $ _____ = $ _____

CALCULATIONS BY _____ _____
(Rural Development employee) (Date)

EXAMPLE A
WORK SHEET FOR LOAN CALCULATION
(**102 percent loans with applicant owned site**)

_____
(Applicant Name)

$1,000,000 Total Development Cost (**TDC**) (Line 58 of *Form RD 1924-13*.)
(Line 58 should include cost of site.)

$1,000,000 Security Value (**SV**) (Recent Rural Development or Rural Development-contracted appraisal.)

$1,000,000 Loan Basis Value (**LBV**) (Lower of **SV** or **TDC**.)

==========

CALCULATIONS

Maximum Loan (**ML**): **$1,000,000** (**LBV**)

Determining Applicant Contribution: (**TDC** minus **ML**)

$1,000,000 - $1,000,000 = $ 0

CALCULATIONS BY _____ _____
(Rural Development employee) (Date)

EXAMPLE B
WORK SHEET FOR LOAN CALCULATION
(**102 percent loans with applicant owned site**)

_____
(Applicant Name)

$ 900,000 Total Development Cost (**TDC**) (Line 58 of *Form RD 1924-13*.)
(Line 58 should include cost of site.)

$1,000,000 Security Value (**SV**) (Recent Rural Development or Rural Development-contracted appraisal.)

$ 900,000 Loan Basis Value (**LBV**) (Lower of SV or TDC.)

==========

CALCULATIONS

Maximum Loan (**ML**): **$900,000** (**LBV**)

Determining Applicant Contribution: (**TDC** minus **ML**)

$900,000 - $900,000 = $ 0

CALCULATIONS BY _____ _____
(Rural Development employee) (Date)

EXAMPLE C
WORK SHEET FOR LOAN CALCULATION
(**102 percent loans with applicant owned site**)

_____
(Applicant Name)

$1,080,000 Total Development Cost (**TDC**) (Line 58 of *Form RD 1924-13*.)
(Line 58 should include cost of site.)

$1,030,000 Security Value (**SV**) (Recent Rural Development or Rural Development contracted appraisal.)

$1,030,000 Loan Basis Value (**LBV**) (Lower of SV or TDC.)

==========

CALCULATIONS

Maximum Loan (**ML**): **$1,030,000** (**LBV**)

Determining Applicant Contribution: (**TDC** minus **ML**)

$1,080,000 - $1,030,000 = $ 50,000

CALCULATIONS BY _____ _____
(Rural Development employee) (Date)

WORK SHEET FOR LOAN CALCULATION
(**102 percent loans with site purchase**)

_____
(Applicant Name)

$_____ Total Development Cost (**TDC**) (Line 58 of *Form RD 1924-13*, including site cost on Line 50.)

$_____ Security Value (**SV**) (Recent Rural Development or Rural Development-contracted appraisal, including site value.)

$_____ Adjusted Total Development Cost (**ATDC**):

$_____ **TDC**
-_____ Minus site cost
+_____ Plus appraised value of site "as is"
$_____ **ATDC**

$_____ Loan Basis Value (**LBV**) (Lower of **SV** or **ATDC**.)

==========

CALCULATIONS

Maximum Loan (ML): $_____ (**LBV**)

Determining Applicant Contribution: The amount of funds the applicant must contribute. (**TDC** minus **ML**)

$ _____ - $ _____ = $_____

CALCULATIONS BY _____ _____
(Rural Development employee) (Date)

EXAMPLE A
WORK SHEET FOR LOAN CALCULATION
(**102 percent loans with site purchase**)

_____
(Applicant Name)

$1,000,000 Total Development Cost (**TDC**) (Line 58 of *Form RD 1924-13*, including site cost on Line 50.)

$1,200,000 Security Value (**SV**) (Recent Rural Development or Rural Development-contracted appraisal, including site value.)

$ 975,000 Adjusted Total Development Cost (**ATDC**):

$1,000,000 TDC
- 150,000 Minus site cost
+ 125,000 Plus appraised value of site "as is"
$ 975,000 ATDC

$ 975,000 Loan Basis Value (**LBV**) (Lower of **SV** or **ATDC**.)

==========

CALCULATIONS

Maximum Loan (ML): **$975,000** (**LBV**)

Determining Applicant Contribution: The amount of funds the applicant must contribute. (**TDC** minus **ML**)

$1,000,000 - $975,000 = $25,000

CALCULATIONS BY _____ _____
(Rural Development employee) (Date)

EXAMPLE B
WORK SHEET FOR LOAN CALCULATION
(**102 percent loans with site purchase**)

_____
(Applicant Name)

$1,125,000 Total Development Cost (**TDC**) (Line 58 of *Form RD 1924-13*, including site cost on Line 50.)

$1,000,000 Security Value (**SV**) (Recent Rural Development or Rural Development-contracted appraisal, including site value.)

$1,130,000 Adjusted Total Development Cost (**ATDC**):

$1,125,000	**TDC**	
- 75,000	Minus site cost	
+ 80,000	Plus appraised value of site "as is"	
1,130,000	**ATDC**	

$1,000,000 Loan Basis Value (**LBV**) (Lower of **SV** or **ATDC**.)

==========

CALCULATIONS

Maximum Loan (**ML**): **$1,000,000** (**LBV**)

Determining Applicant Contribution: The amount of funds the applicant must contribute. (**TDC** minus **ML**)

$1,125,000 - $1,000,000 = $125,000

CALCULATIONS BY _____ _____
(Rural Development employee) (Date)

EXAMPLE C
WORK SHEET FOR LOAN CALCULATION
(**102 percent loans with site purchase**)

_____
(Applicant Name)

$1,200,000 Total Development Cost (**TDC**) (Line 58 of *Form RD 1924-13*, including site cost on Line 50.)

$1,150,000 Security Value (**SV**) (Recent Rural Development or Rural Development-contracted appraisal, including site value.)

$1,250,000 Adjusted Total Development Cost (**ATDC**):

$1,200,000 TDC
- 100,000 Minus site cost
+ 150,000 Plus appraised value of site "as is"
$1,250,000 ATDC

$1,150,000 Loan Basis Value (LBV) (Lower of **SV** or **ATDC**.)

==========

CALCULATIONS

Maximum Loan (ML): **$1,150,000** (**LBV**)

Determining Applicant Contribution: The amount of funds the applicant must contribute. (**TDC** minus **ML**)

$1,200,000 - $1,150,000 = $50,000

CALCULATIONS BY _____ _____
(Rural Development employee) (Date)

CHAPTER 6: PARTICIPATION WITH OTHER FUNDING SOURCES

6.1 INTRODUCTION

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

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

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

6.2 OVERVIEW OF PARTICIPATION LOANS

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

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

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SECTION 1: REQUIREMENTS FOR PARTICIPATION LOANS
[7 CFR 3560.66]

6.3 GENERAL

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

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

- The number of units in the project that will serve Agency income-eligible tenants must equal or exceed the number of units that will be financed by the Agency. This requirement ensures that Agency funds will be used for authorized program purposes. The number of units financed by the Agency is determined by dividing its loan amount by the State's average new per-unit construction costs. If the number of units to be occupied by program-eligible tenants is less than the number of Agency-financed units, the loan applicant must increase the number of units that will serve program-eligible residents or reduce the Rural Housing Service (RHS) loan request. Loan Originators must not approve loans for projects that fail to meet this requirement.

- The Agency must enter into a participation agreement, intercreditor agreement, or Memorandum of Understanding (MOU) with the other participating lenders in the project. This requirement protects the Agency's interests and is further described in Section 2 of this chapter.

- Projects with participation loans may be marketed to a mixed-income population. Consequently, there may be some program-ineligible occupants in a project. Mixing conventional and income-restricted units requires additional management oversight by the Agency and the loan applicant to ensure that those units financed by the Agency meet program requirements. For such projects, the Agency also permits some design flexibility that is not allowed in projects funded solely with Agency financing. Some restrictions apply, and these must be discussed with the loan applicant at the preliminary meeting (see paragraph 6.4).

6.4 DESIGN REQUIREMENTS

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

A. Composition and Quality of Units

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

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

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

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

6.5 SECURITY AGREEMENTS

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

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

A. Lien Position

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

B. Security Agreement

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

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

Exhibit 6-1

Elements of the Participation Agreement, Intercreditor Agreement, or MOU

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

C. Sample Agreements

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

6.6 SUBSIDY LAYERING

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

6.7 RENTS, RENTAL ASSISTANCE, AND MANAGEMENT

A. Establishing Rents

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

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

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

- The Agency's loan must equal at least 25 percent of the project's TDC. The State Director may request an exception to this provision from the Administrator by submitting a complete explanation as to why the exception should be made.

- The rental assistance must be restricted to only those units where the basic rents do not exceed what basic rents would have been had the Agency provided full financing.

C. Management

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

6.8 RESERVE REQUIREMENTS *[7 CFR 3560.65]*

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

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

- Should, where feasible, equal the replacement cost of capital items based on the life-cycle cost analysis of the project's capital needs over the life of the project, but results in rents that are no higher than Comparable Rents for Conventional Units (CRCU) standard discussed in Chapter 3; and.

- At a minimum, equal at least 10 percent of the project's total Rural Development-eligible development cost or appraised value, whichever is greater. This minimum funding assumes annual contributions of at least 1 percent of eligible TDC. Loan Originators should seek guidance from the National Office about the circumstances when it is advisable to establish reserve funding levels at amounts higher than this minimum.

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

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

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

SECTION 2: PROCESSING APPLICATIONS INVOLVING PARTICIPATION LOANS

6.9 OVERVIEW

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

- Underwriting the loan;

- Establishing the Agency's security position;

- Evaluating design and management features; and

- Setting the loan limits.

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

6.10 UNDERWRITING

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

Underwriting Criteria for Participation Loans

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

A. Applicant and Project Eligibility

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

B. Project Feasibility

1. Project Need

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

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

2. Financial Feasibility

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

3. Viability of Other Funding/Financing Sources

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

C. Reasonable Project Costs

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

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

- Agency funds are not being used to pay for the construction, operation, or maintenance of such facilities; and

- Adequate measures have been taken to secure tenant health and safety when using the facility.

D. Management

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

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

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

6.11 ENVIRONMENTAL REQUIREMENTS

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

6.12 SUBSIDY REVIEWS

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

6.13 ESTABLISHING LOAN AMOUNT, TERMS, AND CONDITIONS

A. Establishing Loan Amounts

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

Exhibit 6-2

Establishing Agency Loan Amounts — An Example

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

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

B. Borrower Contribution Requirement

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

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

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

6.14 WORKING WITH STATE HOUSING FINANCE AGENCIES

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

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

A. Coordinating Resources

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

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

- During the loan application review to share information about project financing and costs to make sure that no excess Government assistance is being provided to the project; and

- During asset management to share information about occupancy, tenant incomes, and rents to make sure that owners are in compliance with the tax credit program rules.

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

B. Entering into a Memorandum of Understanding

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

C. Working with the State Agency

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

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

A. Agreement by both parties:

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

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

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

continued

Exhibit 6-3 (cont.)

Contents of the Memorandum of Understanding with State Housing Finance Agencies

C. The State agency should agree to inform any loan applicants seeking both tax credits and Agency Multi-Family Housing assistance that the MOU will be applied to the processing of their loan requests. The State agency should also agree to provide the Agency with the following data:

1. The list of tax credit loan requests received from applicants that indicate they are seeking financing from the Agency;

2. For each loan request, a copy of the tax credit application with the detailed cost breakdown used to estimate the amount of tax credits for which the developer would be eligible;

3. When the development is complete and the final sources and uses of funds in projects receiving both Agency funds and tax credits are made, the *IRS Form 8609, Low-Income Housing Credit Allocation Certification*, with a copy of the cost data used to determine the development cost of the project; and

4. So as to coordinate the use of limited resources and to ensure that no existing projects are adversely affected a list of all allocation requests to the Agency for comment.

ATTACHMENT 6-A
SAMPLE #1

SAMPLE INTERCREDITOR AGREEMENT

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

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

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

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

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

1. Collateral and Priorities. The lien of the mortgages of the Bank and the Government shall be co-equal regardless of the order in which their respective mortgages may be recorded. The Bank agrees that if any interest it may have in the Project is liquidated, the net proceeds, except with respect to revenues, shall be divided pro rata based on the amounts loaned, but not including protective advances. For the purposes of this Agreement, the term "liquidation" means voluntary or involuntary sale, condemnation, forfeiture, casualty loss, or other disposition.

2. Cross Defaults Required. The loan documents used by the Bank and the Government will contain a promise by the Borrower that a default under the terms of the Bank's loan documents will be a default under the terms of the Government's loan documents and that a default under the terms of the Government's loan documents (including any agreements providing for subsidy or assistance to the Borrower or tenants) will constitute a default under the terms of the Bank's loan documents.

3. Notices. The Bank shall give notice in writing to the Government at the address set out above, or such other place as the Government may designate in writing from time to time, within 15 days of the occurrence of a default under the terms of its loan documents. Such notice shall specify the nature of the default and state what action, if any, the Bank intends to take. The Government shall give the Bank notice in writing at the address set out above, or such other place as the Bank may designate in writing from time to time, within 15 days of the occurrence of a default under the terms of its loan documents. Such notice shall specify the nature of the default and state what action, if any, the Government intends to take. Each party shall promptly send the other a copy of any notice or demand that it sends to the Borrower.

4. Application of Payments. In the event that the Borrower shall not have sufficient funds available to pay the regularly scheduled installment due under the terms of the Promissory Notes given to the Bank and the Government (adjusted for interest credit and rental assistance), the Borrower agrees to pay such funds as are available to the Bank and the Government, pro rata, based on the amounts of the respective regularly scheduled installments.

5. Use of Loan Proceeds During Construction. The Bank agrees to advance funds in accordance with the terms of its agreement with the Borrower, except that it will not disburse any funds without first securing the concurrence of a duly authorized officer of the Government.

6. Foreclosure. Neither the Bank nor the Government will foreclose or accept a deed in lieu of foreclosure without consulting with each other. In the event that either the Bank or the Government elects to foreclose, the mortgage of the other lender shall be deemed to be subordinate to that of the foreclosing lender so that the property can be sold free and clear of all liens. The proceeds from any foreclosure sale shall be used: (a) to pay the costs of the foreclosure, including legal fees; (b) protective advances to preserve the Project or the lien of the mortgage of the foreclosing lender; (c) to the Bank and the Government, pro rata, as provided in Paragraph 1, above; and (d) as provided by law.

[NAME OF BANK]
By: _____
[Name, title]

UNITED STATES OF AMERICA
By: _____
[Name, title]

[NAME OF BORROWER]

By: _____
[Name, title]

Sample #2

SAMPLE PARITY AGREEMENT

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

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

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

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

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

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

1. The Bank will record a mortgage perfecting a lien on real property of _____ in _____ County and will file a financing statement perfecting a security interest on revenues earned and personal property of _____ located in _____ County.

2. The agency will or has recorded a mortgage perfecting a lien on real property of _____ in _____ County and has or will file a financing statement perfecting a security interest on revenues earned and personal property of _____ located in _____ County.

3. The agency may perfect a lien and security interest inferior to the lien and security interest of the Bank covering the above referred to property and the revenues in _____ County and the Bank may perfect a lien and security interest inferior to the lien and security interest of Rural Development covering the above referred to property and revenues in _____ County depending upon the order in which said documents are recorded and filed.

4. (a) In the event of default under any of the loan agreements, promissory notes, mortgages, pledges of revenue, or security agreements of either the Bank or the agency, the Bank and the agency will be affected on a proportionate basis regardless of the time and/or order of recording, attachment, or perfection of the security interest as follows:

   (1) In the event adequate funds are not available to meet regular installments in their entirety, the funds available will be apportioned pro rata to the agency and the Bank based upon respective current installments of principal and interest due. Such apportionment shall not prevent the agency or the Bank from seeking any other remedy provided by its agreements with _____ or otherwise provided by law, and shall not be deemed a waiver of default.

   (2) All funds obtained by the agency or the Bank from foreclosure, sale, liquidation or any enforcement of other remedies against _____ will be apportioned to the agency and the Bank based upon the pro rata amount loaned but not to exceed the respective outstanding balances of principal and interest.

   (3) Reimbursement of protective advances, as defined in 7 CFR 3560.455(b)(3)(ii), made by the agency and/or the Bank for the mutual protection of both the agency and the Bank shall receive first priority in the pro rata apportionment of funds between the agency and the Bank provided both the agency and the Bank concurred in the making of each such protective advance given first priority status notwithstanding the provisions of paragraphs (1) and (2) above.

   (b) In any event other than an event of default which results in money or other proceeds to be paid to the agency and the Bank, including without limitation recoveries pursuant to construction contracts or surety bonds, insurance proceeds, condemnation proceeds, disposition of property, releases of secured property, or otherwise, said money or other proceeds shall be shared in the absence of the agreement between the agency and the Bank pro rata by the agency and the Bank in proportion to the unpaid balances of principal interest (reduced by any reserve funds held for such indebtedness) existing at the time such money or proceeds are available.

5. The agency and its successors and assigns, and the Bank, and its successors and assigns, shall each notify the other promptly upon the occurrence of any of the following: an event of default; material and substantial alterations to the loan agreement; advances, extension, reamortizations, renewals, and extensions of additional credit. Such notice shall be immediate and in writing, and if made by United States Mail, shall be deemed received <u>three (3) days</u> after being deposited with the postal service. Failure to give notice shall not affect _____ obligation to the agency or the Bank nor shall it affect the priority of either party.

6. Such notice sent due to the occurrence of an event of default shall fix the time and date upon which the pro rata shares shall be determined as 4:00 p.m. of the date of the notice. Any advances or loans made by either the Bank or the agency thereafter shall not have been made in accordance with the terms of this Agreement, except insofar as said

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

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

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

   To the Bank: To the agency:
   _____ Rural Development
   _____
   _____
   _____
   To _____
   _____
   _____
   _____
   Or to such other address as the party concerned, and its successors and assigns, shall from time to time designate in writing.

8. Provisions herein concerning priority shall be controlling, notwithstanding the terms of any agreement between the agency or the Bank and _____; the time at which the lien or security interest attaches to or is perfected; the order in which financing statements may be filed or continued; the order in which mortgages may be recorded; or any provisions in any other agreement to the contrary, whether or not in bankruptcy, receivership, or other insolvency proceedings have been commenced.

9. All terms used but not defined herein which are defined in the Uniform Commercial Code as adopted by the State of _____ shall have the same meaning as in such code.

10. This Agreement is solely for the benefit of the parties hereto, and their respective successors, and no other person or persons shall obtain any right, priority, or interest pursuant to this Agreement. (It is anticipated and specifically consented to by the agency that the mortgages, security agreements, and financing statements executed by _____ and recorded or filed by the Bank may be assigned.) This Agreement and the rights granted to the parties by this Agreement shall not be further assigned without written notice to the agency, or its successors and assigns, or the Bank, or its successors and assigns. Any such assignment shall not require notice to or the consent of _____. Nothing herein contained shall be deemed to obligate the Bank or the agency to offer or extend any credit to _____ or to forbear in any effort to collect indebtedness owed by _____.

11. So long as any loan obligation of _____ is held or insured by the agency, this Agreement is subject to the following additional restrictions.

a. The loan(s) made by the Bank to _____ may not be redeemed and paid prior to their stated maturity; and

b. The loan(s) made by the Bank to _____ may not be refunded without simultaneously paying the loans made by the agency to _____, without the written consent of the agency; and

c. The loan(s) made by the Bank to _____ and the execution of this Agreement do not impose legal restrictions that will prevent _____ from complying with 7 U.S.C. § 1983(3) with respect to any loan obligations held or insured by the agency.

12. This Agreement shall be governed by and interpreted in accordance with the laws of the State of _____ except to the extent governed by federal statutes, rules, and regulations.

13. The invalidity or unenforceability of any portion of this Agreement shall not affect the remaining portions hereof; in the case of such invalidity or unenforceability, this Agreement shall be construed as if such invalid or unenforceable portion had not been included herein.

14. This Agreement constitutes the entire contract among the parties and may not be modified or amended except in writing signed by the parties.

15. This Agreement may be simultaneously executed in counterparts and all such counterparts shall constitute but one and the same instrument.

16. This Agreement shall remain in effect until or unless terminated by agreement in writing or the parties or until such time as the indebtedness of _____ to the Bank and the agency is paid in full.

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

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

_____

By:_____ By:

_____ _____

By:_____

_____

ATTEST:

_____

STATE OF _____

COUNTY OF _____

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

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

_____
Notary Public

My Commission Expires:

SAMPLE #3

SAMPLE SUBORDINATION AGREEMENT

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

W I T N E S S E T H:

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

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

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

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

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

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

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

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

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

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

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

State Director, Rural Development
(Address)

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

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

Bank
(Address)

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

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

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

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

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

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

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

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

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

12. The BANK will take no action that would preclude BORROWER from being able to comply with applicable government statutes, regulations, instructions and terms of RURAL DEVELOPMENT'S loan instruments with the BORROWER.

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

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

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

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

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

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

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

[Signatures on following page]

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

WITNESSES:

_____
Print name:

_____
Print name:

_____
Print name:

BANK

By: _____ (Seal)
Title: _____

BORROWER

ABC Limited Partnership

By: _____ (Seal)
Title: _____

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

By: _____ (Seal)
Title: _____

STATE OF _____

COUNTY OF _____

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

_____
(Signature of Witness)

SWORN to before me this ____ day of _____, _____.

_____

[Notary Seal]

Notary Public,
State of _____
My Commission Expires: _____

ATTACHMENT 6-B

SAMPLE PROCESSING MEMORANDUM OF UNDERSTANDING

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

INTRODUCTION

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

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

SCOPE OF THE AGREEMENT

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

PURPOSE

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

BOTH PARTIES AGREE:

(a) To share information on project costs.

(b) To use the following fee norms:

(1) Builder's profit: Up to (10 percent) of the construction contract.

(2) General overhead: Up to (4 percent) of the construction contract.

(3) General requirements: Up to (7 percent) of the construction contract.

(4) Developer's fee: Up to (15 percent) of the total development costs for tax credit purposes for new construction and rehabilitation costs; up to (8 percent) of the acquisition costs only for the acquisition rehabilitation costs.

(c) As appropriate, both parties agree on the following process for deviation for a fee over the fee norm for an individual state. Alternative fee norms may be included in the MOU with approval of the National Office.

(d) As appropriate, both parties agree to the definitions and formulas for the determination of costs and amounts of assistance.

(e) The above fee norms will be used in the Agency's analysis of the amount of assistance that is necessary for a proposal. RHS will prepare an analysis spreadsheet on all loan requests:

(1) When accepted as a loan request;

(2) Just prior to approval; and

(3) When the cost certification is completed and prior to issuance of *IRS Form 8609*, indicating the amount of tax credits.

(f) In all cases where the results of an analysis indicate that there will be excess assistance (defined as more than the lesser of $25,000 or one percent of the total development cost as authorized by the State Agency), RHS will consult with the applicant as well as the State Agency, to strive to reach an agreement for reducing the excess assistance. The following alternatives are examples of actions that can be taken:

(1) Reducing the amount of tax credit units required;

(2) Reducing the level of assistance provided by one or more of the sources of funds; or

(3) Revising the uses to include eligible costs for any funding participants, provided the project enhancement is consistent with the intent of the RRH program and will assist the resident population being served by the housing.

(g) Parties to this agreement understand that, in the event that excess assistance is not reduced through other means, RHS will adjust the amount of equity contribution (through the reduction of the loan) to ensure that RHS assistance provided is not more than is necessary to provide affordable housing after taking account of assistance from all Federal, State, and local sources. Approval of any reduction will require formal notification to the applicant and the State Agency and the RHS National Office.

(h) Parties to this agreement understand that RHS does not certify accuracy of the tax credit applicant's eligibility, nor does it certify the applicant's compliance with requirements of Section 42 of the Internal Revenue Code. The State Agency understands that the owner certifies the information to RHS as being true and correct representations and that RHS carries out periodic reviews and analysis of the data to verify compliance with its requirements.

(i) It is further understood that the general information shared under this MOU is for internal analysis and will not be disclosed to other than the appropriate RHS and State Agency employees and that specific information on a proposal may be shared with the applicant and other providers of funds on the respective proposals as appropriate.

(j) The State Director and the State Agency will review, at least annually, the fee norms on builder or general contractor charges (builder's profit, builder's overhead, and general requirements) established by this MOU relative to the State Agency's allocation plan or other regulations. The developer's fee or any other fees allowed will also be reviewed. Any revised fee norms will be added as an amendment to this agreement and be used in subsequent analyses of loan requests.

(k) The State Director and the State Agency will prepare joint environmental assessments whenever possible on jointly funded projects. The State Environmental Coordinator will work with the State Agency's environmental coordinator to facilitate the development of an orderly process for accomplishing this objective.

RHS IN (<u>STATE</u>) AGREES:

(a) To provide to the State Agency information on Section 515 projects being considered and receiving Section 515 funding decisions as follows:

(1) A list of Section 515 loan applications and their status;

(2) For each loan request on the list, the most recent *Form RD 1924-13* or other cost estimation documents;

(3) A copy of *Form RD 1944-37* and any identity-of-interest (IOI) disclosure information that has been provided to RHS;

(4) A copy of any notification of selection for further processing issued to applicants;

(5) When the construction is completed, the final *Form RD 1924-13* including any cost analysis prepared by RHS;

(6) On an annual basis, a copy of the AMAS generated report on the Rural Rental Housing Section 515 program called "Construction Cost Analysis" for the prior year; and

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

THE STATE AGENCY AGREES:

(a) The State Agency agrees to inform any applicants seeking both tax credit and RHS loan assistance that the MOU will be applied to the processing of their request for tax credits. A copy of the MOU will be provided to applicants for their guidance when combining the assistance provided by both agencies.

(b) To provide to RHS in (State) the following data:

(1) The list of tax credit loan requests received from applicants that indicate they are seeking financing from RHS;

(2) For each loan request, a copy of the Tax Credit Application with the detailed cost breakdown used to estimate the amount of tax credits for which the developer would be eligible;

(3) *IRS Form 8609* and a copy of the cost data used to determine the development cost of the project after the development is complete and the final sources and uses of funds for projects receiving both RHS funds and tax credits is made;

(4) A list of all allocation requests to RHS for comment in an effort to coordinate the use of limited resources and to ensure that no existing projects are adversely affected.

(c) Information (quarterly), (at the end of its funding cycle on (date)) or (by (date)).

PERIOD OF AGREEMENT

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

MODIFICATION OF AMENDMENT PROVISION

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

ACCEPTANCE AND SIGNATURE OF EACH PROVIDING PARTY

_____	_____
[State Director] (State) Rural Development	[State Agency Head] [State Housing Credit Agency]
_____	_____
Date	Date

CHAPTER 7: SECURITY REQUIREMENTS *[7 CFR 3560.60]*

7.1 INTRODUCTION

Multi-Family Housing loans made by the Agency must be secured in a manner that protects the Government's financial interest in the loan. Adequate security means that the borrower has control of the land to be developed, the value of the project provides sufficient collateral for the loan, and, in cases where additional funding has been provided by other sources, the Agency maintains an acceptable lien position.

This chapter describes the requirements that protect the Agency's financial interests and outlines procedures for reviewing applications and appraisals to ensure that the Agency obtains adequate security for Multi-Family Housing project loans.

7.2 ADDRESSING SECURITY REQUIREMENTS DURING THE ORIGINATION PROCESS

Security requirements are addressed throughout the loan application process.

- During Stage 1, the application provides evidence that the applicant will control the land prior to closing. Also, for projects with participation loans, a participation agreement is negotiated, establishing the Agency's lien position.
- During Stage 2, the security value of the property is established through the appraisal.
- At closing, the borrower must provide clear evidence of control of land and execute documents establishing the Agency's lien on the property.

SECTION 1: SECURITY REQUIREMENTS

7.3 CONTROL OF LAND

To provide adequate security for the loan, a borrower must control the housing and related land. At the time of application, borrowers must provide sufficient evidence that they will have control of the land. Before closing, the borrower must own or hold a leasehold interest to the property.

A. At Time of Application

At the time of application, borrowers must be able to demonstrate that they will have control of the land at the time of closing. An application that does not provide adequate evidence of site control will be rejected. Evidence can be provided in one of three forms:

- **Proof of title or a lease interest:** If the borrower already has control of the land, then the options discussed in Paragraph B, below, are acceptable.
- **Purchase or Lease Option:** If the borrower does not yet own the property, an option to purchase or lease the property can be provided as evidence of land control. The option must be for a term long enough to process the loan (generally, at least six months, preferably, a year) and require no renewal or extension fees.
- **Letter of Intent:** If the property is being donated to the borrower, the borrower may provide a letter of intent from the donor stating that the site will be donated to the borrower and that the borrower will assume control prior to closing.

B. At Loan Closing

At loan closing, the applicant must have proof of either the title or the lease interest.

1. Ownership

The borrower must have fee-simple ownership, under which the borrower holds a fully marketable title to the property. This title is evidenced by a deed that vests full interest in the property to the borrower.

2. Lease Interest

The borrower may lease land only if it is not available for purchase (for example, land owned by a nonpublic body, state, political subdivision, public body, public Agency, or American Indian tribal lands) and the following conditions are met:

- ◊ A recorded mortgage has been given as security;
- ◊ The amount of the loan against the property does not exceed the property's estimated market value;
- ◊ The unexpired lease term must be at least 25 percent longer than the repayment term;
- ◊ The rent charged under the lease does not exceed the rent paid for similar leases in the area;
- ◊ The loan applicant's interest is not subject to summary foreclosure or cancellation; and

◊ The lease permits the following:

- ♦ The right to foreclose the mortgage and transfer the lease;
- ♦ The Agency to bid at a foreclosure sale and to accept voluntary conveyance of the security in lieu of foreclosure;
- ♦ The Agency to occupy or sublet the property and sell the leasehold for cash or credit if the leasehold is acquired through foreclosure, or if the Agency accepts voluntary conveyance in lieu of foreclosure, or if the borrower abandons the property; and
- ♦ The loan applicant, in the event of default or inability to continue with the lease and the loan, to transfer the leasehold, subject to the mortgage, to a transferee that will assume the program debt.

7.4 ADEQUATE SECURITY FOR THE LOAN

To ensure that the value of the project provides adequate collateral for the loan, the Agency requires that the loan be no more than the appraised value of the property or the total allowable development costs minus the borrower's equity in the project.

For further guidance on obtaining and reviewing appraisals, see Section 2.

7.5 LIABILITY

Agency loans to borrowers will establish the borrower's personal liability, except for loans to limited partnerships. Loan processing staff must make sure that the loan agreement includes appropriate language on personal liability.

7.6 ACCEPTABLE LIEN POSITION

The Agency encourages the use of funding and loans from other sources to aid in the financing of Multi-Family Housing projects. Agency loans provided to projects in conjunction with funding other than the borrower's contribution are referred to as participation loans.

The terms of participation loans must protect the Agency's security in the project. Therefore, when additional sources of funding or financing are used, the Agency will negotiate a participation (or intercreditor) agreement that establishes an acceptable lien position for the Agency. (See Chapter 6 for a full discussion of participation loans and intercreditor agreements.)

A. Acceptable Lien on Property

To protect its interest in the project, the Agency will seek first or parity lien position on the property. A junior lien position is acceptable only if it is necessary to the project and the Government's financial interests are adequately protected (see Chapter 6, paragraph 6.5 A for additional information).

B. Acceptable Lien on Project Revenue

Agency will seek first/parity lien on project revenue. Such liens provide that if the project is subject to a servicing action, the Agency has first or parity claim on project rents and other revenue. The Agency's lien position must be specified in the intercreditor agreement.

SECTION 2: ASSESSING THE VALUE OF THE SECURITY-APPRAISALS

7.7 PURPOSE OF THE APPRAISAL

High quality appraisals are key to ensuring that the Agency obtains adequate security for its loans. The appraisal serves two functions.

- The appraisal provides an objective opinion of the value of the property. The appraiser concludes the value for the real property and for each type of favorable financing involved, if applicable. Several types of subsidies, including below-market financing (e.g., Agency interest credit and non-Agency low-interest loans), low-income housing tax credits, grants, as well as project-based rental assistance and expense abatements, add value to a Multi-Family Housing property. Each type of subsidy should be thoroughly discussed, and each type of favorable financing should be separately valued in the appraisal. For loan origination, these opinions of value serve as a basis for establishing the collateral's loan value and insurable value.

- The appraisal also serves to expand on some of the information in the loan application. Factual data contained in the report, such as regional, neighborhood, site, and apartment market data, aids the reviewer in evaluating the feasibility of the project.

7.8 REQUIREMENTS FOR APPRAISALS *[7 CFR 3560, Subpart P]*

Appraisals must meet the following requirements:

- **Qualified Appraiser:** All Agency Multi-Family Housing appraisals must be written by a state certified general appraiser. Contract appraisers must be certified (or registered for Non-Resident Temporary Practice) in the state in which the subject property is located. The appraiser must have the specialized knowledge and experience necessary to be competent to appraise subsidized housing. The appraiser must understand the housing programs, value types and definitions, real and intangible property rights, use restrictions, pertinent tax considerations, and methods for valuation of various types of favorable financing involved in the appraisal of subsidized housing.

  The Agency will typically contract with qualified state certified general appraisers. However, when a contract appraiser is not available at an acceptable cost or is unable to complete an appraisal within 45 days, a qualified Agency appraiser may conduct the appraisal. An Agency appraiser must possess the same qualifications as those required for contract appraisers, except that an Agency appraiser is only required to be certified in one State or territory to perform real property appraisal duties as a Federal employee in all States and territories.

- **Standards:** All appraisals must be in compliance with the current edition of the Uniform *Standards of Professional Appraisal Practice (USPAP)* and Agency

appraisal requirements, which can be found in *7 CFR 3560, subpart P*, and this chapter of the handbook, including the attachments.

- **Nondiscrimination:** The appraiser may not use factors that are discriminatory on the basis of race, color, religion, sex, disability, familial status, or national origin in conducting the appraisal and valuing the property.

- **Timing:** The appraisal will be ordered once the applicant has been determined eligible and sufficient information has been collected to enable the appraiser to value the property. This should occur at the beginning of Stage 2 of the Loan Origination process (See Chapters 4 and 5).

- **Documentation:** *Form RD 1922-7, Appraisal Report for Multi-Unit Housing*, may be used for Multi-Family Housing appraisals. *Form RD 1922-7* is equivalent to *FNMA Form 1050* and *FHLMC Form 71A*. None of these forms are compliant with *USPAP*; however, they are standard forms used in the appraisal industry for the valuation of multi-family housing. *Form RD 1922-7*, or one of the equivalent forms, or the *Uniform Commercial Industrial Appraisal Report (UCIAR)* form is acceptable. However, the form must be modified, or attachments must be added, so that *USPAP* requirements are met. Appraisers must make the following additions when using these forms.

  ◊ Identification of the type of appraisal report (e.g. self-contained, summary, or restricted use);

  ◊ Identification of the client and any intended users of the appraisal;

  ◊ Statement of the intended use of the appraisal;

  ◊ Statement of the property rights appraised;

  ◊ Statement of the type(s) of value to be concluded, including the definition(s) of the value type(s) and the source(s) of the definition(s);

  ◊ Description of the scope of work used to develop the appraisal;

  ◊ Disclosure (clear and conspicuous) of all extraordinary assumptions and hypothetical conditions; and statements that their use might have affected the assignment results;

  ◊ Description of the information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions;

  ◊ Statement of the use of the real estate existing as of the date of value and the use of the real estate reflected in the appraisal;

◊ Statement and explanation of any permitted departures from specific requirements of *USPAP* Standard 1 and the reason for excluding any of the usual valuation approaches;

◊ Signed certification in accordance with *USPAP* Standards Rule 2-3;

◊ Analysis of all agreements of sale, options, or listings of the subject property at the time of the appraisal and analysis of all sales of the subject property that occurred within the 3 years prior to the effective date of the appraisal;

◊ Inclusion of prospective value (when this is the assignment, for proposed developments of real property), with the effective date of the appraisal being subsequent to the report date and based on the estimated date of completion of the proposed or on-going construction; and

◊ Estimation of reasonable exposure time, when market value is to be concluded.

An appraisal report in a narrative format, in lieu of a form report, is also acceptable, provided it complies with *USPAP* and Agency appraisal requirements. A narrative appraisal report is not required to have an attached *Form RD 1922-7*. See *7 CFR 3560.753(c)(2)* for a list of items that must be contained in a narrative report. A narrative format is more appropriate than a form format for Agency Multi-Family Housing appraisals due to the complexity of the property type, the scope of work involved, and the necessity to include a significant amount of required information on attachments to the form. When contracting for appraisals, a narrative appraisal should typically be ordered.

- **Use of Third Party Appraisals:** Rural Development may use appraisals for which it did not contract, including those obtained by participating lending institutions, state or local housing authorities, or owners/applicants. The Agency reviewer should be especially diligent in reviewing these appraisals to ensure they meet *USPAP* and Agency appraisal requirements.

7.9 VALUING MULTI-FAMILY HOUSING PROJECTS

A. Basic Components of an Appraisal

- **Types of Value:** The value type(s) that should be used in an Agency Multi-Family Housing appraisal are specific to the loan-making, loan-servicing, preservation, or disposition decision for which the appraisal is ordered. In other words, the intended use of the appraisal determines the value type(s) to be requested and reported. Depending on the decision to be made, several value types may be required in one appraisal, including the separate values of different types of favorable financing. Value types used in RHS Multi-Family Housing appraisals are defined and discussed in **Attachment 7-A**, *Value Types Used in Multi-Family Appraisals*. **Attachment 7-C**, *Specific Value Types to be Requested and Reported Based on Intended Use of Appraisal*, is a guide to be used by the State Contracting Officer, in consultation with

the State Appraiser, to determine which value types to request in the appraisal Statement of Work (SOW) and Request for Quote (RFQ).

- **Property Rights Appraised:** The appraiser is required to state the property rights being valued. **Attachment 7-B**, *Property Rights Valued*, provides guidance on this issue.

- **Highest and Best Use Analysis:** "Highest and Best Use" is defined by the 4th Edition of *The Dictionary of Real Estate Appraisal* as "the reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity." The appraiser must conclude the Highest and Best Use of the subject site as though vacant and for the subject property as improved, if improvements have been made.

- **Approaches to Value:** Multi-Family Housing appraisals may contain one, two, or three approaches to value, as described below, depending on the specific assignment.

  ◊ The Cost Approach is a set of procedures through which a value indication is derived for a property by estimating the current cost to build a proposed structure or construct a reproduction of (or replacement for) an existing structure, including an entrepreneurial incentive, deducting depreciation from the total cost, and adding the estimated land value.

  ◊ The Sales Comparison Approach is a methodology by which a value indication is concluded by comparing the property being appraised to similar properties that have been sold recently, then applying appropriate units of comparison and making adjustments to the sale prices of the comparables based on the elements of comparison. This approach may be used to value improved properties, vacant land, or land being considered as though vacant.

  ◊ The Income Approach is a set of procedures through which an appraiser derives a value indication for an income-producing property by converting its anticipated benefits (cash flows and reversion) into property value. This conversion can be accomplished using direct capitalization or yield capitalization. Direct capitalization is a method used to convert an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the income estimate by an appropriate rate or by multiplying the income estimate by an appropriate factor. Yield capitalization is a method used to convert future benefits into present value by discounting each future benefit at an appropriate yield rate (discounted cash flow) or by developing an overall rate that explicitly reflects the investment's income pattern, value change, and yield rate.

- **Reconciliation:** In all Agency Multi-Family Housing appraisals, each of the approaches to value should produce a value indication that is reasonably consistent with the others. Industry convention specifies that the results should not vary by

more than 10 percent. Any variance of more than 10 percent between value indications from any two approaches to value must be reasonably justified in the reconciliation section of the report.

B. Valuation of Favorable Financing

Multi-layered financing, involving multiple financing sources, has become the norm in the building and rehabilitation of affordable housing. Favorable financing is offered to developers of subsidized housing to offset external obsolescence that results from a weak apartment market and/or restrictions placed on the properties by the financing sources. Several types of favorable financing can be used to develop Section 514 and Section 515 projects, including Section 514 and Section 515 direct loans with interest rates as low as one percent, low-interest loans from non-Agency sources, tax-exempt bond financing, tax credits, and grants.

When determination of *market value, subject to restricted rents,* is part of an appraisal assignment, all favorable financing in place at the time of the appraisal must also be valued, but separately from the real property. Favorable financing is valuable to the developer/owner, and an appraiser can calculate the value of each type of favorable financing. When favorable financing is involved, the appraisal report must contain a narrative identifying each source of financing. The amount and terms of each type of favorable financing must be described, and each type of favorable financing must be valued separately from the *market value, subject to restricted rents*. The appraisal SOW should specifically request each value type required, including the value(s) of each type of favorable financing.

Valuation of "interest credit subsidy" from Section 514 and Section 515 direct loans must be consistent with **Attachment 7-H**, *Guide for Valuation of Interest Credit Subsidy*. The methodology presented in **Attachment 7-H** can also be used to calculate the value of low-interest loans from non-Agency financing sources.

7.10 THE APPRAISAL PROCESS—ROLES AND RESPONSIBILITIES

To ensure that appraisals used by the Agency are of consistently high quality, each office should have standard procedures for requesting, writing, and reviewing appraisals. Several different actors play key roles in this process. These procedures and roles are outlined below. Additional detail is provided in the following paragraphs.

A. The Appraisal Process

The appraisal process involves several steps:

- **Step 1:** Request the appraisal. The Loan Originator requests an appraisal. After an applicant has been determined to be eligible, the Loan Originator should submit to the appraisal staff the information needed to complete the Statement of Work (SOW) and the Request for Quote (RFQ) for the appraisal. It is the responsibility of the State Contracting Officer to write a SOW and an RFQ when contracting for appraisals that are consistent with the instructions in this chapter. The State Contracting Officer

should consult with the State Appraiser when writing the SOW and the RFQ to ensure that Agency appraisal requirements and information necessary to complete the assignment are accurately conveyed to the appraiser. It is recommended that the State Appraiser act as the Contracting Officer's Representative (COR) in the contracting aspect of the appraisal process. This may involve actually writing the appraisal SOW and RFQ.

The State Contracting Officer or State Appraiser can use **Attachment 7-D**, *Standard Statement of Work (SOW) for Multi-Family Housing Contract Appraisals*, as a template in writing an appraisal SOW. It is intended as a guide that should be modified when contracting for a specific appraisal assignment. This standard SOW lists the Agency's requirements for a typical complete appraisal.

The State Appraiser should provide all of the appraisal information that is necessary to enable the State Contracting Officer to write a complete RFQ. **Attachment 7-E**, *Appraisal Information Sheet (Example), Attachment to SOW*, should be used as a template for this purpose. The RFQ must contain adequate information regarding the scope of work of the appraisal assignment to enable the contract appraiser to make an appropriate quote.

Attachment 7-F, *Appraisal Data Package Checklist*, is a list of data that the Agency should provide to the appraiser at the time of the assignment. Appraisal staff may establish a standard procedure for collecting this information. It is not necessary for all the items in this list to be collected before the assignment is made, but the appraisal data package should be as complete as possible.

The appraiser should be provided with instructions for accessing, via the internet, *7 CFR 3560, subpart P*, and this chapter of the handbook, including the attachments, along with the SOW and data package, at the time an appraisal assignment is made.

- **Step 2:** Select an appraiser. Appraisal staff, working with the contracting staff, selects an appraiser. In most cases, the Agency relies on contract appraisers to perform appraisals. The process for selecting contract appraisers is described in RD Instruction 1922-B, Exhibit C. Establishing and maintaining a list of qualified appraisers who consistently deliver high quality appraisals is one of the keys to a successful appraisal system.

- **Step 3:** Discuss the SOW. A representative of the Contracting Officer (typically the Staff Appraiser or the Loan Originator) will discuss the contract SOW with the contract appraiser and then give permission to proceed with the appraisal.

- **Step 4:** Perform the appraisal. The appraiser performs the appraisal in accordance with the contract SOW, Agency appraisal requirements, and *USPAP*. The Staff Appraiser should be available to answer questions and provide property contacts and required data during the course of the appraiser’s assignment. The appraiser is required to notify the Agency as soon as possible if the delivery deadline will not be met.

- **Step 5:** Review the appraisal. A Rural Development State designated Appraiser/Reviewer performs a technical review of the appraisal to ensure it is acceptable. An appraisal review report that is compliant with *USPAP* Standard 3 and Agency review requirements must be written and filed for every Multi-Family Housing appraisal review, unless the appraisal was performed by a State Appraiser. Paragraph 7.13 describes the appraisal review process.

- **Step 6:** Analyze the results of the appraisal. The Loan Originator analyzes the results of the appraisal. Once the appraisal is deemed acceptable, the Loan Originator can use the results to make the value determinations needed to make a decision regarding the applicant's proposal. Paragraph 7.14 provides a full description of this analysis.

B. Roles and Responsibilities

The appraisal review system involves staff from the State and National Offices. A description of key staff responsibilities follows. Note that in some offices, roles may overlap. For example, an office may have only one appraiser who serves as the Senior Appraiser as well as Staff Appraiser.

- Loan Originator. The Loan Originator is responsible for requesting the appraisal and for reviewing it to make determinations in the loan approval process. The Loan Originator will use the appraisal to determine the loan amount, the insurance amount, and the overall feasibility of the project.

- Senior Appraiser. The Senior Appraiser is charged with maintaining acceptable appraisal quality within the state. Appraisals must meet industry standards and Agency and *USPAP* requirements. The Senior Appraiser is appointed by the State Director and should be a state certified general appraiser qualified to write and review appraisals of subsidized apartment properties. (See *7 CFR 1922.6 and 1922.7*). Senior Appraiser duties include the following:

  ◊ Oversee the review of appraisals. The Senior Appraiser should supervise the work of staff appraisers and review a sample of the appraisals to ensure the overall quality of work. The Senior Appraiser may conduct both desk and field reviews.

  ◊ Perform appraisals. The Senior Appraiser will perform appraisals on an as-needed basis when contract appraisers are not available.

  ◊ Provide program orientation to contract appraisers. The Senior Appraiser must hold occasional orientation sessions to educate contractors and potential contractors about Agency appraisal policies and procedures.

- Staff Appraiser. The Staff Appraiser must be properly trained and possess the appropriate education and experience to perform technical appraisal reviews and conduct appraisals as needed. The person should be a state certified general

appraiser, certified in the state where the duty station of the appraiser is located, or be working toward certification (see *7 CFR 1922.6 and 1922.7*). Under the supervision of the Senior Appraiser, Staff Appraisers will:

◊ Conduct desk and field reviews of contract appraisals for compliance with the SOW, Agency policy, and *USPAP*.

◊ Manage appraisal contracts; and

◊ Conduct appraisals as needed. If the Staff Appraiser is not a state certified general appraiser, any in-house appraisal written by the Staff Appraiser must be reviewed and signed by an Agency Senior Appraiser.

- State Appraiser. State Appraiser, as the term is used in this handbook, refers to both Senior Appraisers and Staff Appraisers.

- Contracting Officer. The Contracting Officer coordinates the contractual arrangements with the contract appraiser, ensuring that the contract and the selection of the contractor meet Agency requirements.

- National Office. The National Office may request to review a sample of appraisals on a periodic basis to provide general oversight of the appraisal process. Quality reviews and regular training of State Appraisers by the National Office Review Appraiser will be performed to help ensure consistent procedures nationally.

7.11 SELECTING AN APPRAISER

The Appraiser must be selected following Agency contracting requirements. This may be achieved using a Blanket Purchase Agreement or a request for contract services.

A. Blanket Purchase Agreement

A Blanket Purchase Agreement (BPA) allows the Agency to maintain a list of eligible contractors that can be engaged at any time. Regarding the BPA list of approved appraisers:

- The Contracting Officer should develop a BPA list in accordance with Agency contracting procedures.

- When a contractor is needed, the Staff Appraiser can contact an appraiser on the BPA list. At this time, the Staff Appraiser should:

◊ Confirm that the contractor's price for the appraisal is within an acceptable range (based on experience with local costs).

◊ Confirm that the appraiser can complete the appraisal within the required timeframe (see paragraph C below).

- If the appraiser cannot meet these two criteria, the next appraiser on the list should be contacted, and the process should be repeated. When using the BPA list, appraisal staff should make full use of all the names on the list. It is a good practice to rotate through the list to offer different appraisers the chance to perform the contract appraisal each time an appraisal is needed.

B. Request for Contract Services

The Agency may obtain appraisal services through a request for contract services. In this case, contracting staff will solicit bids for services and select the lowest responsive bid in accordance with standard Agency contracting procedures. The Contracting Officer will use the Statement of Work, developed by the appraisal staff, as the basis for the bid solicitation and the contract.

Once a contractor is selected, the Contracting Officer should arrange a post-award meeting with the contractor as described in paragraph 7-12.

C. Time frame for Completion of Appraisals

A key criterion for selection of an appraiser is the proposed delivery date. Completion must not exceed 45 days from the date of assignment to the contractor. If the contractor indicates that this time frame is not acceptable, another contractor or a Staff Appraiser should conduct the appraisal.

If, for reasons beyond the control of the appraiser or the Agency, the appraisal cannot be completed in that time frame, the Contracting Officer may grant an extension of up to 30 days.

7.12 WORKING WITH THE APPRAISER

A. Post-Award Conference with the Appraiser

Before authorizing the contractor to start work, the Contracting Officer's Representative (COR) should discuss the contract SOW with the appraiser to ensure that the work to be performed is well understood. This may be done by telephone or in a face-to-face meeting. Following the discussion, the COR must provide the appraiser with the following items:

- Appropriate forms. The appraiser should be provided with *Form RD 1922-7, Appraisal Report for Multi-Unit Housing* (or an industry equivalent) and *Form RD 1924-13, Estimate and Certificate of Actual Cost*, if appropriate for the appraisal assignment.

- Statement of Work. The SOW should include all the information that the appraiser needs to determine the scope of work of the appraisal assignment. This includes information on the purpose and intended use of the appraisal as well as all pertinent property information. See paragraph B below for a complete description of the information included in the SOW.

- Agency appraisal regulations and instructions. The appraiser should be provided with instructions for accessing, via the internet, *7 CFR 3560, subpart P,* and this chapter of the handbook, including the attachments.

- Appraisal data package. A data package containing as many items from the Appraisal *Data Package Checklist* (**Attachment 7-F**) as possible should be provided to the appraiser.

- *Handbook Letter 107 (3560), Notice to Proceed or Task Order Letter*. This permits the contractor to begin work on the appraisal. **Attachment 7-G**, *Sample Transmittal Letter*, should be used as a template by the Contracting Officer in writing a letter of engagement to the appraiser.

B. The Statement of Work

The SOW must provide all available information needed by the appraiser to conduct a high quality appraisal. A sample SOW is provided as **Attachment 7-D**, *Standard Statement of Work (SOW) for Multi-Family Housing Contract Appraisals*. A good SOW will describe:

- The intended use of the appraisal. The SOW should describe the Multi-Family Housing program and explain how the Agency intends to use the appraisal. For example, if the appraisal is for a loan on a new project, the SOW should state that the appraisal will be used to fulfill loan underwriting requirements for permanent financing of the subject property. For a prepayment-related appraisal, the SOW should state that the appraisal will be used to establish the market value of the property, which is to be considered in making an incentive offer to preserve the property as affordable housing.

- The types of value required. The SOW should specify the value types required in the appraisal. **Attachment 7-C**, *Specific Value Types to be Requested and Reported Based on Intended Use of Appraisal*, should be used to determine the value types that will be requested in the SOW.

- Required submissions. The SOW should specify the number of copies to be delivered, the address (es) to which the reports should be sent, and the deadline for delivery. The number of copies depends on the number of parties involved in the project—these may include an interim lender or another federal or local agency (e.g., a local housing authority if tax credits or HOME funds are involved). Each party involved should be addressed in the appraiser's letter of transmittal and identified as an intended user of the report.

- Background Information. The SOW must include all appraisal and property information needed to complete the appraisal. Appraisal information includes the appraisal type (complete or limited), the report type (self-contained, summary, or restricted use), and the appraisal format (narrative or form). Property information includes property contact(s), property type, property status (existing or proposed), property interest appraised, property owner, property name and address, property

description, and project financing. **Attachment 7-E**, *Appraisal Information Sheet (Example), Attachment to SOW*, should be completed and provided to the appraiser at the time the assignment is made.

C. Paying for Appraisals

- Before a contract appraiser is paid, a Staff Appraiser must review the appraisal for consistency with the contract's SOW and compliance with *USPAP* and Agency appraisal requirements as described in *7 CFR 3560, subpart P*, and this chapter of the handbook, including the attachments. If the appraisal is acceptable, the Staff Appraiser should submit the request for payment on *Form RD 838-B, Invoice Receipt Certification*. Instructions for payment of contracts are found in RD Instruction 2024-A, and Exhibit D.

- If the appraisal is deficient, the reviewer must inform the appraiser of the deficiencies prior to payment. If the deficiencies are not addressed, the reviewer must return the appraisal report and a copy of the review comments to the appraiser. The Senior Appraiser should schedule a meeting with the contractor and the Contracting Officer to discuss the appraisal and contract terms. All contractual actions taken by the Agency must be through the Contracting Officer and comply with the Federal Acquisition Regulations (FAR). Continuation of the contract will be based on the contractor's ability to meet or exceed the conditions of the contract SOW.

7.13 AGENCY REVIEW OF THE APPRAISAL

All Multi-Family Housing appraisals that were not written by an Agency certified general appraiser must be reviewed by an Agency certified general appraiser. This is to ensure that the appraisal is consistent with the Statement of Work and complies with *USPAP* and Agency requirements. The State Appraiser must write and file a technical appraisal review report that complies with *USPAP* Standard 3 and Agency appraisal review requirements.

The reviewer should take the steps described below. If the review identifies errors and/or deficiencies in the appraisal, the reviewer must inform the appraiser of the errors and/or deficiencies.

- **Step 1:** Review for Completeness. Review the appraisal for completeness using a checklist to ensure that all of the essential elements of a complete appraisal, as required by *USPAP* and the Agency, have been included in the report.

- **Step 2:** Review for Reasoning. Confirm that the analyses, opinions, and conclusions in the appraisal are appropriate and reasonable and that the report provides support for its conclusions. Consider whether the appraiser took all relevant information into account, such as:

  ◊ Using the correct rents for the type of value requested (e.g., restricted rents should be used for "market value, subject to restricted rents ", while market rents should be used to determine "market value");

◊ Factors that could affect the project's value such as nearby development, or environmental, zoning, or encroachment issues;

◊ Market information, including local rents and sales;

◊ Population trends and other demographic data; and

◊ Future area development plans.

- **Step 3:** Review for Value(s) of Favorable Financing. There are several types of favorable financing that must be discussed and valued in the appraisal of subsidized Multi-Family Housing properties. These include interest credit subsidy from USDA Section 514 and Section 515 direct loans, low-interest loans from non-Agency sources, tax-exempt bond financing, tax credits, and grants. Each type of favorable financing must be valued separately from the restricted real property. Check the appraiser's calculation of value for each type of favorable financing. See **Attachment 7-H**, *Guide for Valuation of Interest Credit Subsidy*, for guidance on the correct method to calculate the interest credit subsidy value.

- **Step 4:** Review for Overall Conclusion. Determine whether the final value conclusions in the appraisal report are reliable.

◊ Has the appraiser provided conclusions of the subject property's value using all applicable approaches to value?

◊ Have the value indications derived by each of the approaches to value been adequately reconciled? If the approaches do not yield a consistent value, has the appraiser provided an adequate explanation?

The reviewer must make one of four possible dispositions of the appraisal in the review report: (1) the appraisal is accepted; (2) the appraisal is accepted as revised by the appraiser; (3) the appraisal is accepted as modified by the reviewer; or (4) the appraisal is rejected. The reviewer must comply with the Record Keeping section of the Ethics Rule of *USPAP* and keep, or have access to, a copy of the review report for at least 5 years. A copy of the appraisal review report should be filed with the appraisal in the loan docket.

7.14 RELEASE OF APPRAISALS

Multi-Family Housing appraisals procured by the Agency will be released to owners/ applicants, from their own files, upon their request. (See *7 CFR 3560.752(d)*.)

A. Freedom of Information Act

The Freedom of Information Act (FOIA) does not prohibit the release of Multi-Family Housing appraisals ordered by Rural Development to owners/applicants, from their own files. This is because the disclosure is necessary to effectively carry out a governmental purpose. The governmental purpose in this case is to give owners/ applicants an opportunity to review their appraisals and identify any errors or deficiencies

that are material to value in order to facilitate Rural Development's administration of its affordable housing programs. If an owner/applicant requests a copy of a Multi-Family Housing appraisal from his/her file, this request should *not* be treated as a FOIA request. The appraisal will be released to the owner/applicant according to the following procedures.

B. Steps in Release of Appraisals

- **Step 1:** Write a cover letter. The letter should be addressed to the owner/ applicant that requested a copy of the appraisal. **Attachment 7-J**, *Cover Letter for Released Appraisal*, can be used as a template. The cover letter should identify the appraisal, provide contact information for the State Appraiser who reviewed the appraisal, and inform the owner/applicant that they may contact the reviewer to discuss the appraisal.

- **Step 2:** Redact the Appraisal. The Rural Development Office must determine if the appraisal report contains operating expense information of subsidized apartments, other than the subject property, that are administered by Rural Development that was provided to the appraiser by the Agency. If so, the names and addresses of the expense comparables must be blackened out before the appraisal is released. Qualified personnel, like the State Appraiser, must ensure that the names and addresses of the expense comparables are deleted while those of the rent comparables and sales comparables are preserved in the report. This expense data is proprietary information that belongs to the owners of apartments that possibly compete with the subject property.

- **Step 3:** Mail, or allow access to, the appraisal. After the names and addresses of any expense comparables provided to the appraiser by the Agency have been removed from the appraisal report, the owner/applicant may either review a copy of the redacted appraisal report at the Agency Office, or a copy of the redacted report can be bound and mailed, along with the cover letter, to the owner/ applicant.

When contracting with fee appraisers, the SOW should instruct the appraiser to identify Rural Development as the client of the appraiser and identify both Rural Development and the owner/applicant as “intended users” of the appraisal in the appraisal report. Identification of “intended users” in appraisals is a requirement of *USPAP* Standard 2 and will ensure that the appraiser does not object to the Agency releasing the appraisal to the owner/applicant.

The Rural Development State Appraiser will make the final disposition of the appraisal. Although the disposition concluded in the appraisal review report may be provided to the owner/applicant, the review report itself is confidential, intended only for the internal use of the Agency, and will not be released.

When the purpose of the appraisal review includes the reviewer developing and reporting an independent opinion of value about the subject property of the work under review, that opinion is an appraisal. The appraisal review report then also becomes an appraisal report.

Appraisals will be released to owners/applicants, from their own files, upon their request, but appraisal review reports, including those that contain appraisals, will not be released. The FOIA Officer in the State Office should deny access if a written FOIA request for an appraisal review report is received. Exemption 5 under the FOIA, 5 U.S.C. 552(b)(5), *deliberative process privilege*, should be cited.

7.15 EVALUATING THE RESULTS OF THE APPRAISAL

The appraisal is a critical document in the underwriting process. It gives the Loan Originator information about the subject property's region, neighborhood, market, and value and thereby aids the underwriter in loan-making decisions. When evaluating the results of the appraisal, the Loan Originator will go back to the underwriting questions outlined in Chapter 5:

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

See Chapter 5, Section 2 for a full discussion of these underwriting criteria.

A. Is the Project Eligible?

The appraisal provides additional information about project eligibility.

- **Site suitability:** The appraisal documents boundary lines and zoning and notes desirable and undesirable elements in the market area and on the site. These elements should be reviewed to confirm the project's eligibility.
- **Rents:** The Loan Originator should compare the proposed basic rents for the project with the market rents provided in the appraisal. Program rules specify that basic rents in Agency projects may not exceed the standard Conventional Rents for Comparable Units (CRCU) in the market area, except under limited circumstances, as described in Chapter 3, paragraph 3.20(B). Therefore, if the appraisal shows basic rents in the project to be higher than CRCU, the project proposal must provide significant justification for an exception, or the applicant must seek additional financing to reduce rent levels.

B. Is the Project Economically Feasible?

The appraisal also provides information about the demand for affordable units and the likelihood that the property will be financially successful. This information can help the Loan Originator to make a final determination about the project's feasibility. The key items to consider include the following:

- **Vacancy rate:** The Income Approach should indicate the vacancy rate projected for the project, and the reasons for the given rate should be well documented. Vacancy rates above five percent may suggest that sufficient affordable housing is already available in the market and that the project may not have enough demand to be feasible.

- **Community growth rate:** The Loan Originator should consider whether the local population is growing or declining. A declining population may mean that new housing is not needed in the area.

- **Industry:** Do local industries provide sufficient stable employment to support this community into the future? Again, if the local economy is in decline, the area may experience a drop in the need for new housing.

- **Market rents:** Rent levels are also an indication of the need for new units. If basic rents projected for the project exceed market rents, this is an indication that the project is competing with conventional housing and that there is sufficient affordable housing in the market.

- **Capitalization rate:** The capitalization rate reflects the ratio of the projected net operating income to the concluded value of the project. The overall rate is a measure of the return anticipated by an investor in the market. Generally, the greater the risk an investor is willing to take, the higher the expected rate of return. Therefore, the Loan Originator should look at the capitalization rate as a measure of anticipated risk in the project. According to real estate industry standards, a capitalization rate of 10 percent or more suggests that investors consider the investment relatively risky. It may also indicate that there is adequate housing available at affordable rents and that there is insufficient demand for the project.

C. Are the Costs Reasonable?

The information in the Cost Approach of the appraisal can help confirm whether project costs are reasonable.

- **Highest and best use:** The appraisal should confirm that the highest and best use for the property is subsidized housing. If not, this may increase the development costs for the project.

- **Operations and maintenance costs:** The Loan Originator should examine the projected operating and maintenance (O&M) expenses in the Income Approach. They should be comparable to the O&M expenses of other subsidized projects (as verified by expense comparables and expense surveys from recognized sources such as the Institute for Real Estate Management (IREM)). For conventional properties, O&M expenses greater than 60 percent of effective gross income may indicate that the property has not been properly maintained or is not managed efficiently. However, for subsidized properties, a high Operating Expense Ratio (OER) may simply reflect relatively low income due to the property's restricted rents.

D. Are the Agency's Interests Secure?

The appraisal is ultimately an opinion of value that aids the Loan Originator in determining whether the Agency's interests are secure. In considering the project's value, the Loan Originator should look at the following criteria:

- **Appraised Value:** In examining the appraised value, the Loan Originator should compare the appraised value to the total development costs proposed by the applicant. In general, the appraised value should equal or exceed the estimated development costs to ensure that the loan is secured by the value of the property. However, in cases with capital subsidies (e.g., tax credits), total development costs usually exceed the appraised value of the real estate.

- **Value of the Land:** The Loan Originator should compare the appraised value of the land to the land value stated in the application. If they are different, the estimated total development costs may not be supported by the appraised value.

- **Insurable Value:** The Loan Originator must determine the appropriate amount of insurance for the property. The insurance is based on the insurable value of the property, which is the replacement cost new of the improvements plus an allowance for demolition. It should include direct (hard) costs, which are construction labor and materials and the contractor's profit, overhead, and general requirements. It should not include indirect (soft) costs, which are all other costs in the project, such as administrative costs, professional fees, and financing costs. The appraiser can calculate the insurable value of the property using **Attachment 7-I**, *Insurable Value Calculation*. (See Chapter 3 for a full description of the types of insurance required.)

- **Economic Life of the Improvements:** The economic life of the improvements must be sufficient to cover the term of the loan. For new construction, the economic life of the property is considered to be 50 years (for average to good quality construction), and the loan is amortized over that period. However, for existing structures, the appraiser estimates the remaining economic life of the property, not to exceed 50 years. The remaining economic life of the improvements must equal or exceed the term and amortization period of the Agency loan. If it does not, the term and amortization period of the loan must be adjusted to equal the remaining economic life of the improvements.

ATTACHMENT 7-A

VALUE TYPES USED IN MULTI-FAMILY APPRAISALS

A discussion of the various types of value used in Rural Housing Service (RHS) appraisals follows. A definition of each value type and the source for each definition is provided. These value types and definitions are acceptable for use by State Contracting Officers in writing a Statement of Work (SOW) and a Request for Quote (RFQ) when contracting for an appraisal and by appraisers in writing a Multi-Family Housing appraisal for RHS. General procedures for developing and reporting some of these value types are included.

Market Value

The 4th Edition of The Dictionary of Real Estate Appraisal includes several definitions for *market value*. The following definition from the dictionary is used by the federal agencies that regulate insured financial institutions in the United States.

"*Market value: the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:*

- *Buyer and seller are typically motivated;*
- *Both parties are well informed or well advised, and acting in what they consider their best interests;*
- *A reasonable time is allowed for exposure in the open market;*
- *Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and*
- *The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.*"

Most appraisers and users of Agency Multi-Family Housing appraisals understand the definition of *market value* to mean the value as a conventional or unrestricted or market property. However, to avoid confusion when requesting or reporting this value type, the term "as conventional or unrestricted" should be added to the term *market value* (i.e. "market value, as conventional or unrestricted").

In an appraisal report, a *hypothetical condition* on which the *market value* is based should be clearly and conspicuously stated. The *market value* of a Section 514/515 housing project is always based on a *hypothetical condition*, which is defined by the 4th Edition of The Dictionary of Real Estate Appraisal as, "that which is contrary to what exists but is supposed for the purpose of analysis." An existing 514/515 apartment complex that is the subject of an appraisal ordered by the Agency is subsidized (restricted) at the time of the appraisal. A market value concluded for the property would be based on the hypothetical condition that the property is a conventional (market) property, which it is not. *Uniform Standards of Professional Appraisal Practice*

(*USPAP*) Standards Rules 1-2(h) and 2-2(a)(viii), (b)(viii), and (c)(viii) require the appraiser to identify and state any hypothetical conditions necessary in the assignment.

Market value should be requested by the Contracting Officer and reported by the appraiser when the intended use of the appraisal is to aid in determining:

- the appropriate amount of an equity loan as a prepayment incentive;
- the amount of an equity loan in a preservation transfer;
- a reasonable sale price, or the basis for a liquidation value, for a property in foreclosure; or
- a reasonable sale price for a non-program property.

Market Value, subject to restricted rents

A definition of *market value, subject to restricted rents*, as the term is used by RHS, derived from the definition of *market value* above, is stated as follows. *Market value, subject to restricted rents: the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:*

- *Buyer and seller are typically motivated;*
- *Both parties are well informed or well advised, and acting in what they consider their best interests;*
- *A reasonable time is allowed for exposure in the open market;*
- *Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and*
- *The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.*

It considers any rent limits, rent subsidies, expense abatements, or restrictive-use conditions imposed by any government or non-government financing sources but does not consider any favorable financing involved in the development of the property.

Market value, subject to restricted rents, refers only to the value of the subject real estate, as restricted, and excludes the value of any favorable financing. The *market value, subject to restricted rents,* is based on a pro forma that projects income, vacancy, operating expenses, and reserves for the property under a restricted (subsidized) scenario. This restricted pro forma includes the scheduled restricted rents, a vacancy and collection loss factor that reflects any rental assistance (RA) or Section 8, and operating expenses and reserves projected for the subject as a subsidized property. Subsidized apartments typically experience higher management, auditing, and bookkeeping expenses, relative to similar conventional apartments, but often have lower real estate tax expenses.

Rural Development will provide a 3-year operating history of the subject property and the most recent operating statements for a set of expense comparables, if available, to the appraiser.

Expense comparables data is proprietary information. Therefore, if a copy of the appraisal is requested by an owner/applicant, the names and locations of the expense comparables must be redacted from the appraisal by the Agency before the copy is released. Much of this information is available on the Multi-Family Information System (MFIS). For the appraisal of a Section 8/515 project, Rural Development should provide the appraiser with a copy of the Housing Assistance Payment (HAP) contract and a contact at the agency that administers the HAP contract for the U.S. Department of Housing and Urban Development (HUD). The appraiser must consider the restrictions imposed on the subject property by both the U.S. Department of Agriculture (USDA) and HUD in concluding the *market value, subject to restricted rents*.

In the appraisal, the Income Approach for the *market value, subject to restricted rents,* is the best indication of value and should be most heavily weighted. Direct capitalization should typically be used when the subject's operation will be stable and restrictions will be in place long-term. A discounted cash flow (DCF) analysis should be used when significant net income changes are projected for the subject property over a foreseeable period. A DCF is the most appropriate method for valuing phased developments, projects that have several sources of income, and properties with short-term restrictions that will be converted to market apartments.

Using direct capitalization, the Net Operating Income (NOI) from the restricted pro forma can be capitalized using a capitalization rate derived from sales of conventional apartments that have physical and locational characteristics similar to those of the subject. A base capitalization rate is derived from these sales and then adjusted qualitatively for factors related to specific benefits and restrictions of the subject property. Use of an overall rate from the conventional market, which reflects conventional financing, is appropriate because all favorable financing will be valued separately from the *market value, subject to restricted rents,* of the real estate. This procedure, a departure from the method used by the Agency for many years, is standard appraisal practice. National appraisal firms and their clients use this as a primary method in the valuation of subsidized housing. A capitalization rate derived via this method should be supported using other accepted methods, including the band-of-investment technique, the debt coverage ratio formula, and regional investment criteria surveys.

A method that includes the use of note rate rent as Potential Gross Income (PGI) in the Income Approach pro forma to derive a value equal to the sum of the *market value, subject to restricted rents,* plus the value of the interest credit subsidy is not acceptable appraisal practice. Appraisers must not use this procedure in Agency Multi-Family Housing appraisals, and State Appraisers must not accept this procedure when reviewing appraisals.

In an appraisal concluding *market value, subject to restricted rents*, the Income Approach is the most important section of the appraisal and must be complete. Appraisers must provide good support for the income, vacancy, expense, and capitalization rate analyses within the approach. The expense analysis must be well supported by the 3-year operating history of the subject and by expense comparables. A current expense survey from RHS or a State or local housing authority should be used to provide additional support. The capitalization rate selected for the subject must be derived from the most recent sales of similar properties in the local (or nearest similar) conventional apartment market. Support for this overall rate should be provided using

the methods discussed above. Rural Development appraisers performing technical reviews must not accept appraisals unless/until all Income Approach analyses are adequately supported.

The Cost Approach can be used to support the *market value, subject to restricted rents,* indication from the Income Approach, especially for new construction. The usefulness of the *market value, subject to restricted rents,* indication via the Cost Approach for existing properties more than twenty years old (typical of the RHS portfolio) is questionable due to the difficulty in estimating the three types of depreciation. However, when ordering appraisals, the SOW should require the Cost Approach for determination of *market value, subject to restricted rents*. Important information, including site value, construction costs, remaining economic life, and external obsolescence, can be extracted from this approach. Deduction for external obsolescence, which is basically calculated by capitalization of the difference between economic NOI and restricted NOI, results in a *market value, subject to restricted rents,* indication in the Cost Approach.

The Sales Comparison Approach is rarely applicable in concluding a *market value, subject to restricted rents,* due to the lack of sales of subsidized apartments in small rural markets and the difficulty of making meaningful adjustments for financing terms to the sales comparables. When ordering appraisals, the SOW should not require the Sales Comparison Approach for determination of the *market value, subject to restricted rents*.

The *market value, subject to restricted rents,* must include the value of any rental assistance (RA) available. When the subject property has RA, the appraisal must include a discussion of the Section 521 Rental Assistance Program, the number of RA units at the subject, and how RA affects the *market value, subject to restricted rents,* of the property. Rental assistance is a rent subsidy provided to owners of 514/515 projects. The renter of an RA unit is required to pay a tenant contribution toward the approved shelter cost (rent plus tenant based utilities) of the unit that is equal to no more than 30 percent of his/her income. RA is the portion of the approved shelter cost paid by the Agency to compensate a borrower for the difference between the approved shelter cost and the tenant contribution. RA usually adds value to a 514/515 project in three ways: 1) it guarantees that the scheduled base rate rent for all occupied RA units will be attained; 2) it usually increases demand for the subject's units and consequently decreases the vacancy rate; and 3) it reduces the risk of investment in the subject project by improving the durability of the income stream. Rental assistance need not be separately valued; the value of RA can be incorporated within the *market value, subject to restricted rents*. This can be accomplished within the Income Approach by taking into account the three ways that RA increases value, listed above, as follows. 1) Base rate rents should be included as Potential Gross Income (PGI) in the restricted pro forma; 2) a vacancy and collection loss factor that reflects the amount of RA at the property should be included; and 3) a capitalization rate for the subject may be adjusted downward to account for the reduced risk to the investor due to RA.

When determination of *market value, subject to restricted rents,* is part of an appraisal assignment, all favorable financing in place at the time of the appraisal must also be valued, but separately from the real property. Multi-layered financing, involving multiple financing sources, has become the norm in the building and rehabilitation of affordable housing. Favorable

financing is offered to developers of subsidized housing to offset external obsolescence that results from a weak apartment market and restrictions placed on the properties by the financing sources. Favorable financing is valuable to the developer/owner, and an appraiser can calculate the value of each type of favorable financing. Several types of favorable financing can be used to develop 514/515 projects, including 514/515 direct loans with interest rates as low as 1 percent, low-interest loans from non-Agency sources, tax credits, tax-exempt bond financing, and grants. When favorable financing is involved, the appraisal report should contain a narrative identifying each source of financing. The amount and terms of each type of favorable financing should be described, and each type of favorable financing should be valued separately from the *market value, subject to restricted rents,* of the property. The appraisal SOW should specifically request each value type required, including the value(s) of each type of favorable financing.

Valuation of "interest credit subsidy" from Section 514/515 loans should be consistent with Attachment 7-H. The methodology presented in Attachment 7-H can also be used to calculate the value of low-interest loans from non-Agency financing sources.

It is emphasized that the *market value, subject to restricted rents,* includes the value of any rental assistance at the subject property but does not include the value of any favorable financing, including Agency financing. The value(s) of any favorable financing must be reported separately. The *security value* of the property, which may be calculated by an Agency Loan Originator in making a loan decision, is typically derived from the sum of the *market value, subject to restricted rents,* plus the total value of the applicable favorable loans. However, an appraisal report should conclude with the value(s) of the real estate and separate value(s) for any intangible items, including favorable financing. These values should not be added together by the appraiser because their sum does not represent the market value of the real estate in appraisal terms. Separate reporting of value(s) of favorable financing, including the value of tax credits and grants, which cannot be considered collateral for a loan is advised by *USPAP* (Advisory Opinion 14) and provides useful information about the security of the project to the Loan Originator.

"As-Is" Value

The 4th Edition of the Dictionary of Real Estate Appraisal defines *value as is* as follows. "*Value as is: the value of specific ownership rights to an identified parcel of real estate as of the effective date of the appraisal; relates to what physically exists and is legally permissible and excludes all assumptions concerning hypothetical market conditions or possible rezoning.*"

The term "As-Is" applies not only to the physical condition of the subject property at the time of the appraisal but to the legal status of the property. Therefore, the term "As-Is" should not be used with the term *market value* unless the property is a conventional or market property at the time of the appraisal. The term "As-Is" should precede the term *market value, subject to restricted rents,* when the *market value, subject to restricted rents,* of the project at the time of the appraisal is required.

Prospective Value

The term *prospective value* is defined by the 4th Edition of The Dictionary of Real Estate Appraisal as follows. "*Prospective value: a forecast of the value expected at a specified future date. A prospective value opinion is most frequently sought in connection with real estate projects that are proposed, under construction, or under conversion to a new use, or those that have not achieved sellout or a stabilized level of long-term occupancy at the time the appraisal report is written.*"

As used in Agency regulations and instructions, the term "as-improved value" refers to the value of real property after completion of proposed improvements. The Agency's intended meaning of "as-improved value" is the same as the definition of *prospective value*. However, use of the term "as-improved value" can cause confusion for two reasons, as follows. 1) The term "as-improved", as used in a Highest and Best Use analysis, refers to the subject real estate as it has already been improved at the time of the appraisal, not as it is proposed to be improved. Therefore, "as-improved value" could be interpreted to refer to the value of the subject property as it has already been improved at the time of the appraisal. 2) There is a common misconception with the use of the term "as-improved value" that this is a value based on a hypothetical condition; that is, the value of the property as if it were improved, as proposed, as of the date of inspection. Since this scenario is impossible, an "as-improved value", as of appraisal date (inspection date), is not useful. The term *prospective value* is better understood than the terms "as-improved value" and "as-complete value" by appraisers and users of appraisals and has replaced these terms in appraisal literature and common usage. Therefore, the term *prospective value* should be used when requesting or reporting a forecasted value, and the associated date of value should be the projected date of completion of construction.

Value-in-Use

The 4th Edition of The Dictionary of Real Estate Appraisal defines *use value (value-in-use)* as follows. "*Use value: the value a specific property has for a specific use; may be the highest and best use of the property or some other use specified as a condition of the appraisal.*"

Value-in-use is the type of value that should be requested in the appraisal SOW and reported in the appraisal of an on-farm labor housing project. The Cost Approach is the only applicable approach in an appraisal of on-farm labor housing. This type of property does not produce rental income, and sales of these projects are virtually non-existent. Consequently, the Cost Approach is the only approach to value that should be required in the appraisal SOW and included in the report by the appraiser.

USPAP requires a Highest and Best Use (HBU) analysis in all real property appraisals when the value type to be developed and reported is *market value*. When *value-in-use* (not *market value*) is to be concluded, *USPAP* does not require a HBU analysis and neither does the Agency. The Agency identifies the use or intended use of the subject property as farm labor housing to the appraiser. Therefore, the appraisal SOW for a *value-in-use* appraisal should instruct the appraiser to value the property as farm labor housing and not require a HBU analysis as part of the scope of work. The appraiser should explain in the report why a HBU analysis was omitted

and include a *limiting condition* in the report that states the *value-in-use* is based on the specified use of the subject property as farm labor housing.

Liquidation Value

Liquidation value is defined by the 4th Edition of The Dictionary of Real Estate Appraisal as follows. *"Liquidation value: the most probable price that a specified interest in real property is likely to bring under all of the following conditions:*

1. *Consummation of a sale will occur within a severely limited future marketing period specified by the client.*
2. *The actual market conditions currently prevailing are those to which the appraised property interest is subject.*
3. *The buyer is acting prudently and knowledgeably.*
4. *The seller is under extreme compulsion to sell.*
5. *The buyer is typically motivated.*
6. *The buyer is acting in what he or she considers his or her best interest.*
7. *A limited marketing effort and time will be allowed for the completion of a sale.*
8. *Payment will be made in cash in U.S. dollars or in terms of financial arrangements comparable thereto.*
9. *The price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."*

Liquidation value should be requested in the appraisal SOW and reported in the appraisal when it is in the best interests of the Agency: 1) not to take a non-program property into inventory but to sell it at a foreclosure sale; or 2) to dispose of a non-program inventory property when a very limited marketing period is available. *Liquidation value* should be derived from *market value* by applying a discount extracted from the market, when possible. Therefore, *market value* should always be requested in the appraisal SOW whenever a *liquidation value* is sought.

Insurable Value

A definition of *insurable value* acceptable for use in Agency Multi-Family Housing appraisals is as follows: *Insurable value: the value of the destructible portions of a property which determines the amount of insurance that may, or should, be carried to indemnify the insured in the event of loss. The estimate is based on replacement cost new of the physical improvements that are subject to loss from hazards, plus allowances for debris removal or demolition. It should reflect only direct (hard) construction costs, such as construction labor and materials, repair design, engineering, permit fees, and contractor's profit, contingency, and overhead. It should not include indirect (soft) costs, such as administrative costs, professional fees, and financing costs.*

The term "insurable cost" is sometimes used instead of the term *insurable value* because it is based strictly on a cost estimate, not a value concluded in an appraisal. However, the term *insurable value* is more commonly used. Attachment 7-I, *Insurable Value Calculation*, is a

worksheet that should be used as a guide by State Appraisers and fee appraisers contracted by the Agency in calculating *insurable value*.

ATTACHMENT 7-B

PROPERTY RIGHTS VALUED

In identifying the subject property, the appraiser must state and should define the particular rights or interests being valued. A thorough discussion is warranted in appraisals of fee simple estates subject to restrictive-use agreements and short-term leases. *Uniform Standards of Professional Appraisal Practice* (*USPAP*) Standards Rule 1-2(e)(ii) requires the appraiser to identify the real property interest to be valued.

The property interest to be valued in the appraisal of a Section 514/515 project, when the value type to be concluded is *market value*, is the *fee simple estate*. This property interest is subject to short-term leases and should therefore be referred to as the *fee simple estate, subject to short-term leases.*

A Section 514/515 affordable housing project is usually subject to a restrictive-use agreement imposed by the U.S. Department of Agriculture (USDA) Rural Development that places restrictions on the property for a specified period of time. These restrictions pertain to use, transfer, and operation of the property. They include rent limits and restrictions on tenant eligibility based on income. Additionally, when tax credit financing is involved, these properties have deed restrictions imposed by the Low-Income Housing Tax Credit (LIHTC) program. These restrictions are a type of *encumbrance*. The 4th Edition of the Dictionary of Real Estate Appraisal defines *encumbrance* as 'an interest or right in real property that may decrease or increase the value of the fee estate but does not prevent its conveyance by the owner. An encumbrance effects a permanent reduction in an owner's property rights, while a lien represents a claim against the owner's property rights, which may or may not become permanent. Mortgages, taxes, and judgments are liens; restrictions, easements, and reservations are encumbrances."

The property interest to be valued in the appraisal of a Section 514/515 project, when the value type to be concluded is *market value, subject to restricted rents*, is neither the *fee simple estate*, nor the *leased fee estate*, nor the *leasehold estate*. The 4th Edition of the Dictionary of Real Estate Appraisal defines *fee simple estate* as "absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat." Since Section 514/515 properties are encumbered with restrictive-use agreements, and sometimes LIHTC deed restrictions as well, the property interest to be valued is not the *fee simple estate*. However, the property interest to be valued could reasonably be referred to as the *fee simple estate, as restricted, subject to short-term leases.* To comply with *USPAP*, the appraiser should identify this as the property interest to be valued and provide a description of these property rights and the restrictions involved.

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ATTACHMENT 7-C

SPECIFIC VALUE TYPES TO BE REQUESTED AND REPORTED BASED ON THE INTENDED USE OF THE APPRAISAL

Value types that should be requested in an appraisal Statement of Work (SOW) and reported in an Agency Multi-Family Housing appraisal are specific to the loan-making, loan-servicing, preservation, or disposition decision(s) for which the appraisal is ordered. In other words, the intended use of the appraisal determines the value type(s) to be requested and reported. Depending on the decision(s) to be made, several value types may be required in one appraisal, including the separate values of different types of favorable financing. Specific value types that should typically be requested for each intended use, as they might be stated in the appraisal, are listed under each category. Some of the listed value types may not be required, depending on the needs of the State Office. The State Contracting Officer and Contracting Officer's Representative (COR) should use this guidance in determining which value types to request in the appraisal SOW and Request for Quote (RFQ). The State Appraiser or contract appraiser must follow this guidance when reporting values in the appraisal. The State Appraiser, when reviewing a contracted appraisal, should require the report to be consistent with this guidance.

The value types listed under each intended use described below are required by Rural Development in appraisals used by the Agency. It is the contract appraiser's responsibility to ensure compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) and when Rural Development is partnering with other lender(s), the lender(s) must ensure compliance with all applicable appraisal guidelines and requirements for each funding source. This is a requirement of the Competency Rule and the Scope of Work Rule in USPAP. If Rural Development is provided written authorization from the borrower, and is included as a co-client and intended user of the report, information can be provided from Agency records to assist the appraiser in providing a credible analysis. It is expected that the applicant/borrower has properly notified Rural Development of their intent as required by 7 CFR Part 3560. Ultimately, the applicant/borrower has control over the anticipated funding sources and should be able to assist the contract appraiser with the appraisal requirements according to the anticipated funding sources.

This guidance does not require an appraisal when it is not otherwise needed and does not restrict Rural Development from requesting additional values if a need for analysis, or for any other purpose, is determined or requested.

On the following pages the user of this guidance will find;

- General Guidance for Rural Development Appraisals.
- Quick Reference of Values to Request.
- Specific appraisal guidance for each value as shown in the Quick Reference of Values to Request which can be used in the SOW.

GENERAL GUIDANCE FOR RURAL DEVELOPMENT APPRAISALS

- Rural Development typically uses only Three (3) Value Types:
  1. **Market Value** (7 CFR Part 3560.752(b)(1)(ii).
  2. **Market Value, subject to restricted rents** (7 CFR Part 3560.752(b)(1)(i), (The appraiser must consider all restrictions and report the value of intangible assets individually and separately from the real estate)
  3. **Liquidation Value** (has a shortened marketing period defined by the client, i.e. 30 days, 3 months, etc.).

  ***The value types listed above are based on a current time frame. Rural Development also uses a "Prospective Value", which uses the same definition as the valuations stated above, but based on a specified future date such as "Prospective Market Value" and "Prospective Market Value, Subject To Restricted Rents". Prospective Values are typically used when construction or improvements to the property need to be considered in the value.**

- The user of this guidance should be familiar with 7 CFR Part 3560 along with all applicable Handbooks. The information contained within is used to help apply the CFR, not replace it. They also need to know the purpose of the appraisal (new loan, determine equity, etc.). The appraiser should only use the value terminology as stated in 7 CFR Part 3560 (and emphasized in this guidance), other values would not be consistent in applying the regulations and may result in an inappropriate value.

- In a 'Market Value' appraisal, unless specifically requested to use a hypothetical condition to provide a credible appraisal for the intended use, the appraiser needs to analyze the Highest and Best Use of the property using four criteria; physically possible, legally permissible, financially feasible and maximally productive. The appraiser must consider all legal restrictions or prohibitions including, but not limited to; restricted use provisions, program restrictions, zoning and local ordinances.

- Using the hypothetical condition "as unsubsidized conventional housing" according to 7 CFR Part 3560.656(c)(1)(i) means when the appraiser develops their Highest and Best Use analysis they will not recognize any Rural Development restrictions or subsidies and must only consider the property as continued use as housing (apartments, condos, elderly, labor housing, etc.). They must still consider all other legal restrictions or benefits that apply to the property. If the appraiser determines that subsidies from other sources provide the highest and best use of the property this hypothetical condition according to 7 CFR Part 3560.656(c)(1)(i) does not restrict that use.

- When the value is "Subject To Restricted Rents" the appraiser must consider all restrictions and report the value of intangible assets (financing, tax credits, grants, etc.) individually and separately from the real estate in accordance with 7 CFR Part 3560.752 (b)(1)(i). Since intangible assets are nonphysical assets and not real estate the appraiser

should never add the value of the intangible assets to the value of the real estate. Any investment values that add intangible assets or cash to the real estate value will not be accepted. The Security value should only be calculated by the Agency underwriter, not the appraiser.

- An extraordinary assumption should only be used to determine value when requesting a Prospective Value, since this is a forecast of future value. A hypothetical condition should only be used to determine value when the property qualifies for an Incentives Offers according to 7 CFR Part 3560.656. An extraordinary assumption or hypothetical condition may also be used to analyze the affects that any required changes have on a property.

- All hypothetical conditions and extraordinary assumptions must be labeled as such and must be clear and conspicuous to the reader of the report.

- Every appraisal should be done on the subject in its 'Current Physical Condition' except 'Prospective' values which usually includes construction and should be based on the estimated date that construction would be completed and occupancy stabilized.

- Intangible assets are nonphysical assets, as distinguished from physical assets such as facilities and equipment. They include rights over real property, but not rights of use and possession. In subsidized housing they include, but are not limited to, interest credit subsidies, and low-interest loans from other sources, tax-exempt bond financing, tax credits, and grants.

- Security value means the value of an asset deposited or pledged as a guarantee of the payment or fulfillment of an obligation or debt. Security value as utilized by the Agency is an underwriter's tool to assist them in the collateral requirements of a loan. The real estate value, personal property value and the intangible assets value should always be reported individually and separately in an appraisal report. The Security value does not always include every intangible asset. The Agency underwriter must determine which intangible assets are considered in the Security value.

- This guidance should not restrict Rural Development from requesting additional values if a need for additional analysis or for any other purpose is determined or requested.

- In many cases, for transfers, prepayments, rehab, etc., in utilizing QUICK REFERENCE OF VALUES TO REQUEST you should ask a few questions;

  (1) Does the property qualify for an Incentives Offer within 7 CFR Part 3560.656? Request value of property under # 3 or #4 based on the answer.
  (2) Is there an existing loan? Do we need to know the current security position of the property? Request the value under #2.
  (3) Is Rural Development or others providing any new funds or subsequent loans that may affect the value of the security? Request the values under #1.

  Other questions may apply depending on the specific intended use.

QUICK REFERENCE OF VALUES TO REQUEST

1: NEW FUNDS OR SUBSEQUENT LOANS (By Rural Development or others)

- New construction
- Rehab/repair construction

REQUEST:
"Prospective Market Value, Subject To Restricted Rents within 7 CFR Part 3560.752(b)(1)(i)". (The appraiser must consider all restrictions and report the value of intangible assets individually and separately from the real estate.)
"Prospective Market Value within 7 CFR Part 3560.752(b)(1)(ii), Premised Upon A Hypothetical Condition As-If Conventional Housing". (Optional value used to analyze the affects of restrictions).

2: EXISTING LOAN

- Transfer
- Loan assumption
- Loan write-down
- Subordination

REQUEST:
"Market Value, Subject To Restricted Rents within 7 CFR Part 3560.752(b)(1)(i)". (The appraiser must consider all restrictions and report the value of intangible assets individually and separately from the real estate).

3: VALUE OF PROPERTY (Does NOT qualify for Prepayment Incentives Offers within 7 CFR Part 3560.656 Incentives Offers).

- Validation of sale/marketing price
- Equity determination
- Acquisition of property into program

REQUEST:
"Market Value, within 7 CFR Part 3560.752(b)(1)(ii)". (All restrictions and prohibitions currently existing must be considered, including Restrictive Use Provisions).

4: VALUE OF PROPERTY (Qualifies for Prepayment Incentives Offers within 7 CFR Part 3560.656 Incentives Offers).

- Validation of sale/marketing price
- Equity determination

REQUEST:
"Market value within 7 CFR Part 3560.752(b)(1)(ii), Premised Upon A Hypothetical Condition As-If Unsubsidized Conventional Housing in compliance with 7 CFR Part 3560.656(c)(1)(i)". (In order to use this value the property must qualify for a prepayment incentives offer within the Code of Federal Regulations).

5: VALUE FOR SALE - ELIGIBLE AS PROGRAM PROPERTY

- Maintain in program, REO's, foreclosure, etc.

REQUEST:
"Market Value within 7 CFR Part 3560.752(b)(1)(ii), Premised Upon A Hypothetical Condition As-If Conventional Housing".
"Market Value, Subject To Restricted Rents within 7 CFR Part 3560.752(b)(1)(i)". (The appraiser must consider all restrictions and report the value of intangible assets individually and separately from the real estate).

6: VALUE FOR SALE - NON PROGRAM PROPERTY

- Properties leaving program, REO's, etc.

REQUEST:
"Market Value within 7 CFR Part 3560.752(b)(1)(ii), Premised Upon A Hypothetical Condition As-If a Conventional Market Property".
"Liquidation Value Premised Upon a Marketing Period of (enter days) **Days".** (Optional value, market period prescribed by USDA.)

☐ **1: NEW FUNDS OR SUBSEQUENT LOANS (By Rural Development or others)**

VALUE REQUIRED FOR:

- New construction
- Rehab/repair construction

APPRAISED VALUE TO REQUEST:

- ***Prospective Market Value, Subject To Restricted Rents within 7 CFR Part 3560.752(b)(1)(i).*** (Must consider any rent limits, rent subsidies, expense abatements, and restrictive-use conditions that will affect the property. All intangible assets must be evaluated individually and separately from real estate.)

AND POSSIBLY:

- ***Prospective Market Value within 7 CFR Part 3560.752(b)(1)(ii), Premised Upon A Hypothetical Condition As-If Conventional Housing***. (Value estimate will be based upon a highest and best use analysis as-if not encumbered by USDA program provisions.)

SPECIAL NOTES AND INTENDED USE:

- All value conclusions cited in the appraisal must report and label the specific value as cited above in "Appraised Value To Request."
- The intended use of the appraised value *"Prospective Market Valu*e, *subject to restricted rents within 7 CFR Part 3560.752(b)(1)(i)"* for a new or subsequent loan is to assist the underwriter with calculating the security value for the basis of a loan or loan guarantee.
- The intended use of the appraised value *"Prospective Market Value within 7 CFR Part 3560.752(b)(1)(ii), Premised Upon A Hypothetical Condition As-If Conventional Housing"* for a new or subsequent loan is for <u>reasonable analysis and comparison</u> as to how the USDA restrictions affect the property. It should not be used as the basis of a loan or loan guarantee.
- "Prospective value" estimates are premised on an extraordinary assumption which presumes as fact uncertain information. An appraiser should only use an extraordinary assumption when it is reasonable to believe that the unknown condition is true. A prospective value for new or rehab construction should be based on an estimated date that construction would be completed and occupancy stabilized.
- When the value is "Subject To Restricted Rents" the appraiser must consider the impact of USDA program participation and report the value of intangible assets (financing, tax credits, grants, etc.) individually and separately from the real estate. Since intangible assets are nonphysical assets and not real estate the appraiser should never add the value of the intangible assets to the value of the real estate. USDA will identify intangible assets to be evaluated and provide information relevant and necessary for the evaluation of the intangible assets.
- All hypothetical conditions and extraordinary assumptions must be labeled as such and must be clear and conspicuous to the reader of the report.

2: EXISTING LOAN

VALUE REQUIRED FOR:

- Transfer
- Loan assumption
- Loan write-down
- Subordination

APPRAISED VALUE TO REQUEST:

- ***Market Value, Subject To Restricted Rents within 7 CFR Part 3560.752(b)(1)(i).*** (Must consider any rent limits, rent subsidies, expense abatements, and restrictive-use conditions that will affect the property. All intangible assets must be evaluated individually and separately from real estate.)

SPECIAL NOTES AND INTENDED USE:

- All value conclusions cited in the appraisal must report and label the specific value as cited above in "Appraised Value To Request."
- The intended use of the appraised value *"Market Valu*e, *subject to restricted rents within 7 CFR Part 3560.752(b)(1)(i)"* for an existing loan is to assist the underwriter with calculating the security value to determine if the existing loan is adequately secured.
- When the value is "Subject To Restricted Rents" the appraiser must consider the impact of USDA program participation and report the value of intangible assets (financing, tax credits, grants, etc.) individually and separately from the real estate. Since intangible assets are nonphysical assets and not real estate the appraiser should never add the value of the intangible assets to the value of the real estate. USDA will identify intangible assets to be evaluated and provide information relevant and necessary for the evaluation of the intangible assets.
- The use of a hypothetical (false) condition is not allowed.
- The appraisal is to reflect the value of the property in its current physical condition.
- All hypothetical conditions and extraordinary assumptions must be labeled as such and must be clear and conspicuous to the reader of the report.

☐ **<u>3: VALUE OF PROPERTY</u> (Property does NOT qualify for Prepayment Incentives Offers within 7 CFR Part 3560.656 Incentives Offers).**

VALUE REQUIRED FOR:

- Validation of sale/marketing price
- Equity determination
- Acquisition of property into program

APPRAISED VALUE TO REQUEST:

- ***Market Value, within 7 CFR Part 3560.752(b)(1)(ii).*** *(*All existing restrictions and prohibitions must be considered including Restrictive- Use Provisions (RUP's).

SPECIAL NOTES AND INTENDED USE:

- All value conclusions cited in the appraisal must report and label the specific value as cited above in "Appraised Value To Request."
- The intended use of the appraised value *"Market Valu*e *within 7 CFR Part 3560.752(b)(1)(ii)"* is to determine the value of the property for sale/purchase and to determine the amount and availability of any equity.
- Equity is determined by the <u>appraised</u> value of the property less all loans and liens against it. It is not determined by a contract price or the individual wants or needs of a specific buyer or seller.
- An analysis of the highest and best use of the property using the four criteria including physically possible, legally permissible, financially feasible and maximally productive is required.
- The use of a hypothetical (false) condition is not allowed.
- The appraisal is to reflect the value of the property in its current physical condition.
- All hypothetical conditions and extraordinary assumptions must be labeled as such and must be clear and conspicuous to the reader of the report.

☐ **4: <u>VALUE OF PROPERTY</u> (Property qualifies for Prepayment Incentives Offers within 7 CFR Part 3560.656 Incentives Offers. There must be no prepayment prohibitions and RUP's must have expired.)**

VALUE REQUIRED FOR:

- Validation of sale/marketing price
- Equity determination

APPRAISED VALUE TO REQUEST:

- ***Market Value within 7 CFR Part 3560.752(b)(1)(ii), Premised Upon A Hypothetical Condition As-If Unsubsidized Conventional Housing in compliance with 7 CFR Part 3560.656(c)(1)(i).***

SPECIAL NOTES AND INTENDED USE:

- All value conclusions cited in the appraisal must report and label the specific value as cited above in "Appraised Value To Request."
- The intended use of the appraised value *"Market Value within 7 CFR Part 3560.752(b)(1)(ii)**,** Premised Upon A Hypothetical Condition As-If Unsubsidized Conventional Housing in compliance with 7 CFR Part 3560.656(c)(1)(i)"* is to determine the value of the property that qualifies for an Incentive Offer within 7 CFR Part 3560.656 for sale/purchase and to determine the amount and availability of any equity.
- Equity is determined by the <u>appraised</u> value of the property less all loans and liens against it. It is not determined by a contract price or the individual wants or needs of a specific buyer or seller.
- Using the hypothetical condition "as unsubsidized conventional housing" according to 7 CFR Part 3560.656(c)(1)(i) means when the appraiser develops their Highest and Best Use analysis they will not recognize any Rural Development restrictions or subsidies and must only consider the property as continued use as housing (apartments, condos, elderly, labor housing, etc.). They must still consider all other legal restrictions or benefits that apply to the property. If the appraiser determines that subsidies from other sources provide the highest and best use of the property this hypothetical condition according to 7 CFR Part 3560.656 (c)(1)(i) does not restrict that use.
- The appraisal is to reflect the value of the property in its current physical condition.
- All hypothetical conditions and extraordinary assumptions must be labeled as such and must be clear and conspicuous to the reader of the report.

☐ **5: VALUE FOR SALE - ELIGIBLE AS PROGRAM PROPERTY**

VALUE REQUIRED FOR:

- Maintain in program, REO's, foreclosure, etc.

APPRAISED VALUE TO REQUEST:

- *Market Value within 7 CFR Part 3560.752(b)(1)(ii), Premised Upon A Hypothetical Condition As-If Conventional Housing.* (Value estimate will be based upon a highest and best use analysis as-if not encumbered by USDA program provisions.)

AND:

- ***Market Value, Subject To Restricted Rents within 7 CFR Part 3560.752(b)(1)(i).*** (Must consider any rent limits, rent subsidies, expense abatements, and restrictive-use conditions that will affect the property. All intangible assets must be evaluated individually and separately from real estate.)

SPECIAL NOTES AND INTENDED USE:

- All value conclusions cited in the appraisal must report and label the specific value as cited above in "Appraised Value To Request."
- The intended use of the appraised value "*Market Value within 7 CFR Part 3560.752(b)(1)(ii), Premised Upon A Hypothetical Condition As-If Conventional Housing"* is to assist in the determination of an acceptable bid or sale price.
- The intended use of the appraised value *"Market Value, Subject To Restricted Rents within 7 CFR Part 3560.752(b)(1)(i)" is to* assist in the determination of an acceptable bid or sale price.
- Unless otherwise directed, all market value appraisals will provide an analysis of the highest and best use of the property using the four criteria including physically possible, legally permissible, financially feasible and maximally productive
- When the value is "Subject To Restricted Rents" the appraiser must consider the impact of program participation and report the value of intangible assets (financing, tax credits, grants, etc.) individually and separately from the real estate. Since intangible assets are nonphysical assets and not real estate the appraiser should never add the value of the intangible assets to the value of the real estate. USDA will identify intangible assets to be evaluated and provide information relevant and necessary for the evaluation of the intangible assets.
- The appraisal is to reflect the value of the property in its current physical condition.
- All hypothetical conditions and extraordinary assumptions must be labeled as such and must be clear and conspicuous to the reader of the report.

☐ **6: VALUE FOR SALE - NON PROGRAM PROPERTY**

VALUE REQUIRED FOR:

- Properties leaving program, REO's, etc.

APPRAISED VALUE TO REQUEST:

- *Market Value within 7 CFR Part 3560.752(b)(1)(ii), Premised Upon A Hypothetical Condition As-If A Conventional Market Property*. (Value estimate will be based upon a highest and best use analysis as-if not encumbered by USDA program provisions.)
  AND POSSIBLY:
- ***Liquidation Value Premised Upon A Marketing Period* of (*enter days*) *Days* (marketing period prescribed by USDA)**

SPECIAL NOTES AND INTENDED USE:

- All value conclusions cited in the appraisal must report and label the specific value as cited above in "Appraised Value To Request."
- The intended use of the appraised value "*Market Value Premised Upon A Hypothetical Condition As-If A Conventional Market Property" is to* assist in the determination of an acceptable bid or sale price
- Unless otherwise directed, all market value appraisals will provide an analysis of the highest and best use of the property using the four criteria including physically possible, legally permissible, financially feasible and maximally productive
- The intended use of the appraised value "*Liquidation Value Premised Upon a Marketing Period* of (*enter days*) *Days"* is to assist in the determination of an acceptable bid or sale price.
- Request for ***Liquidation value*** is applicable only if USDA is considering selling within a prescribed time frame which may or may not be the same as the traditional marketing period. USDA staff must determine whether Liquidation Value is required, and supply the appraiser with the prescribed marketing time to be associated with the property liquidation.
- USDA will provide a specific marketing period for a Liquidation Value. If the prescribed marketing period is less than the traditional marketing period as determined by the appraiser, the appraiser will analyze and estimate the value associated with the prescribed marketing period. A prescribed marketing period may result in a value estimate premised upon an extraordinary assumption.
- All hypothetical conditions and extraordinary assumptions must be labeled as such and must be clear and conspicuous to the reader of the report.

ATTACHMENT 7-D

STANDARD STATEMENT OF WORK (SOW) FOR MULTI-FAMILY HOUSING CONTRACT APPRAISALS

Background: USDA Rural Development provides loans to eligible applicants for multi- family housing properties. In support of this program, Rural Development requires the services of qualified persons or firms to provide appraisals of subsidized Multi-Family Housing properties. All appraisals must be in compliance with the current edition of the *Uniform Standards of Professional Appraisal Practice* (*USPAP*) and Rural Housing Service (RHS) Multi-Family Housing appraisal requirements (supplemental standards), which are set forth in the Statement of Work (SOW), *7 CFR 3560, subpart P*, and Chapter 7 of the *RHS HB-1-3560*. The appraiser should note that there are other agencies within Rural Development with different appraisal needs and requirements.

Professional Qualifications: All Agency Multi-Family Housing appraisals must be written by a State Certified General Appraiser, certified in the State in which the subject property is located. The appraiser must have the specialized knowledge and experience necessary to be competent to appraise subsidized housing. The appraiser must understand the housing programs, value types and definitions, real and intangible property rights, use restrictions, pertinent tax considerations, and methods for valuation of various types of favorable financing involved in the appraisal of subsidized housing.

Request for Quote (RFQ): The RFQ will be used to request proposals from appraisers via fax or e-mail and will contain basic property information, services requested, special requirements, and any additional information the appraiser will need to bid appropriately. It is the appraiser's responsibility to understand the scope of the assignment and its requirements. When the appraiser receives the RFQ, he/she is to notify the requesting representative by fax or e-mail within __ hours (1) that the appraiser is unavailable to bid on the assignment, or (2) with the amount of the fee and the number of calendar days required to complete the assignment.

Contract for Appraisal Services (CAS): Once the appraiser has been selected to complete the assignment, a Rural Development representative will provide a CAS by fax or e-mail. The CAS form will contain the same information as the RFQ but will also include Rural Development and property contacts as well as the agreed upon fee and due date. Rural Development will also inform the appraiser if he/she has not been awarded the assignment. The required number of copies of the appraisal may vary, and the appraiser must pay attention to the number specified on the CAS, as well as the specific delivery instructions. The CAS will specify to whom the reports are to be addressed and where the reports and invoice should be delivered.

Subcontracting: The appraiser engaged by Rural Development or a qualified employee or associate of the appraiser, must perform the appraisal and must not subcontract it, or any part of it, to another person without written consent of the Rural Development Contracting Officer.

Post Award Conference: The appraiser must contact the Contracting Officer's Representative (COR), identified in the CAS, to schedule a post-award telephone conference. The COR (usually the State Appraiser) will discuss appraisal requirements with the appraiser and answer questions about the assignment. Furthermore, the COR will be the appraiser's contact with the Agency during the course of the assignment. Again, it is the appraiser's responsibility to understand the scope of the appraisal and its requirements.

Client: The appraiser must understand and agree that USDA Rural Development is the appraiser's client, and all reports must be addressed to USDA Rural Development (and any other intended user specified by the Agency). Any questions related to the form or substance of the assignment will be directed to the COR and will not be directed to the property owner.

Property Contact: The appraiser should call the property contact, identified in the CAS, for gaining access to the property and in most cases for procuring property specific data relevant to the assignment. Appraisal fees or turnaround times should not be discussed with the property contact. The appraiser must notify the COR *immediately* if any of the following occurs: 1) the appraiser cannot gain adequate access to the property, 2) the appraiser does not receive essential property information in a timely manner, 3) the appraiser has previously appraised or is in the process of appraising the property, 4) the appraiser has any other potential conflict of interest with respect to the assignment.

Confidentiality: The appraiser must keep all information and materials furnished by Rural Development, the owner, and/or property contact regarding the subject property confidential, as required by USPAP and the Gramm-Leach-Bliley Act. The appraiser may use such information only in connection with performance of the assignment. The appraiser must agree to prevent the unauthorized disclosure, misuse, or alteration of the confidential information. Any information obtained through public sources is not considered confidential information. Disregard of this privacy requirement will be cause for immediate debarment as a contractor for the federal government.

Nondiscrimination: All appraisals of Section 515 Rural Rental Housing or Section 514/516 Farm Labor Housing properties must comply with the Fair Housing Amendments Act of 1988. According to the Act, it is unlawful for an appraiser to use factors that are discriminatory on the basis of race, color, religion, sex, disability, familial status, or national origin in the sale, rental, leasing, or financing of housing.

Assumptions, Hypothetical Conditions, and Limiting Conditions: All extraordinary assumptions, hypothetical conditions, and limiting conditions must be clearly described in a single location near the beginning of the report and in appropriate sections of the appraisal. In addition, extraordinary assumptions and hypothetical conditions must be restated wherever the appraiser opines to the final value(s). Extraordinary assumptions and hypothetical conditions also must be discussed with and agreed to by the COR prior to completion of the report. General assumptions and limiting conditions that reduce the normal scope of appraisal due diligence are not allowed.

Potential Environmental Hazards: The appraiser must note any suspected environmental hazards, including issues external to the property that could adversely impact the property's

value. Examples of environmental hazards would include damaged asbestos-containing building materials, underground storage tanks, chemical leaks, spills, or staining of ground surfaces, or on-site waste disposal such as sludge, oil, paints, or chemical residues. If the appraiser observes any suspected environmental hazards, he/she must notify the COR immediately and refrain from finalizing aspects of the appraisal that could be impacted until resolution of the issue or until instructed otherwise.

Americans with Disabilities Act (ADA): Appraisers must be familiar with the general provisions of the ADA because subsidized housing is a property type that is likely to be affected. The appraiser must consider what impact (if any) noncompliance with the ADA has on the value of the subject property. Any impact on value must be supported by market evidence.

Appraisal Report Formats: The appraisal type (complete or limited), report type (self-contained, summary, or restricted use), and report format (narrative or form) will be set forth in Rural Development's authorizing Contract for Appraisal Services (CAS). Narrative formats are preferred for most Multi-Family Housing appraisals, with the level of detail dependent on the scope of work and the requested appraisal type and report type. Form reports completed on *Form RD 1922-7, Appraisal Report for Multi-Unit Housing, FNMA Form 1050, FHLMC Form 71A*, or the Uniform Commercial Industrial Appraisal Report (UCIAR) are generally acceptable, as long as they are modified to meet USPAP and Agency requirements and are agreed upon in advance.

Approaches to Value: The approaches to value (Cost Approach, Sales Comparison Approach, and Income Approach) that are to be included in the appraisal depend on the specific assignment and will be specified in the CAS. When the purpose of the appraisal is to conclude *market value*, all three approaches to value must be included as part of a Complete Appraisal. When the purpose of the appraisal is to conclude *market value, subject to restricted rents*, the Cost Approach and the Income Approach must be included, but the Sales Comparison Approach is typically not applicable and may be excluded. When the purpose of the appraisal is to conclude *value-in-use* of an on-farm labor housing project, only the Cost Approach is applicable, and the other two approaches are excluded. For some assignments, an approach to value that is typically applicable may not be applicable. When this is the case, the appraiser, upon receiving the RFQ, must discuss this issue with the COR so that the CAS will correctly specify the approaches to value that will be included in the report. If, during the course of the assignment, the appraiser determines that an approach is not applicable, he/she must obtain the approval of the COR to exclude the approach from the report, and the CAS must be modified.

Value Types: The types of value (e.g., *market value* or *market value, subject to restricted rents* or *insurable value*) to be reported, including values of various types of favorable financing, will be specified in the CAS.

Complete Appraisal Requirements: All RHS Complete Appraisals must comply with the following unless the CAS requires otherwise:

1) All appraisal reports must comply with the current edition of *USPAP*. Specifically, all reports must include the following items required by Standards 1 and 2 of *USPAP*:
   - Identification of the appraisal type and report type,

- Identification of the client and any other intended users of the appraisal,
- Identification of the intended use of the appraisal,
- Description of the subject real estate,
- Identification of the real property interest (property rights) appraised,
- Identification of the purpose of the appraisal,
- Identification and definition(s) of the value type(s) reported,
- Identification of the effective date(s) of the appraisal and the date of the report,
- Description of the scope of work used to develop the appraisal,
- Disclosure of all assumptions, hypothetical conditions, and limiting conditions that directly affect the appraisal,
- Description of the information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions,
- Description of the use of the real estate existing as of the date of value and the use of the real estate reflected in the appraisal; and (for market value) an analysis of the highest and best use of the real estate,
- Disclosure of any permitted departures from specific requirements of Standard 1 of *USPAP* and the reason for excluding any of the usual valuation approaches,
- A signed certification in accordance with *USPAP* Standards Rule 2-3.

2) All reports must include an executive summary.
3) All reports must include a legal description of the subject property.
4) All reports must include photographs of the interior and exterior of the subject property and of the exterior of all rent comparables and sales comparables.
5) All reports must include the following maps, showing the location of the subject:
   - Regional map
   - City map
   - Flood plain map
   - Land Sales map
   - Sales Comparables map
   - Rent Comparables map
6) All reports must include the following exhibits of the subject property:
   - Survey
   - Site plan
   - Floor plans
7) All analyses within the Income Approach must be well supported. When the assignment is to conclude *market value, subject to restricted rents*, the subject's 3-year operating history should typically be used as the primary data source to project the subject's other income, vacancy, and operating expenses. A set of expense comparables should be compiled from recent operating statements for similar restricted properties within the subject's housing program. This data can be obtained from Rural Development and used to support these projections. All expense analyses must include a tabulated set of expense comparables and should also include supporting information from an expense survey done by RHS or a State or local housing authority, if available. The capitalization rate selected for the subject must be derived from the most recent sales of similar properties in the local (or nearest similar) conventional apartment market. Support for this overall rate should be provided using other accepted methods such as the band-of-investment technique, the debt coverage ratio formula,

and regional investment criteria surveys. If the pro forma income, vacancy, expenses, or capitalization rate is not adequately supported, the Rural Development Review Appraiser will require the contract appraiser to make revisions that provide the necessary support before the appraisal can be accepted.

8) Any method that includes the use of note rate rent as Potential Gross Income (PGI) in the Income Approach pro forma to derive a value equal to the sum of the *market value, subject to restricted rents,* plus the value of the interest credit subsidy is not acceptable appraisal practice. Appraisers must not use this procedure in Agency Multi-Family Housing appraisals.
9) All reports must conclude the market rents for the subject's units. A market rent adjustment grid showing quantitative adjustments in specific percentages or dollar amounts must be included and be well supported. When the assignment is to conclude *market value, subject to restricted rents*, the report must state whether the base rate (restricted) rents are less than, equal to, or higher than market rents. Market rents must be estimated to determine if the subject's base rate rents are attainable without RA. Base rate rents must not be higher than market rents, unless an exception is made, according to the policy of Conventional Rents for Comparable Units (CRCU).
10) All reports must include an estimate of the remaining economic life of the subject.
11) All appraisals of existing properties must include a discussion of deferred maintenance at the subject property. Items of deferred maintenance must be listed, and the cost to cure each item must be estimated, with support provided. The final value must be calculated by subtracting the total cost estimated to cure all deferred maintenance from the value indicated as if no deferred maintenance existed.
12) When favorable financing is involved, the appraisal report must contain a narrative identifying each source of financing. The amount and terms of each type of favorable financing must be described, and each type of favorable financing must be valued separately from the *market value, subject to restricted rents,* of the property. Valuation of “interest credit subsidy” from Section 514/515 loans should be consistent with Attachment 7-H.
13) When the assignment is to conclude *market value, subject to restricted rents*, the subject's operating statements for the preceding three full years and the proposed budget for the current year must be used in the expense analysis and included in the addenda of the report, if available.
14) Appraisals of properties with proposed rehabilitation must include *Form RD 1924-13, Estimate and Certificate of Actual Cost*, in the addenda.
15) A copy of the CAS must be included in the addenda of the appraisal report.

Review of Appraisal: Appraisal reports are subject to review by Rural Development. Appraisers must be prepared to discuss their analyses, opinions, and conclusions and provide additional written support, clarification, and/or corrected appraisal pages if requested.

Accountability: The engaged appraiser must inspect the subject property and be prepared to discuss the appraisal report. A staff appraiser or associate may participate in the appraisal assignment but must either sign the report or be identified, by name, as having provided significant professional assistance in the appraiser's certification. If a staff appraiser or associate wrote the majority of the report, that staff appraiser or associate may be present during any discussion of the assignment. However, it is the engaged contract appraiser whose work product

has been identified as acceptable by Rural Development, and that appraiser must sign the report and be accountable for it.

Defense of Appraisal: The Agency may require the appraiser to defend the appraisal in court or in Rural Development's appeals process. This would constitute a consulting assignment that would be contracted separately from the original appraisal assignment.

Payment of Services: Late delivery of any report may result in liquidated damages. Lacking specific arrangements in writing to the contrary, Rural Development may impose a penalty equal to the lesser of 5% of the appraisal fee per day, or $100 per day, for each calendar day beyond the scheduled due date. The late fee penalty is based on the calendar days between the due date and the date the appraisal report is received by Rural Development. If delivery of the report is 30 days past due, the appraisal engagement is cancelable by Rural Development, and the appraiser's right to all fees associated with the assignment may be forfeited.

ATTACHMENT 7-E

APPRAISAL INFORMATION SHEET (EXAMPLE), ATTACHMENT TO SOW

Appraisal Type: (Complete / Limited)
Report Type: (Self-Contained / Summary / Restricted Use)
Appraisal Format: (Narrative / Form)
Client: Ann Smith, Oregon State Appraiser, USDA Rural Development
USDA Rural Development Contact: Ann Smith, Oregon State Appraiser and Contracting Officer's Representative (COR); Phone: 503-414-3300
Property Contact: Sue Jones, on-site manager; Phone: 503-679-3857
Intended Users of Appraisal: Oregon Housing and Community Services (OHCS); Bedford Falls Limited Partnership (owner)
Intended Use of Appraisal: To fulfill loan underwriting requirements for permanent financing of the subject property
Purpose of Appraisal: To submit supported opinions of the required value(s), in conformity with *USPAP* and the appraisal policy of USDA Rural Housing Service
Property Type: USDA Rural Development Section 514/516 Off-Farm Labor Housing complex
Property Status: (Existing / Proposed)
Property Interest Appraised: fee simple estate, as restricted, subject to short-term leases
Property Owner: Bedford Falls Limited Partnership
Property Name: Bedford Falls Apartments
Property Address: 1945 Maple Avenue, Bedford Falls, OR 97055
Property Description: (number and type of buildings, number of stories, number and type of units, NRA, GBA, year of construction, site size, amenities, parking, etc.) The subject property is a proposed 30-unit USDA Rural Development Section 514/516 Off-Farm Labor Housing complex, situated on a 2.50-acre site. It will have a NRA of 28,602 SF and a GBA of 32,656 SF. There will be five 2- and 3-story buildings with cementicious siding exteriors and pitched asphalt shingle roofs. 1-, 2-, and 3-BR units, ranging from 643 SF to 1,311 SF, will be offered. There will be a 4,054 SF community building containing offices, kitchens, and laundry facilities, as well as paved parking with 64 open spaces (2 handicapped spaces). Completion of construction is scheduled for April 30, 2005.
Project Financing: Financing for the project will come from four sources, as follows:

- USDA Rural Development will make a Section 514 loan for $1,300,000. The loan term is 33 years, and the loan is amortized over that period. The effective rate of interest is one percent. The borrower's monthly payment is $3,855.59.
- USDA Rural Development will make a Section 516 grant for $1,500,000.
- The Clackamas County Community Development Division has awarded a HOME Grant in the amount of $500,000.
- OHCS has awarded tax credits in the amount of $950,000. (See the borrower's Syndication Proposal Agreement for terms.)

Value Types Required: The following values are required:

- Prospective market value, subject to restricted rents, of the fee simple estate, as restricted, subject to short-term leases, of Bedford Falls Apartments, as of completion of construction, April 30, 2005
- Value of interest credit subsidy from the USDA Rural Development Section 514 loan
- Value of the USDA Rural Development Section 516 grant
- Value of the Clackamas County Community Development Division HOME grant
- Value of the OHCS tax credits
- Insurable value

Approaches to Value: The Cost Approach and the Income Approach must be included in the appraisal. The Sales Comparison Approach is not applicable and is not required.

Rental Assistance: (existing number of units/proposed number of units) The subject property will have 30 units of Rental Assistance (RA).

Utilities: Tenants pay for: ___ Electricity ___ Gas ___ Water/Sewer

Assumptions, hypothetical conditions, and limiting conditions: The *prospective market value, subject to restricted rents*, should be based on the *specific assumption* that the subject property retains its 30 units of Rental Assistance (RA). It should also be based on a *limiting condition* citing the market conditions from which the prospective value opinion was made.

Number of Copies: 3

Mail Reports to: Ann Smith (2 copies)
State Appraiser
USDA Rural Development
101 SW Main St., Suite 1410
Portland, OR 97204-3222

James Miller (1 copy)
Director
Oregon Housing & Community Services
725 Summer St., NE
Salem, OR 97309

ATTACHMENT 7-F

APPRAISAL DATA PACKAGE CHECKLIST

___ sales contract or purchase agreement
___ legal description
___ Rural Development Mortgage or Deed of Trust
___ Housing Assistance Payment (HAP) contract (if applicable)
___ description of restrictive use provisions
___ environmental report
___ lead-based paint inspection report
___ Rural Development unit-by-unit inspection
___ market study
___ prior appraisal
___ survey
___ site plan
___ floor plans
___ unit mix (number of units by type, size, rent)
___ recent rent roll
___ tenants waiting list
___ operating statements for subject property from previous 3 years
___ operating statements for five expense comparables from last full year (property name, address, age, number of units, and expense year included)
___ proposed budget for current year
___ plans, specs, and cost estimates (new construction)
___ Form RD 1924-13, *Estimate and Certification of Actual Cost* (rehabilitation)
___ Sources & Uses Comprehensive Evaluation (SAUCE Report)
___ ownership history for past three years
___ financing information (list of existing and proposed financing sources with detailed descriptions of terms for each; e.g., amount of financing, loan balance, interest rate, loan term, remaining loan term, amortization period, payment)

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ATTACHMENT 7-G

SAMPLE TRANSMITTAL LETTER

_____, 20__
_____ Appraisal Services
_____ Member of Appraisal Institute (MAI)
_____
_____, (State) _____

Dear _____:

In our recent telephone conversation you quoted a price of $_____ to complete one (1) Multi-Family Appraisal for the following Multi-Family Housing property:
_____ _____ (Address, City and State, County).

The completed appraisal shall provide _____ estimate of value. The appraisal shall determine the _____ value of the project as _____ housing.

Rural Development is issuing Purchase Order (60-0496-0-C00xx) [sample number] to your firm. You will have until _____ (date) to complete and return 3 copies of the appraisal to _____, Contracting Officer's Representative (COR), Rural Development, _____ _____ (Address, City and State). The Government is allowed fifteen (15) days from the date of receipt of the submitted appraisal for the appraisal review. The invoice shall be submitted to the COR's attention at the same address. Upon acceptance of the appraisal and receipt of a properly prepared invoice payment shall be processed in accordance with the Prompt Payment Act.

We are enclosing the *AD-838, Purchase Order*; *Form RD 2024-18, Designation of Contracting Officer's Representative (COR)*; and the Appraisal Contract Terms and Conditions which includes the statement of work, clauses and other information.

Please note that this written correspondence confirms our oral discussions and establishes the completion dates for the performance of the Contract.

Thank you for your prompt attention. If you have questions please contact me at _____ (phone number).

Sincerely,

_____

Contracting Officer
Enclosures
cc: COR/MFH Program Director, _____ State Office, _____
MFH Housing Specialist, _____ AO, ____

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ATTACHMENT 7-H

GUIDE FOR VALUATION OF INTEREST CREDIT SUBSIDY

Interest Credit Subsidy

Interest credit is a form of federal assistance available to eligible borrowers that reduces the effective interest rate of a loan. The USDA Rural Housing Service (RHS) offers direct loans with very favorable terms for affordable housing in the Rural Rental Housing Program (Section 515) and the Farm Labor Housing Program (Section 514). Section 514 and 515 permanent loans for new construction and subsequent loans for rehabilitation include interest rates as low as 1 percent. These loans are made at a "note rate" of interest, but a "basic rate" of interest to the borrower is typically 1 percent. A monthly mortgage payment is calculated at the note rate of interest, and the loan is amortized at the note rate of interest, but the borrower's actual mortgage payment is based on the basic rate of 1 percent. The difference between the note rate payment and the basic rate payment is the *interest credit*. The borrower is effectively subsidized with an income stream represented by the monthly *interest credit* that is available for the term of the loan.

In appraisals of Section 514 and Section 515 Multi-Family Housing properties, valuation of the *interest credit subsidy* (favorable financing) is part of the assignment when the *market value, subject to restricted rents*, must be concluded. When *interest credit subsidy* is the only favorable financing involved, the security value, on which the loan is based, has two components: 1) the *market value, subject to restricted rents*, of the real estate, and 2) the value of the *interest credit subsidy*. The present value (PV) of the *interest credit subsidy* can be calculated with a financial calculator using a simple discounted cash flow if three variables are known: payment (PMT), discount rate (i), and period (n). Determination of each of these three variables is discussed below.

Methodology for Valuation of Interest Credit Subsidy

The first variable to consider, which is input as payment (PMT) in a financial calculator, is the income stream that accrues to the borrower from the savings in mortgage payments resulting from the *interest credit*. With the RHS direct loan, the borrower typically will make 360 monthly mortgage payments based on an interest rate of 1percent. Without the RHS direct loan, the borrower would have to obtain alternative conventional financing at a significantly higher market interest rate, resulting in higher monthly mortgage payments. Therefore, the borrower's income stream is equal to the difference between the monthly mortgage payment that would have been required at the conventional rate of interest and the actual mortgage payment at the reduced rate. (It should be noted that the USDA note rate of interest cannot be used to calculate the higher conventional payment because this rate does not represent a mortgage interest rate available to the borrower at the time of the appraisal.)

The second variable used in the calculation is the discount rate (i). The discount rate to be applied to the income stream is simply the alternative conventional mortgage interest rate. This is the rate of interest at which the borrower would have had to pay if a conventional loan had

been obtained, so this is the rate at which the borrower saves with the favorable financing. The conventional mortgage interest rate is extracted from the subject's lending market.

The third variable to determine is the period (n) over which the income stream is to be discounted. The loan term, or remaining loan term, is known at the time of the appraisal. Although the borrower might hold the property for a holding period less than the loan term, the income stream from the favorable loan is available for the period of the loan. The *interest credit subsidy* should be valued according to the actual terms of the loan, so the appraiser should discount the income stream over the term of the loan. For new construction, the loan term is 30 years for a Section 515 loan and 33 years for a Section 514 loan. The appraiser should use these terms for the period of the loan. For an existing property, the remaining loan term, which should not exceed the estimated remaining economic life of the property, should be used for the period of the loan.

The value of the *interest credit subsidy* from RHS direct loans on most existing properties can be calculated by subtracting the monthly debt service at the below-market rate of interest from the monthly payment at the current rate offered for conventional loans and discounting the difference by the current conventional interest rate over the remaining loan term. For RHS direct loans on proposed new construction, an additional step is required if the amortization period is longer than the loan term. With conventional financing, a loan with a term of 30 years is amortized at the end of the 30-year term. However, with a RHS direct loan that has a loan term of 30 years and an amortization period of 50 years, a large balloon payment is due at the end of 30 years. The PV of the balance of the RHS direct loan at the end of the 30-year loan term (the PV of the balloon payment) must be subtracted from the present value of the 30-year income stream to derive the value of the *interest credit subsidy*.

Example Problem and Solution

The following example problem is used to illustrate the method for valuing the *interest credit subsidy*.

Problem:

A Section 515 direct loan of $1,000,000 is offered by USDA Rural Development with a term of 30 years and an amortization period of 50 years. The loan is to be amortized at the USDA note rate of interest of 6.0%, but the base rate of interest to the borrower is 1.0%. At the end of the 30-year loan term, a balloon payment is due. Alternative conventional financing includes a 30-year loan term, completely amortized after 30 years, and an interest rate of 7.0%. What is the value of the "interest credit subsidy" or below-market financing?

Solution:

The loan amount in the example problem is $1,000,000. With conventional financing, the monthly payment at 7.0% interest, amortized over 30 years, would have been $6,653.02. This payment can be calculated on an HP-12C calculator using the following keystrokes:

1,000,000 PV
7.0 g i
30 g n
Solve for PMT = -6,653.02

With the Section 515 direct loan and *interest credit*, the monthly payment, at 1.0% interest, amortized over 50 years, is $2,118.59 (calculated in the same way), but a balloon payment of $734,760 is due at the end of 30 years. The borrower makes a monthly payment based on a 1.0% interest rate. However, the loan is amortized at the note rate of interest at the time of the loan (6.0% in this example), as if the mortgage payment was the sum of the borrower's payment and the *interest credit* calculated by USDA. The balloon due at the end of 30 years on the RHS loan can be calculated on an HP-12C calculator using the following keystrokes:

1,000,000 PV
6.0 g i
50 g n
Solve for PMT = -5,264.05
30 g n
Solve for FV = -734,760

The difference in the payments at the two different interest rates is $4,534.43 ($6,653.02 - $2,118.59) per month. The borrower saves $4,534.43 per month due to the below-market financing. Without the benefit of the favorable financing (*interest credit subsidy*), the owner would pay an additional $4,534.43 per month, at an interest rate of 7.0%, over the projected holding period. The projected holding period for the subject property is the loan term, 30 years.

With the Section 515 direct loan, a large balloon payment is due at the end of the 30-year loan term, but a conventional loan would be fully amortized at the end of the 30-year loan term, and there would be no balloon. Therefore, to calculate the value of the *interest credit subsidy*, the present value (PV) of the balance of the RHS loan at the end of the 30-year loan term (the PV of the balloon payment) must be subtracted from the present value of the income stream resulting from the savings in the mortgage payments. The present value of the balloon payment is calculated by discounting the balloon payment ($734,760) by the current mortgage interest rate (7.0%) over the term of the loan (30 years). In this example, the PV of the balloon payment can be calculated with an HP-12C calculator using the following keystrokes:

734,760 CHS FV
7.0 g i
30 g n
Solve for PV = 90,527

The value of the *interest credit subsidy* is equal to the amount of the monthly debt service saved, discounted by the current conventional mortgage interest rate over the remaining loan term, minus the present value of the RHS direct or guaranteed loan balloon payment. The value of the

interest credit subsidy for the subject property can be calculated with an HP-12C calculator using the following keystrokes:

4,534.43 CHS PMT
7.0 g i
30 g n
Solve for PV = 681,559
90,527 –
Value of interest credit subsidy = $591,032
The Value of the Interest Credit Subsidy is $591,000 (rounded)

Conclusion

When appraising existing properties, calculation of the value of the *interest credit subsidy* usually does not involve a balloon payment. Only valuation of the income stream is considered. The appraiser should obtain the current balance of the original loan from the Rural Development Office. The remaining loan balance and the remaining term of the loan are used to calculate the monthly mortgage payment at the current conventional interest rate. The appraiser should use the borrower's actual payment based on a below-market rate (usually one percent) that has been calculated by the Rural Development Office in this process. The difference in the payments at the two rates is then discounted at the current conventional mortgage interest rate over the remaining loan term to calculate the value of the *interest credit subsidy*.

The *interest credit subsidy* for a RHS original loan should be valued separately from the *interest credit subsidy* of any subsequent RHS loans. *Interest credit subsidy* should be valued separately from the *market value, subject to restricted rents*, of the real property.

ATTACHMENT 7-I

USDA Rural Development

Insurable Value Calculation

Property Name:	
Street Address:	
City, County, State, Zip:	

BASE COST			$0.00	PSF
Main Structure			$0.00	
Sprinkler			$0.00	
Other			$0.00	
Adjustments and/or Multipliers			0	
TOTAL BASE COST PER SQ. FT			$0.00	
Building Area Square Footage			0	SF
TOTAL REPLACEMENT COST NEW			$0.00	
EXCLUSIONS	Per SF	Percent		
Excavations	$1.00	0.00%	$0	
Foundations	$1.00	0.00%	$0	
Site Work	$1.00	0.00%	$0	
Site Improvements	$0.00	0.00%	$0	
Architect's Fees	$0.00	0.00%	$0	
Underground Piping	$0.00	0.00%	$0	
TOTAL EXCLUSIONS			$0	
INCLUSIONS				
Appliance Packages			$0	
Patios / Balconies, etc.			$0	
TOTAL INCLUSIONS			$0	
CONCLUDED INSURABLE VALUE				
Total Replacement Cost New			$0	
Less Total Exclusions			$0	
Plus Total Inclusions			$0	
CONCLUDED INSURABLE VALUE			$0	

ATTACHMENT 7-J

COVER LETTER FOR RELEASED APPRAISAL

(*date*)

USDA Rural Development

(*State Office address*)

(*inside address*)

Re: Real Property Appraisal of (*name and address of property*)

Dear Sir or Madam:

Enclosed is a copy of the appraisal report on the above referenced property that you requested. You may contact the Rural Development State Appraiser, (*name; e-mail address; phone number*), to discuss any errors or deficiencies that you identify in your review of the appraisal. The Rural Development State Appraiser, who will also have reviewed the appraisal, will decide whether any of the errors or deficiencies that you have identified are material to value and if revisions by the appraiser or modifications by the reviewer can or should be made. The Rural Development State Appraiser will make one of four possible dispositions of the appraisal: (1) the appraisal is accepted; (2) the appraisal is accepted as revised by the appraiser; (3) the appraisal is accepted as modified by the reviewer; or (4) the appraisal is rejected. Although the disposition concluded in the appraisal review report may be provided to the applicant/owner, the review report itself is intended for the internal use of the Agency and will not be released.

Sincerely,

(*name*)

(*title*)

CHAPTER 8: LOAN CLOSING AND PROJECT LEASE-UP

8.1 INTRODUCTION

After a loan has been approved, as described in Chapters 4 and 5, the Loan Originator takes steps to prepare for loan closing and project lease-up. This chapter describes the rules and procedures of these activities.

Section 1 addresses the loan closing process in three parts:

- Preparing for closing,
- Going to closing, and
- Post-closing activities.

Prior to closing, a number of documents must be prepared. At closing, documents are executed and ownership of the property is transferred to the borrower. Post-closing, the loan docket is completed, documents are filed, and the loan file is forwarded to the Loan Servicing staff.

Moving from Loan Approval to Loan Closing

It is important for the process to move quickly from loan approval through loan closing. Once a loan is obligated, as described in Chapter 5, Processing Final Aplications – Stage 2, a debt to the U.S. treasury is established, resulting in interest costs to the Agency and taxpayers. The Loan Originator must work with the borrower to establish realistic expectations of the construction period so that after funds have been obligated, construction can be completed and funds can be disbursed as quickly as possible. Moving a project from loan approval to loan closing in a timely manner will help make the most effective use of program funds.

Section 2 describes Agency responsibilities during project lease-up. When the loan is closed and construction completed, the borrower begins to lease up the project. At this point, the Agency must begin to monitor the borrower's compliance with rent and occupancy rules, which will involve meetings with the borrower and visits to the site.

SECTION 1: LOAN CLOSING *[7 CFR 3560.72]*

8.2 OVERVIEW

This section addresses the timing and general requirements of loan closing and then describes the key responsibilities of each actor in the loan closing process. It discusses the borrower's and the Agency's roles in choosing a closing agent, the closing agent's responsibilities, and the role of the Loan Processing Staff. The section then describes the actual process of loan closing and the actions that take place after closing to complete the loan docket.

8.3 TIMING OF LOAN CLOSING

The timing of loan closing depends on the method of project financing. As described in Paragraph 4.18 C.5, there are two methods of financing construction for Multi-Family Housing projects: interim financing and multiple advances. The method approved for the project is

specified in the final application. Exhibit 8-1 shows the timing of the loan closing activities in relation to project construction.

- For interim financing, Agency loan closing takes place after construction is complete.
- For multiple advances, loan closing takes place prior to construction.

8.4 LOAN CLOSING REQUIREMENTS

At loan closing, the Agency and the borrower execute all necessary documents to secure financing for the project. At this time, they may collect any items not already provided to meet the conditions indicated in the letter.

A closing agent selected by the borrower and approved by the Agency must be present.

Before the loan can be closed, the borrower must demonstrate that all program and property requirements have been met and that the loan is adequately secured as specified in the *Handbook Letter 102 (3560), Letter of Conditions, Loan Approval, or Obligation of Funds* that was sent to the borrower at loan approval. Briefly, the borrower must demonstrate that the following conditions are met:

- The financing is secure. All funds sources proposed in the application are brought to loan closing for disbursement.
- The construction has been completed (or in the case of multiple advances, the funds are adequate to ensure completion) in accordance with the plans and specifications for the costs projected in the application.
- The property is adequately secured and the Agency's lien position requirements are met. Chapter 7 provides further details on security requirements.
- The borrower has met program and civil rights requirements.

Exhibit 8-1
Summary of Loan Closing Activities
Performed by Agency Staff

Construction→ Performed for Interim Financing

Preparing for Closing

- Select closing agent or title insurance company;
- Review title opinion/insurance binder;
- Provide necessary documents to the Office of General Counsel (OGC) to prepare/finalize closing instructions; and
- Provide closing instructions and necessary documents to closing agent (see **Attachment 8-A**).

******

Closing agent arranges closing date and prepares closing documents.

- Review promissory note and interest credit agreement;
- Determine size of initial check (if financing is by multiple advances); and
- Order loan check from St. Louis Office.

Loan Closing

- Attend closing (if necessary).

Closing agent reviews closing documents with all parties, and obtains applicant signature on all closing documents, and disburses loan funds.

*****

Post-Closing Activities

Closing agent records mortgage or deed of trust and secures title.

- Obtain closing documents, review them to determine acceptability, and sign the closing instructions;
- Enter closing data into Automated Multi-Family Housing Accounting System (AMAS) **[M1F]** and establish the Amortization Effective Date (AED);
- Compile final documents in the loan file and forward them to OGC for review (if required); and
- Forward completed loan docket to Loan Servicing staff.

← Construction Begins for Multiple Advances

8.5 CHOOSING THE CLOSING AGENT AND TITLE COMPANY

Every loan closing requires a closing agent to close Agency real estate loans, provide necessary title clearance services, and perform other closing-related duties prescribed by the Agency. An attorney or title company, chosen by the borrower and approved by the Agency, may perform this role. A closing agent or title company will be selected in accordance with RD Instruction 1927-B.

8.6 CLOSING AGENT RESPONSIBILITIES

To allow the Agency the ability to minimize potential fraud, waste, abuse, kick backs, referral fees and equity skimming; all closing agents/attorneys must indicate the recipient and amount of section 514 loans and section 516 grants. This information must be stated on the Form HUD-1 Settlement Statement. The recipients of payments and the amount of the payment from section 514 loans and section 516 grants must be stated on Form RD 3550-25, section Other. If all recipients and the amounts received can not be stated on Form RD 3550-25, an attachment may be added. If an attachment is added indicate on Form RD 3550-25:" See Attachment".

The closing agent conducts the loan closing and has certain other pre- and post-closing responsibilities in accordance with RD Instruction 1927-B. The list of tasks performed by the closing agent is provided in Exhibit 8-2.

Exhibit 8-2

Responsibilities of a Closing Agent

Prior to Closing

- Provide a title insurance binder within 10 days of the date of the transmittal letter.
- Assess whether there will be any problems meeting the closing conditions as provided in the closing instructions:
  - ◊ Assess whether, after closing, the lien position will be as required by the Agency;
  - ◊ Ensure that the applicant provides a copy of an acceptable hazard insurance policy or insurance binder and evidence that one year's premium has been paid;
  - ◊ Confirm that the applicant has flood insurance, if applicable;
  - ◊ Confirm that all required taxes have been paid;
  - ◊ Collect any other information the Agency has instructed the applicant to provide;
  - ◊ Ensure that the applicant is aware of any funds that must be brought to closing;
  - ◊ If interim financing, make sure that there are no outstanding demands for payment from a contractor or supplier for construction work; and
  - ◊ If required by State Supplement, require that an affidavit regarding work of improvement, provided by the Agency, be completed and executed. *Form RD 1927-5, Affidavit Regarding Work of Improvement*, may be used for this purpose. The affidavit must be signed at closing by the borrower when a loan is being made to a borrower who already owns the real estate to be mortgaged. The affidavit must be signed at closing by the seller when a loan is being made to a borrower to enable the borrower to acquire the property.
- Establish a mutually convenient date for the loan closing.

On Day of Loan Closing

- Complete Closing Statement, which itemizes the costs to be paid by the applicant at closing.
- Confirm that the applicant has no outstanding judgments. If any additional entries of record are identified, the loan cannot be closed until these entries are cleared or approved.
- Review closing documents with all parties and obtain required signatures.
- Disburse funds as required.

After Closing

- Record security documents.
- Return to the Agency executed documents and other loan information provided by it.
- Secure a title insurance policy within 14 days of loan closing.

8.7 LOAN PROCESSING STAFF RESPONSIBILITIES

The Loan Originator is responsible for coordinating all aspects of the loan closing process so that all of the conditions for loan closing are met and the required documents are prepared and ready to be signed by the day of closing.

Between the time the loan is approved and the day of closing, the Loan Originator must work with the applicant and the closing agent to ensure that all appropriate documents are prepared prior to closing. The Loan Originator must also work with the OGC to obtain loan closing instructions from them. Closing must not take place until the applicant has met all of the conditions outlined in *Handbook Letter 102 (3560), Letter of Conditions, Loan Approval, or Obligation of Funds* for loan closing sent to them by the Agency when the loan was approved (see Paragraph 5.21 for details on the letter of conditions).

A. Work with the Applicant

The Loan Originator must work with applicants to ensure that they understand the steps required to reach closing successfully and that they are fully aware of the responsibilities they will assume when the loan closes. Items to cover prior to closing include:

- Prior to loan closing, meeting all conditions specified in *Handbook Letter 102 (3560), Letter of Conditions, Loan Approval, or Obligation of Funds*;
- Requirements for the selection of a closing agent;
- A list of current Agency-approved closing agents;
- Documents and information that must be provided prior to closing;
- Insurance requirements; and
- Applicant responsibilities at loan closing.

These items might be covered at the preconstruction meeting (see Chapter 9), the prelease-up meeting (see Section 2 of this chapter), or, if necessary, at a preclosing meeting.

B. Review Title Insurance Binder

Upon receipt of a title insurance binder from the closing agent, the Loan Originator must carefully review it to ensure that:

- The borrower will become the owner of the property;
- All prior liens have been removed;
- Outstanding judgments have been resolved; and

- Property rights intended as security are available.

In consultation with OGC, the Loan Originator should review the legal description and any exceptions to the title to determine if the lien position is in jeopardy. If the exceptions will adversely affect the property's title, suitability, or security value, the loan cannot be closed.

If any required information is omitted, or if the title insurance binder is not satisfactory, the Loan Originator should return it to the closing agent for corrections.

C. Prepare Documents for Closing Instructions

The Loan Originator must obtain loan closing instructions from OGC and then forward these instructions to the loan closing agent. The Loan Originator should not request closing instructions from OGC until the Loan Originator has determined that the applicant will meet the loan closing conditions specified in the *Handbook Letter 102 (3560), Letter of Conditions, Loan Approval, or Obligation of Funds* sent to the applicant by the Agency at loan approval. The Loan Originator will take the following steps:

- Assemble the loan docket to be provided to OGC, including the documents and information provided as **Attachment 8-A**; and

- Forward to OGC the docket and documents. OGC will review the information provided and complete any portions if necessary. If the loan docket includes any documents that require special attention, such as a bond (replacing a promissory note) or an intercreditor agreement, OGC will review these also.

D. Provide Closing Agent with Closing Instructions and Materials

When OGC completes its review of the loan docket and documents and determines that the loan can be closed, it will provide the Loan Originator with the loan closing instructions. The Loan Originator must forward these instructions and the documents and information listed in **Attachment 8-A** to the closing agent.

All forms needed for loan closing, as well as copies of other documents to facilitate the closing agent's review (e.g., tax bills, legal descriptions, or surveys), will be attached to the closing instructions. The closing agent must ensure that they are executed at loan closing and returned to the Agency along with the other closing documents.

E. Obtain Loan Check

The amount of the check will depend on whether the borrower is obtaining interim financing or multiple advances. Funds cannot be disbursed until the mortgage is filed.

If the applicant obtained interim financing, the check will be for the entire amount of the loan. If any funds are being held back for any reason (e.g., incomplete construction),

these funds will be put in a supervised account.

- In the case of multiple advances, the check will be for an initial amount. Additional checks will be requested on a periodic basis to cover costs as the borrower requests them. See Chapter 9 for guidance on preparing partial payments.

To obtain a loan check, the Loan Originator must use AMAS as described below. The check request can take as long as 5 days from request to receipt.

- Check the screen **[M1AI]** for the undisbursed amount of the loan and the Maximum Debt Limit (MDL).

- Check the screen **[M1XI]** for the disbursed amount and accrued interest.

- Make sure that the disbursed amount plus accrued interest does not exceed the MDL. If it exceeds the MDL, the check amount will default to the amount available.

- Complete screen Request Loan/Grant Check **[M1C]**.

F. Establish Payment Schedule

The borrower is required to make loan payments on a monthly basis, payable on the first of each month. If closing does not occur on the first of the month, principal and interest payments for the period before the first payment are added to the loan amount as described in the Forms Manual Insert for *Form RD 3560-52, Promissory Note*.

G. Establish Initial Disbursement

For interim financing, all loan funds are disbursed at the Agency closing. If there is a reason to retain funds (e.g., if small construction tasks still need to be completed) these funds will still be disbursed, but they will be held in a supervised account in accordance with RD Instruction 1902-A.

For multiple advances, however, funds are disbursed over time. The initial disbursement will cover initial expenses such as the cost of the land, attorney fees, and other closing costs. Prior to closing, the borrower will inform the Agency of the amount needed for the initial disbursement. (Disbursements after closing are requested on a monthly basis for expenses incurred during the month. See Chapter 9 for a discussion of how to request partial payments.)

8.8 ACTIONS AT LOAN CLOSING

At loan closing, the Agency and the borrower must execute all necessary documents to transfer ownership and secure financing for the project.

At loan closing, the following actions must take place.

- Each document listed in **Attachment 8-A** is reviewed and executed as necessary.
- If any changes need to be made to the text of a security instrument or promissory note, a line should be drawn through only the specific language to be deleted. All persons signing the security instrument or promissory note must initial the changes.
- Funds will be dispersed, as appropriate.

8.9 POSTCLOSING ACTIVITIES

After closing, all documents need to be accounted for, recorded, and filed as necessary.

A. Obtain and Review Closing Documents

The closing agent will provide all closing documents to the Agency. The Loan Originator will review the mortgage to ensure the Agency received proper lien priority and review all other documents to ensure that they were properly executed and recorded. A final copy of the mortgage and the title insurance policy may be delivered later as described in Paragraphs 8.9 B and C.

When all documents have been reviewed, the Loan Originator will sign the Loan Closing Instructions to show that loan was closed in accordance with the instructions.

B. Record Mortgage or Deed

The closing agent must record the mortgage (or deed of trust) after closing. The closing agent will submit an unrecorded copy to the agency along with other closing documents. The recorded copy should be provided to the Agency as soon as it is completed. If the original is retained by the filing official, a confirmed copy showing the date and place of record must be provided.

C. Secure Title

The closing agent must secure the title insurance policy and deliver it to the Loan Originator and applicant within 14 days of closing.

D. Establish the Amortization Effective Date

The AED is the date that the system begins accruing interest on the loan and establishes the schedule of payments. Once the closing date occurs or the last advance check is distributed, whichever occurs last, the AED is established. If the closing date or the last advance is distributed on the first day of the month, the AED is the same day. If the loan closing occurs on any other day, the AED is the first day of the following month.

E. Put Closing Information into AMAS

When all closing documents are complete, the Loan Originator should enter the closing information into AMAS using screen Loan Closing **[M1F]**.

F. Complete Loan Docket and Transfer to Servicing Staff

Once the information has been entered into AMAS and all closing documents are filed, as necessary, the Loan Originator should put all loan closing documents in the loan docket and forward the loan docket to appropriate staff for servicing. (The Loan Servicing Staff will service the loan in accordance with procedures outlined in HB-3-3560.)

G. Populate Multi-Family Housing Information System (MFIS)

The Loan Originator will enter appropriate information into MFIS.

SECTION 2: PROJECT LEASE-UP

8.10 PROJECT LEASE-UP REQUIREMENTS

Once the loan is closed, the applicant becomes a borrower. Borrowers are then subject to program requirements regarding project management, occupancy, rents, subsidies, and financial management. Marketing, as required by the borrower's approved Affirmative Fair Housing Marketing Plan (AFHMP), must begin no less than 90 days prior to any rental activity. During project lease-up, borrowers should make special efforts to ensure that they comply with program rent and occupancy requirements as they lease available units. The Agency will take steps to help borrowers understand their responsibilities and will monitor the project closely in the early stages to ensure that these requirements are met. HB-2-3560 provides detailed guidance on these requirements. Exhibit 8-3 shows where the applicable requirements can be found in the regulation.

Exhibit 8-3

Project Management Requirements

7 CFR part 3560, subpart C: Borrower Management and Operations Responsibilities
7 CFR part 3560, subpart D: Multi-Family Housing Occupancy
7 CFR part 3560, subpart E: Rents
7 CFR part 3560, subpart F: Rental Subsidies
7 CFR part 3560, subpart G: Financial Management

8.11 MONITORING PROJECT LEASE-UP

Borrowers should be prepared to reach full occupancy with eligible tenants as quickly as possible. Loan Processing Staff must coordinate with Loan Servicing Staff to monitor the lease-up process to make sure that the following key program requirements are being met:

- Affirmative marketing has been taking place at least 90 days prior to any rental activity, as required by an approved AFHMP, to market the property to all eligible persons.

- Program occupancy rules are being observed. (All tenants admitted are eligible and all eligible tenants are being admitted.)

- Program rent rules are being observed. Tenants are being charged the correct rents as evidenced in their leases.

The Agency will receive project worksheets and tenant certifications on a monthly basis as the project leases up. Field Office Staff with the responsibility for monitoring project lease-ups must check, as part of their review of these documents, that rent and occupancy requirements are being observed.

In addition, there are three key occasions early in the project's life to monitor project operations and address issues with the borrower: the pre-occupancy conference, the 90-day visit, and the 11-month warranty inspection.

A. Pre-Occupancy Conference

The pre-occupancy conference takes place 90 to 120 days before lease-up begins and includes the Agency, the borrower, and the management agent. This meeting is a time to explain program requirements and reach agreement on how property will be operated. At a minimum, the Loan Originator should explain the following items:

- **Management documents.** The Agency should discuss the management plan, management certification, lease, and budget and point out aspects that are particularly important to program compliance. Examples of documents to review at this meeting include:

  ◊ *Form RD 3560-9, Interest Credit and Rental Assistance Agreement*;

  ◊ *Form RD 3560-29, Notice of Payment Due Report*;

  ◊ *Form RD 3560-8, Tenant Certification*;

  ◊ *Form RD 1910-5, Request for Verification of Employment;*

  ◊ *Form HUD 935.2, Affirmative Fair Housing Marketing Plan;*

  ◊ *Form RD 400-4, Assurance Agreement;*

  ◊ *Form HUD 928.1, HUD Fair Housing Poster (English);*

  ◊ *Form HUD 928.1A, HUD Fair Housing Poster (Spanish)* in addition to the English version of the poster, when appropriate; and

  ◊ *Form AD-475-C, USDA "…and Justice for All" Poster*.

- **Initial operating issues.** In accordance with *Forms RD 3560-33* and *-34*, the borrower is required to provide initial operating capital (2 percent contribution) by the time the loan is closed or interim funds are obtained, whichever occurs first. The Loan Originator should ensure that these funds are deposited in the General Operating Account and made available to the project. The Loan Originator should also review with the borrower the list of expenses that the Agency approved during the loan application stage (Paragraph 5.9 D).

- **Tenant issues.** Initial tenant issues are likely to include tenant eligibility, waiting list procedures, and tenant grievances (see Chapter 6 of HB-2-3560).

- **Civil rights issues.** The borrower must understand that marketing, in accordance with their approved AFHMP, must begin no less than 90 days prior to the beginning

of rental activities. Also the "approved plan" must be posted in a conspicuous location, along with the *Form HUD 928.1, HUD Fair Housing Poster (English),* and *Form AD 475-C, USDA "…and Justice for All" Poster*. The borrower must be provided with the required posters and the approved marketing plan at this time. It is also an opportunity to review with the borrower the requirements of *Form RD 400-4*. This form requires the borrower to collect and maintain statistical data concerning race, national origin, and sex in a manner that will enable the Agency to complete periodic civil rights compliance reviews.

Where a significant number or proportion of the population needs information in a language other than English, the borrower will take reasonable steps to provide information in appropriate languages to such persons. This requirement applies with regard to written material of the type that is ordinarily distributed to the public.

B. The 90-Day Visit

The 90-day visit is a chance to see that the project is making progress with lease-up and that program rules are being observed. It should take place between the sixtieth and ninetieth days that a project is open for occupancy.

The 90-day visit is similar to the supervisory visit described in Chapter 9 of HB-2-3560, but will concentrate on issues appropriate to a new project (e.g., there is generally no need for a physical inspection since all units are new). The following key items should be examined during the visit:

- **Tenant files.** Confirm that tenant files reflect compliance with program rent and occupancy rules.

  ◊ Do the files demonstrate that the units are occupied by eligible tenants?

  ◊ Are the rents indicated in the lease consistent with program rent requirements?

  ◊ Do the leases conform with agency requirements?

- **Marketing plan.** Confirm that the borrower is following the AFHMP.

- **Waiting list.** Check the waiting list for rejections, acceptances, and withdrawals to confirm that selection priorities were observed and applied correctly.

- **Borrower contribution.** Confirm that 2 percent operating capital is being used for initial operating expenses. In particular, make sure that the borrower understands that these funds are to be spent on initial operating expenses.

- **Financial management.** Confirm that all appropriate accounts have been set up and systems are in place to track funds. See HB-2-3560 for guidance on financial management.

- **Project maintenance.** Confirm that the project has a maintenance plan and that initial maintenance has been performed satisfactorily.

C. The 11-Month Warranty Inspection

Eleven months after project completion, the Agency should conduct a physical inspection of the property to verify the condition of items under the 1-year builder's warranty and ensure that there are no repairs to be made before the warranty expires. This inspection is a good time to check on the property's general physical condition and address any other physical property or maintenance issues that are identified.

The 11-month warranty inspection should be monitored through the MFIS.

ATTACHMENT 8-A

LOAN CLOSING DOCUMENTS

The following documents must be prepared prior to closing and will be executed/ submitted at closing:

- Promissory Note (*Form RD 3560-52*);
- Interest credit and rental assistance agreement (*Form RD 3560-9*);
- Mortgage;
- Financing statements and/or security agreements, if applicable;
- Title insurance (borrower must provide binder prior to closing; policy, after closing);
- Organization papers (Certificate of Good Standing, Partnership Agreement);
- Affidavits — as appropriate;
- Evidence of payment of taxes;
- Evidence of all required insurance policies (property, liability, and fidelity bond) as required by *[7 CFR 3560.105]*;
- Deeds; and
- Loan Closing Instructions.

Other items to be completed not later than loan closing:

- Meeting conditions identified in *Handbook Letter 102 (3560), Letter of Conditions, Loan Approval, or Obligation of Funds* (must be signed by the borrower and filed with the Agency);
- Evidence of deposit of initial operating capital;
- Evidence of initial equity contribution; and
- Applicant's certification of availability or unavailability of other Government assistance.

CHAPTER 9: PROJECT CONSTRUCTION

9.1 INTRODUCTION

Management of construction is the borrower's responsibility. However, the Agency will monitor construction to ensure that it complies with the project plans and specifications and to protect the government's security interest. Consequently, the Agency plays an active oversight role in the construction process, from reviewing planning documents to inspecting construction work. This chapter describes the Agency's procedures for carrying out these responsibilities. It summarizes the requirements established under RD Instruction 1924-A, and RD Instruction 1924-C.

The chapter is organized as follows:

- Section 1 describes construction requirements, including construction standards, contracting methods, contractor requirements, and cost certification procedures.
- Section 2 describes the contracting procedures from the invitation to bid through the preconstruction conference and the notice to proceed.
- Section 3 describes the Agency's responsibilities during construction, including inspections, concurrence in change orders and contractor payments, and the contract close-out process.

9.2 OVERVIEW OF THE AGENCY'S ROLE IN THE CONSTRUCTION PROCESS

The Agency's involvement in the construction process begins with the submission of the initial application. The State Architect reviews all construction documents, beginning with the preliminary planning documents and concluding with the final plans, specifications and cost estimate. The State Architect will advise the loan approval official on acceptability of the project design, specifications, and cost estimates before the loan is closed or construction begins (whichever occurs first). The State Architect will also consult with the State Environmental Coordinator regarding any mitigation measures required by the environmental review, which may affect project plans and specifications. The State Architect acts in an advisory role to the processing and approval officials, unless specifically delegated responsibility for "approval" of design, contracts, etc.

The Agency concurs in the borrower's selection of a contractor and in the construction contract. The Agency requires that a preconstruction conference be held, as described in Paragraph 9.11.

During construction, the Agency assumes an oversight role, performing inspections and concurring in change orders and contractor payments. The Agency also performs a final inspection before contract close-out.

(Note: The Agency's role in construction oversight does not diminish the role of the project architect hired by the borrower. The project architect is responsible to the borrower for

ensuring that the project is constructed according to the Agency-accepted plans and specifications. The project architect's responsibilities include regular inspections, payment certifications, change order approvals, and other oversight of construction activities.)

9.3 CONSTRUCTION FINANCING

There are two methods of financing construction: interim financing and multiple advances.

- **Interim financing.** If the borrower obtains interim financing, an interim lender provides the funds for construction and the Agency does not close its loan until after construction. The Agency prefers to use interim financing whenever possible since it is, in essence, financing a finished product.

- **Multiple advances.** If the borrower obtains multiple advances, the Agency advances funds to the borrower to pay for construction as the work progresses. If multiple advances are used, the borrower must document that interim financing is not available at suitable rates or terms.

These methods are described in Chapters 4 and 5. Regardless of the method used, the Agency will assist in monitoring the construction process as described in this chapter.

9.4 IDENTIFY-OF-INTEREST RELATIONSHIPS

If any parties in the construction process have an identity-of-interest (IOI) relationship with the borrower, the following steps must be taken:

- The borrower must disclose the IOI relationship to the Agency;

- The construction costs must compare favorably with projects not involving an IOI; and

- The contractor must certify all actual costs in accordance with cost certification procedures described in Paragraph 9.8.

SECTION 1: CONSTRUCTION REQUIREMENTS

9.5 CONSTRUCTION STANDARDS

Construction standards are prescribed in RD Instruction 1924-A. Projects must be designed to meet or exceed:

- The development standard adopted by the Agency in the State where the project is located;
- Agency thermal performance standards; and
- Applicable state and local laws, ordinances, codes, and regulations.

Land and site development must meet the standards and requirements in RD Instruction 1924-C. These requirements are discussed in Chapter 3. The project architect must certify that the final plans and specifications comply with these standards prior to Agency approval of the loan. *Form RD 1924-25, Plan Certification,* must be used for this purpose. In addition, the project architect must also certify that the project has been designed in accordance with all applicable accessibility standards and guidelines. These standards may include, but not be limited to, the Uniform Federal Accessibility Standards (UFAS), the Fair Housing Act Accessibility Guidelines (FHA/AG), the Americans with Disabilities Act Accessibility Guidelines (ADA/AG), and any applicable State or local requirements.

9.6 METHODS OF CONSTRUCTION

There are three methods of constructing Multi-Family Housing projects: competitive bid contracts, negotiated bid contracts, and owner-builder.

A. Competitive Bid

All construction contracts must be awarded by competitive bid unless an exception is granted for a negotiated contract or the owner-builder method of construction, as described in Paragraphs 9.6 B and C.

For competitive bidding, the borrower provides public notice inviting contractors to submit a bid within a specified time frame. Contracts are selected based on cost and awarded to the lowest responsible bidder.

The contractor and the contract price must have Agency concurrence. The contractor must be licensed as required by the State and must not be on the list of debarred contractors. Unless waived by an interim lender, the contractor must provide a performance and payment bond or an acceptable alternative as described in RD Instruction 1924-A.

The competitive bidding process is discussed further in Paragraph 9.9.

B. Negotiated Contract

Borrowers may request an exception from competitive bidding if they prefer to use a specific contractor or if the competitive bidding process does not yield an acceptable bid. Negotiated contracts are often used by borrowers with a construction company having an IOI. The State Director may grant an exception only if the following conditions are met:

Competitive Bids and Negotiated Contracts

At times of high-construction activity when construction prices tend to be higher, negotiated bids may provide lower costs. At times of low-construction activity, competitive bidding is more likely to yield lower costs.

- The cost under the negotiated contract compares favorably with similar and recent construction in the market area;
- The proposed contractor is a reliable contractor and licensed to perform the construction work in accordance with local requirements where the project is located; and
- The reasons for requesting the exception from competitive bidding are documented.

The information required for a written request to grant an exception to the competitive bidding requirements must be in accordance with RD Instruction 1924-A.

C. Owner-Builder [RD Instruction 1924.13(e)(2)]

The Owner-builder method of construction is used when the construction company is identical to the borrower/owner entity. Owner-builders must be qualified to perform the construction work and show that they are licensed in accordance with local requirements where the project is located. There is NO written agreement or contract between the borrower and the construction company to build the project. However, there will be separate contracts with companies to perform portions of the work, such as plumbing and electrical systems.

Before granting an exception to allow an owner-builder arrangement, the Loan Originator and the State Architect/Engineer will review the borrower's written request, drawings, specifications, and cost estimates to determine whether the arrangement is in the best interest of all parties. All borrowers with owner-builder construction arrangements are required to certify the final construction costs as described in Paragraph 9.8.

The information to be included in the borrower's written request must be in accordance with RD Instruction 1924-A.

9.7 CONTRACTOR REQUIREMENTS

The Agency must ensure that the contractor meets the requirements described below.

A. Debarment and Suspensions

All contractors submitting a bid in excess of $25,000 must certify that they are not currently debarred or suspended from participating in Federally funded programs. The certification statement is included on *Form AD 1048, Certification Regarding Debarment.* Failure to submit the certification is grounds to reject the bid. It is the Agency's responsibility to check the list of debarred and suspended contractors to make sure the contractor is not listed there (even if the contractor has submitted the certification).

B. Insurance

The contractor must have property and liability insurance for construction to protect the borrower and contractor from a variety of losses. The construction contract must not become valid until proof of insurance is received by the Agency. The amount of coverage and the other insurance provisions of the coverage must be in accordance with the project's construction documents.

C. Payment and Performance Bonds

Payment and performance bonds covering the contractor's work must be executed prior to the start of any construction. The bonds must each have a face value of 100 percent of the construction contract. These surety bonds must only be obtained from a corporate bonding company listed on the current U.S. Department of Treasury Circular 570 (published annually in the *Federal Register*), as holding a certificate of authority, as an acceptable surety on Federal bonds, and as legally doing business in the State where the project is located.

If interim financing is involved, the interim lender may waive the bonding requirement. The waiver must be in writing and attached to the contract documents.

An alternative to the bonding requirement is a letter of credit. Requirements for letters of credit are discussed in Paragraph 9.7 D.

D. Letters Of Credit

In lieu of payment and performance bonds, the lender (or in the case of multiple advances, the Agency) may accept an unconditional and irrevocable letter of credit issued by another lending institution to secure the completion of construction. The letter of credit must equal the amount of the construction contract and must remain in effect until the date of final acceptance of work by the owner and the lender (or the Agency). In addition, the letter of credit must stipulate that the lending institution that issued the letter of credit, upon written notification by the owner or lender (or the Agency) of the contractor's failure to perform under the terms of the contract, will provide payment up to the amount of the contract to satisfy all prior debts incurred by the contractor in performing the contract and all funds necessary to complete the work.

An irrevocable Letter of Credit issued by a bank or other approved financial institution must meet strict credit quality requirements (see Exhibit 9-1 for credit quality requirements) and be for 100 percent of the construction contract. Further requirements for letters of credit include:

- The issuing institution must not be an affiliate of the lender, unless it has an acceptable rating from an approved rating agency, which is not an affiliate of the lender;
- Federal Home Loan District Bank-enhancement of a member bank letter of credit is an acceptable method for meeting Agency credit standards;
- Rural Development, USDA, must be named as the sole beneficiary;
- The term must be a minimum of 1 year; and
- The form of the letter of credit and the sight draft must be reviewed and approved by the Agency.

Exhibit 9-1

Credit Quality Requirements for Letters of Credit

Rating Agency	Type of Collateral	Rating
Thomson's Bankwatch	N/A	B or better
S&P	Long-term senior debt, if rated, or long-term bank deposit	A or better
Moody's	Long-term senior debt, if rated, or long-term bank deposit	A or better

E. Warranties

At the time the project is determined ready for occupancy, the contractor must execute *Form RD 1924-19, Builder's Warranty*, providing a 12-month warranty on work performed and materials supplied.

F. Compliance with Civil Rights Requirements

The applicant/borrower must comply with all applicable civil rights requirements. A partial list includes:

- Architectural Barriers Act (ABA);
- Section 504 of the Rehabilitation Act of 1973 and UFAS;
- Americans with Disabilities Act and ADA/AG;

- Fair Housing Act and FHA/AG;
- Executive Order 11246; and
- Any State or local requirements.

9.8 COST CERTIFICATION

In certain cases the borrower, contractor, subcontractors, and suppliers must each provide a certification of the actual costs of construction. Appropriate circumstances for cost certification include:

- All situations where there is an IOI; and
- Other cases deemed appropriate by the Agency. For example, the Agency may request cost certifications to assist in cost tracking and help determine whether bids on future projects are reasonable.
- Cost Certification will be performed in accordance with § 1924.13 (e)(1)(v).

The actual direct costs to the company with an IOI with the borrower must be reported on *Form RD 1924-13, Estimate and Certificate of Actual Cost* and audited by a licensed Certified Public Accountant (CPA) in accordance with Government audit standards (GAS). The audit may be contracted out by the Agency.

Reviewing construction costs is an ongoing process for Agency staff, beginning with the preliminary cost estimate provided in the initial application through the final payment to the contractor.

A short summary of the cost review process is provided in Exhibit 9-2.

Exhibit 9-2

Overview of the Cost Review Process

The Loan Processing Staff will:

- Compare the applicant's preliminary cost estimate to historic costs and nationally recognized cost databases and discuss any concerns with the applicant.
- Review the applicant's cost estimate provided on *Form RD 1924-13*, and ensure any previous concerns were addressed satisfactorily.
- Review payment requests and change orders to check arithmetic and verify that totals do not exceed contract limits.
- Review the final payment request and the cost certification provided on *Form RD 1924-13*.

SECTION 2: CONTRACTING PROCEDURES

9.9 COMPETITIVE BIDDING PROCEDURES

The borrower is responsible for following proper bidding procedures in accordance with RD Instruction 1924-A. Generally, the project architect oversees the bid invitation and selection process. The Agency serves only in an oversight role to ensure that proper bidding procedures are followed.

The purpose of competitive bidding is to obtain acceptable construction services for the lowest costs possible. To be successful, the process must maximize open and free competition. Conditions must not exist or be established that would give preference to a specific bidder or type of bidder. If no acceptable bids are received, the borrower may competitively rebid the contract or proceed to a negotiated bid, subject to Agency approval.

A. Contents of the Bidding Package

For competitive bids, the project architect prepares documents to be distributed in the bidding package. The bidding package must include the items listed in RD Instruction 1924.13(e)(1)(ii).

B. Distribution of the Bidding Packages

The invitation to bid must be distributed to all interested parties. The borrower may send the invitation directly to specific contractors from whom bids are desired, but public notice must always be required so that other contractors have an opportunity to bid. Prospective bidders can be informed of requests for bids through publication in local newspapers, plans services and similar services.

9.10 AGENCY CONCURRENCE IN THE CONTRACT

Normally, the borrower, project architect, bidders, and interested persons attend a bid opening. An RD representative should attend each bid opening. The RD representative is an observer, not a referee, and as such cannot waive bidding requirements and should not address any questions concerning bid acceptability, responsiveness of bids, responsibility of bidders, etc.

A. Review of the Bid

The borrower must submit the following for Agency review:

- A bid summary that shows the project architect's estimate of costs and all bids submitted.
- A revised final cost breakdown on *Form RD 1924-13*.

- The project architect's recommendation. (If the project architect does not recommend that the bid be awarded to the lowest bidder, the recommendation must include a justification for an award to a higher bidder, or, to accept no bids.); and

- Documentation of the borrower's decision (copy of the bid selected).

Loan Processing Staff should review the bid documentation to confirm the following items:

- The selected bid is properly completed including the bid bond;

- Based on the revised final *Form RD 1924-13*, there is enough money is to cover the construction costs; and

- The project architect has provided sufficient justification for the borrower's bid selection.

After these items have been reviewed, the Agency should advise the borrower in writing of any problems or of its concurrence with the bid award.

B. Contract Documents

The borrower may use the construction contract form published by the American Institute of Architects (AIA Document A-101) with the Agency-approved amendment (RD Instruction 1924-A, Guide 1, Attachment 6). RD Instruction 1924-A also references use of Agency forms for MFH and other more complex projects. Other contract documents, acceptable to the Loan Approval Official and containing the requirements of RD Instruction 1901-E may be used provided they are customarily used in the area and protect the interest of the borrower and the Government. In such cases, the OGC should be consulted.

The construction contract must contain the nondiscrimination language required by Executive Order 11246 and regulations issued by the Department of Labor (DOL). That language may be found in the DOL regulations at 41 CFR 60 [§ 60-1.4(b)] and on pages 2 through 4 of *Form RD 1924-6, Construction Contract*.

A contract is signed and concurred in by the State Director (or his/her delegate) after it is signed by the borrower and contractor. The Agency is not a party to the contract and does not incur any liability under it, but still must ensure that the borrower and the contractor comply with all applicable regulatory requirements.

Loan Processing Staff should maintain all construction-related documents in the borrower's construction file. A complete list of contract documents is provided in Exhibit 9-3. See RD Instruction 1924-A for more guidance on contract documents (1924.13(e)(1)(ii) and Guide 1).

9.11 PRECONSTRUCTION CONFERENCE

Once the contract is awarded and executed, all interested parties must attend a preconstruction conference. The conference serves to clarify arrangements and expectations in advance to avoid conflicts later in the construction process. *Form RD 1924-16, Record of Preconstruction Conference,* or an industry equivalent may be used as a guide for an agenda.

The preconstruction conference should include the borrower, contractor, architect, lender representatives (if interim financing was obtained), and an Agency representative. The project architect should lead this meeting. It should cover, at a minimum, the following items:

- Responsibilities of all parties, including the contractor, the Agency, and the borrower, including identifying the authorized representatives for each entity;
- The work to be undertaken;
- Applicable wage rates and The United States Equal Employment Opportunity Commission (EEOC) requirements;
- The U.S. Department of Labor Occupational Safety and Health Administration (OSHA) requirements;
- Contractor's use of the site (parking, security, permits, dust control);
- Protection of stored materials;
- Mitigation measures required by the environmental review;
- Procedures to be used for inspection, change orders, and payment requests;
- Timeframes for starting and completing work;
- Requests for extending contract times;
- The contract agreement and any subcontracts;
- Dispute resolution procedures; and
- Close-out procedures.

Exhibit 9-3

Contract Documents

- Advertisement for Bidders;
- Instructions for Bidders;
- Bid;
- Bid Bond;
- *Form RD 400-6, Compliance Statement*
- Notice of Award;
- *Form AD 1048, Certification Regarding Debarment and Suspension*
- RD Instruction 1940-Q, Exhibit A-1, Disclosure of Lobbying Activities
- Agreement between Owner and Contractor
- Certificate of Owner's Attorney;
- Contract Concurrence;
- Payment Bond;
- Performance Bond;
- Notice to Proceed;
- General Conditions of the Construction Contract ;
- *Form RD 3560-31, Identity of Interest Disclosure/Qualification Certificate*;
- Drawings and specifications;
- Contract Change Order;
- Payment request or certification;
- Labor Standards Provisions, only for projects subject to Davis-Bacon
- Wage determinations (Department of Labor); and
- *Form RD 1924-19 Builder's Warranty*, or equivalent.

9.12 NOTICE TO PROCEED

The Notice to Proceed establishes the contractor's permission to proceed with construction. It gives the contractor permission to go to the borrower's land and begin work, and it identifies the start date for the time period of the contract. It is issued by the borrower after the contract has been executed and the preconstruction conference has concluded. It is signed by the borrower and the contractor. The Notice to Proceed should not be issued until the Agency loan is closed (for multiple advances) or the interim lender has concurred (for interim financing).

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SECTION 3: CONSTRUCTION OVERSIGHT

9.13 PROGRESS INSPECTIONS

The borrower maintains full responsibility for the quality of construction; however, the Agency must still take steps to protect the value of its investment. Consequently, the Agency must conduct periodic progress inspections to ensure that work is proceeding as planned. These inspections must be performed by persons with knowledge of MFH construction and experience in conducting Agency inspections.

A. Timing of Inspections

Inspections must take place prior to authorization of partial payments, normally at least monthly. In addition, the following three inspections must take place for each building:

- The initial inspection must be made just prior to or during the placement of concrete footings or monolithic footings and floor slabs.

- Another inspection must be made when the building is enclosed; structural members are still exposed; roughing in for heating, plumbing, and electrical work is in place and visible; and wall insulation and vapor barriers are installed. Customarily, this is prior to installation of brick veneer or any interior finish materials.

- The final inspection must be made when all development has been completed and the project is ready for occupancy for its intended use.

Who Performs Inspections?

Several parties have an interest in the satisfactory completion of project construction and, therefore, conduct inspections.

- The project architect has the primary responsibility for performing regular inspections. These inspections should take place at least monthly and serve to document partial payment requests.
- An Agency representative with sufficient knowledge of MFH construction should also inspect the property on a monthly basis and as needed. It is good practice for the Agency architect to coordinate with the project architect to perform joint inspections and to time these inspections with partial payment requests.
- The interim lender (if there is one) is also encouraged to make inspections of the

B. Inspection Procedures

Actual construction work needs to be inspected to determine and verify that terms and conditions of the construction contract are met. The project plans and specifications signed by all parties are used to judge the acceptability of the work. Items that do not meet these or other contract documents must be either removed, corrected, or in some cases accepted with an adjusted price.

The Agency inspector must use *Form RD 1924-12, Inspection Report.*

- The inspection report must provide a description of the conditions seen, especially those that differ from the plan and specifications. Discrepancies with the plans and specifications must be brought to the attention of the project architect and documented until the issue is resolved.

- For inspections prior to making payment, the inspector must confirm the estimated values of work completed and properly stored materials and itemize the percent of work complete for each task. Payments must be adjusted if there are any discrepancies.

- If environmental mitigation measures are required and included in the construction contract, the inspector must document compliance with such measures on the report. Noncompliance with mitigation measures should be reported promptly to the Loan Originator.

- A (pre-final) inspection must be made to determine if the project is ready for occupancy. If so, the project architect must issue a Certificate of Substantial Completion and submit a written report (punch list) of the work yet to be completed to the owner, the contractor, and the Agency. The project architect should notify the Agency in sufficient time for the Agency to participate in the inspection. The owner, project architect, Approval Official, and State Architect should jointly participate in the inspection. The Agency should receive a copy of all inspections from applicable regulatory authorities at this time.

- The inspection report must be signed by the Agency inspector.

- Copies of all inspection reports (by the Agency inspector, the project architect, and any other inspectors, e.g., local, State, fire marshal) should all be kept in the construction file by the Agency.

9.14 CHANGE ORDERS

Change orders are used to address changes in: facility design; labor or material or their cost; or the time requirement of the project. They are used when an owner, the project architect, or local authorities require changes in the work or other unforeseen circumstances require a change in the contract's scope of work. Any changes that occur after a contract is executed and affect project design, materials, costs, scope, or schedule must be documented as a contract change order. The owner, with the assistance of the project architect, will obtain Agency concurrence in writing for all change orders prior to the performance of the work. The change order becomes a part of the construction contract. Form RD 1924-7, Contract Change Order, or its equivalent must be used. Changes that are deemed minor and do not affect costs should be documented as field orders by the project architect.)

- Generally, total changes to the work should not exceed 20 percent of the original contract cost. If changes exceed this threshold, an increase in performance and payment bonds will be necessary.

- The change order must be supported by a cost breakdown, including any profit and overhead. No additional profit or overhead is allowed in IOI cases if either totals more than the amounts included in the final Agency-approved cost estimate on Form RD 1924-13.

- If the change orders result in an increase in project costs, there are several ways to pay for these costs:

  ◊ The borrower finds the funds elsewhere.

  ◊ Costs are reduced from another part of the project, and a deductive change order is executed to document that change. Where funds are derived from reductions in other portions of the work it is critical to assure that these changes to not affect the overall value of the project. It may be necessary to refer such changes to the appraiser for this determination.

  ◊ In rare cases, the Agency may make a subsequent loan. Subsequent loans may only be made to complete, improve, repair, or make modifications to a project. Subsequent loan funds may not be used to reimburse an owner for additional contributions that were made to complete a project. In addition, no commitment for additional funds will be made by the Agency unless, and until, additional funds have actually been obligated. Finally, if a subsequent loan is made, the borrower equity and initial operating capital contribution requirements apply, and the total amount of the combined loans may not exceed 95 percent of the appraised value, or total development cost, whichever is less.

◊ No increase in per-unit development cost will be approved, whether the circumstance causing the cost increase occurs before, during, or after the construction period, unless these conditions were unforeseen factors beyond the owner's control; design changes that were required by the Agency or local government; or changes in financing that were approved by the Agency. Any increase in cost must be approved by Rural Development in writing before the expense is incurred.

◊ Under no circumstances will a cost increase request be approved without concurrent agreement between Rural Development and the applicant/borrower as to how the cost increase will be funded. In most cases, this will mean that the owner will need to contribute additional funds.

- If the change orders result in a decrease in project costs:

  ◊ Unused funds may be used to cover certain other eligible project costs only if they were unknown to the borrower at the time the loan was approved.

  ◊ Otherwise, the amount of the loan will be decreased and the funds deobligated.

- Change orders do not generally require preparation of *Form RD 1940-22, Environmental Checklist for Categorical Exclusions* or amendment of the original environmental assessment, provided that the action will not alter the purpose, operation, location, or design of the project as originally approved.

9.15 PARTIAL PAYMENTS

The borrower and the Agency must take proper precautions to ensure that all payments made to the contractor are properly applied against bills for materials and labor procured under the contract.

Form RD 1924-18, AIA Form G702, or other professionally recognized form that contains architect certification and approval, approval of the borrower, and conditional concurrence of Agency must be used. If the Agency form is not used, Agency concurrence language must be added to the form used.

The following procedures must be used in approving construction payments:

- Payment requests are submitted by the contractor to the owner. The request must include a statement showing total amount owed to date for material and labor procured under the contract. It may also include evidence showing that previous partial payments were applied properly. The payment requests should provide the same breakdown of construction costs as the final and approved cost estimate before construction began.

- The breakdown of cost items in the payment requests must be the same used in the final Agency-approved cost estimate on Form RD 1924-13.

- The project architect and the borrower must review the request and confirm its accuracy, based on a site inspection, before signing and forwarding it to the Agency.

- Payment requests may include costs associated with a change order only when the change order is approved by the Agency. Each approved change order should be entered as a separate cost line item on the request form.

- The Agency will concur with the or require revision to the amount of partial payment based on a site inspection.

- The borrower must retain a percentage of the amount due the contractor in accordance with RD Instruction 1924-A until all work has been completed and accepted. The surety company that issued the payment and performance bonds, if applicable, must provide a written consent for the retainage to be released. Retention percentages must be clearly articulated in the construction contract. When construction is determined to be substantially complete, but some work remains to be completed, an amount adequate to cover any remaining work items must be withheld from the contractor. See Paragraph 9.17 for a discussion of final payments at contract close-out.

9.16 OBTAINING THE CHECK FOR MULTIPLE ADVANCES

Once the Agency has approved the payment request, the Loan Servicer must order the check using AMAS. Note that the check request will take approximately 5 days from request to receipt.

When the check is received it is deposited in the supervised bank account in accordance with RD Instruction 1902-A. As work is completed, the Agency can release these funds to the borrower. If all work for that payment request is completed at the time of check receipt, the entire amount of the check can be released immediately to the borrower.

It is important to monitor the maximum debt limit (MDL) for the loan. The Loan Servicer should insure that that the disbursed amount plus accrued interest does not exceed the MDL.

9.17 CONTRACT CLOSE-OUT

When work is complete, the contract is closed out—all payments are made and all claims are released. However, prior to close-out, the Agency and the borrower must ensure that all work was performed according to the contract and that it meets acceptable standards.

A. Final Inspection

The project architect should coordinate the final inspection with all parties, including the Agency and the interim lender's fee inspector (if applicable), so that all inspectors may be present on the site at the same time. A final inspection must be conducted before the final payment to the contractor to ensure that all work is performed according to project plans and specifications and meets all applicable codes and quality standards. If the project is receiving interim financing, the Agency loan must not be closed until this inspection is performed.

A final inspection is conducted when all construction work is completed, including any punch-list items, and the project is fully ready for its intended use. The owner shall acknowledge final acceptance by signing an Agency inspection report. The final inspection will be made at the earliest possible date after completion of the planned development. When several buildings are involved, inspections may be made upon completion of each building. No inspection will be recorded as a final inspection until all deficiencies or nonconforming conditions have been corrected. When codes and ordinances require inspections by local authorities, their final acceptance will be required prior to the Agency's final inspection and acceptance.

B. Final Payment

The final payment to the constructor will be based on the results of the final inspection. Before the final payment can be made, the final documents as listed below must executed:

- *Form RD 1924-9, Certificate of Contractor's Release,* or other professionally recognized form.
- *Form RD 1924-10, Release by Claimants,* or other professionally recognized form.
- *Form RD 1924-19, Builder's Warranty* or equivalent, and any related documents required by the contract.
- Acceptance by responsible public authority. When local or state codes and ordinance require inspections, final acceptance by the local authority will be required prior to final inspection. A certificate of occupancy may be evidence of this inspection.
- Final Certificate of Payment by the project architect.
- Cost certification, if applicable.

If work cannot be completed due to weather or other extenuating circumstances (e.g., landscaping work that cannot be done during the winter), the borrower will withhold funds to ensure completion of the work. Usually, the amount withheld is 1.5 to 2 times the dollar value of the work completed. (This serves as an incentive to the contractor to

return and complete the work.)

Interim funds remaining because of early completion of construction will be returned. The leftover interest may be used for certain other eligible loan purposes critical to the completion of the project that were unknown to the applicant and contractor at the time the loan was approved.

CHAPTER 10: SUBSEQUENT LOANS *[7 CFR 3560.73]* AND LOANS FOR FINAL PAYMENTS *[7 CFR 3560.74]*

10.1 INTRODUCTION

The Agency may extend additional credit to a borrower for a Multi-Family Housing project initially financed by the Agency in the form of a subsequent loan. Subsequent loans may be made to current borrowers to complete, improve, repair, or make modifications to a Multi-Family Housing project or to finance equity to avert prepayment of a Multi-Family Housing project. In special circumstances, a subsequent loan may be used to add units to a project to provide access for persons with disabilities.

As the average age of properties in the Agency's portfolio increases, Loan Processing Staff are likely to encounter a growing number of subsequent loan requests from borrowers who have projects with immediate capital replacement needs, but insufficient reserve funds to meet those needs. Because subsequent loans increase project debt, the Agency must pay particular attention to ensuring that projects offer sufficient security to protect both the Agency's subsequent and initial loans in the event of default.

This chapter provides guidance to Loan Originators in evaluating whether approval of a subsequent loan is the appropriate action to take on a project. This evaluation must include an analysis of the applicant's management performance, as well as an analysis of the project's ability to support the additional debt service to cover the subsequent loan. Such an evaluation must also be made if a borrower wishes to assume a subsequent loan with non–Agency debt.

This chapter also covers the circumstances under which the Agency will make subsequent loans and describes how the procedures for underwriting and processing these loans differ from initial Multi-Family Housing loans.

A loan request to add units to an existing project because of a need for additional units is considered to be a second phase of a project and an initial loan, not a subsequent loan. Such loans to add new units compete for funding with all other initial Multi-Family Housing loans and are processed and underwritten in the same manner as initial Multi-Family Housing loans.

10.2 OVERVIEW

Subsequent loans may be made to current borrowers for a project with Agency financing to:

- Complete, improve, repair, or make modifications to the project.
- Finance equity to avert prepayments of the project. Such loans are discussed in detail in Chapter 15 of HB-3-3560.
- As a last resort, when modification of existing units is not possible, develop additional units to provide access for persons with disabilities. Such units do not

compete with other projects under the Notice of Funding Availability (NOFA) system.

A. Loans for Existing Units

A subsequent loan for existing units might be appropriate to:

- Complete needed repairs and rehabilitation work;
- Replace obsolete units (no additional units may be added to the original number of units); and
- Complete a project when there have been unforeseen factors beyond the owner's control, design changes that were required by the Agency or local Government, or changes in financing that was approved by the Agency (for example, where the cost of completing the project has escalated due to unexpected and prolonged inclement weather, which caused excessive delays in constructing the project, or where unexpected additional fees have been applied by the local Government). Subsequent loan funds may not be used to reimburse an owner for additional contributions that were made to complete a project.

If a subsequent loan is made, the borrower equity and initial operating capital contribution requirements apply.

- Subsequent loans for repair and rehabilitation do not compete for funding, and borrowers can apply for a subsequent loan at any time.
- The processing of subsequent loans for repair or rehabilitation typically begins when the Agency and the borrower identify the need for improvements at a project as a result of monitoring or servicing actions. Subsequent loans for this purpose are prioritized, selected, and processed in accordance with National Office instructions. States must categorize subsequent loan requests in accordance with Paragraph 10.3.

B. Loans Made with Conventional Financing

When a borrower wants to obtain a subsequent loan from a conventional lender, the Agency must approve the loan. In evaluating whether to approve the loan, the Agency will apply the underwriting criteria of applicant eligibility, project eligibility, reasonable costs, project feasibility, and security described in Paragraph 10.11.

SECTION 1: QUALIFYING FOR SUBSEQUENT LOANS

10.3 ELIGIBILITY, LOAN PURPOSES, AND PRIORITIES

A. Project Eligibility

As soon as it becomes evident that a subsequent loan request may be made, the Loan Originator must make an evaluation of the project in accordance with Chapter 6 of HB-3-3560. This evaluation will determine whether the additional commitment that such a loan represents is in the best interest of the Agency and the tenants. If this analysis concludes that the project is no longer suitable program property, the subsequent loan must not be made.

B. Eligible Loan Purposes

The provisions of 7 CFR 3560.53 and 7 CFR 3560.54, describing permitted and restricted loan purposes, apply to subsequent loans. Additional guidance specific to subsequent loans is provided at 7 CFR 3560.73.

The annual funding notice to the States, RD Instruction 1940-L, specifies the funds available for rehabilitation and new construction.

C. Repair and Rehabilitation Loan Funds

Subsequent loan requests for repair and rehabilitation are funded in accordance with guidance provided by the National Office. Loan Originators must categorize loan requests as follows:

- **Health and safety concerns.** Projects with outstanding health and safety deficiencies.

- **Inventory properties.** Projects that are in inventory or that need an additional loan to fund an approved workout agreement.

- **Deferred maintenance and Fair Housing compliance.** Projects with deferred maintenance and Fair Housing compliance deficiencies.

10.4 DESIGN REQUIREMENTS

All improvements, repairs, and modifications made as part of a subsequent loan must be in accordance with RD Instructions 1924-A and 1924-C.

The Loan Originator must require that the loan applicant obtain appropriate architectural services whenever any of the following conditions exist:

- New enclosed habitable space is being added;
- Architectural services are required by State law; or
- The Agency determines that the work being performed requires architectural services. This should include any work involving the structural, mechanical, plumbing, or electrical systems of a residential building, or requires a building permit from a local building jurisdiction.

The specific architectural service should be as deemed appropriate for the type and scope of work involved in the project.

10.5 ENVIRONMENTAL REQUIREMENTS

Subsequent loans are subject to the same environmental requirements as initial loans. Chapter 3 and RD Instruction 1940-G provide further details on environmental requirements.

10.6 LOAN LIMITS

The requirements for initial loans regarding loan amounts, borrower equity contribution, rates and terms, and initial operating capital as presented in Chapter 5, also apply to subsequent loans. The requirements for borrower equity and initial operating capital are specified below.

A. Borrower Equity Contribution

Loan applicants requesting subsequent loans must make an equity contribution consistent with the percentage required for the original loan. When determining the necessary equity contribution, any increase in the value of the property since the initial loan was made cannot be counted as a borrower equity contribution. However, additional initial investment on the initial loan may be credited toward the required investment on the subsequent loan. Exhibit 10-1 presents two examples showing the procedures for determining a borrower's required equity contribution.

B. Initial Operating Capital

Initial operating capital is required for subsequent loans to complete the original project, but is not required for subsequent loans to repair or improve an existing housing project.

Exhibit 10-1
Calculating Borrower Equity Contributions—Two Examples

***Example 1*:** Borrower Smith has an original loan from the Agency of $712,500, on which he paid a 5% equity requirement of $37,500. If he were to request a subsequent loan for $50,000, he would be required to provide a 5% equity contribution of $2,500 as follows because he has no excess equity in the first loan:

Calculating initial loan and equity	
Security value of initial loan	$750,000
Equity contributed to initial loan (5%)	$37,500
Initial Agency loan	$712,500
Calculating subsequent loan and equity	
Security value of subsequent loan	$50,000
Equity required for subsequent loan (5%)	$2,500
Subsequent Agency loan	$47,500
Determining whether equity requirement for subsequent loan has been met	
Security value of combined loans	$800,000
Total 5% equity required	$40,000
Equity contributed to initial loan	$37,500
Balance equity required for subsequent loan	$2,500

Example 2: Borrower Jones has an original loan of $712,500, on which he made an equity contribution of $40,000 (his land was worth $40,000, which is more than the 5% contribution required). If he were to obtain a subsequent loan for $50,000, he would not be required to contribute any additional equity, since the $2,500 he would ordinarily be required to contribute was already provided as part of the original loan:

Calculating initial loan and equity	
Security value of initial loan	$750,000
Equity contributed to initial loan (5%+)	$40,000
Initial Agency loan	$710,000
Calculating subsequent loan and equity	
Security value of subsequent loan	$50,000
Equity required for subsequent loan (5%)	$2,500
Subsequent Agency loan	$50,000
Determining whether equity requirement for subsequent loan has been met	
Total security value of combined loans	$800,000
Total 5% equity required	$40,000
Equity contributed to initial loan	$40,000
Balance equity required for subsequent loan	$0

10.7 RATES AND TERMS

Subsequent loans are amortized over a period not to exceed the lesser of the economic life of the housing being financed or 50 years, and are paid over a term not to exceed the lesser of the economic life of the housing or 30 years from the date of the loan.

10.8 RESTRICTIVE-USE PROVISIONS

Projects receiving subsequent loans are also subject to additional restrictive-use provisions in accordance with 7 CFR 3560.662.

A. Extension of Restrictive-Use Provisions

It is the Agency's policy that in exchange for providing Agency financing to a project through a subsequent loan, the project should be made available for low-income occupancy for an extended period beyond what the initial loan required. When a subsequent loan is made, a new 20-year restrictive-use period on the project begins as of the date of loan closing.

B. Prepaying Projects

Subsequent loans made to nonprofit organizations or public agencies to avert prepayment or to finance equity to avert prepayment will be subject to the restrictive-use provisions established in 7 CFR part 3560, subpart N and described in Chapter 15 of HB-3-3560. These restrictions require the borrower to continue housing eligible very low-, low-, and moderate-income households for the remaining useful life of the project; unless the Agency determines that there is no longer a need for the project.

SECTION 2: APPLICATION SUBMISSION AND PROCESSING

10.9 ACCEPTING APPLICATIONS

Subsequent loans for repairs or rehabilitation are funded from a separate allocation and do not compete for funding with new construction loans under the NOFA system. These requests are prioritized and funded at the National Office level in accordance with guidance provided by the National Office. Nevertheless, the Loan Originator must complete underwriting as would be done for any other loan to ensure the Agency's security and to establish the need for and eligibility of the loan under program requirements.

To complete the necessary underwriting, the Loan Originator must require the submission of the documentation and forms listed in Exhibit 10-2.

Exhibit 10-2
Documentation to be Submitted for a Subsequent Loan to Complete, Improve, Repair, or Modify an Existing Project

- *Form SF 424 A, Application for Federal Assistance;*
- *Form RD 1944-37, Previous Participation Certification;*
- The method of financing construction;
- Drawings, specifications, and a contract document that meets the requirements of Paragraph 9.10 B;
- The estimated total development cost, the cost per unit and the estimated loan amount (*Form RD 1924-13, Estimate and Certificate of Actual Cost);*
- Scope of work (not necessary for loans to complete a project);
- Signed statement regarding cost overruns;
- Information on architectural, engineering, and legal services and proposed contractor;
- *Forms RD 3560-30, Certification of No Identity of Interest (IOI)* and *RD 3560-31, Identity of Interest Disclosure/Qualification Certificate;*
- Change in related assistance;
- Detailed operating budget *(Form RD 3560-7, Multiple Family Housing Project Budget/Utility Allowance);*
- Demonstrated ability of cooperative to self-manage, if applicable;
- Updated financial statements; and
- *Form RD 1910-11, Applicant Certification Federal Collection Policies for Consumer or Commercial Debts.*

When a borrower wants to apply for a subsequent loan for repair and rehabilitation, the Loan Originator must send the borrower a formal letter that:

- Lists all information required for a subsequent loan application (see Exhibit 10-2);
- Includes all forms that the applicant must complete and return;
- Specifies the deadline by which the information and forms must be returned;

- Defines what constitutes a complete application (all information and forms are submitted, and all forms are signed); and

- Invites the applicant to attend a meeting to discuss the subsequent loan application with the Loan Originator.

10.10 SETTING DEADLINES AND EVALUATING COMPLETENESS

A. Submission Deadlines

While subsequent loans to repair or rehabilitate existing units are processed in accordance with loan priorities established by the National Office, Loan Originators should set submission deadlines based upon the timing of the subsequent loan request. However, any deadlines must allow the applicant reasonable time to gather and prepare the necessary documentation, which is generally at least 30 days.

Once the deadlines have been established, the Loan Originator must inform the applicant that failure to meet the deadlines may result in the applicant losing their place in line for funding or may cause the applicant to face serious servicing consequences as a result of the repair and rehabilitation work being delayed. Chapter 10 of HB-3-3560 describes the servicing consequences in detail.

B. Completeness Requirements

To be considered complete, loan applications must meet the following requirements:

- All information detailed in Exhibit 10-2 must be completed; and

- All required forms must be signed.

10.11 UNDERWRITING

As for all loans, the Loan Originator must underwrite the loan to make sure that it is consistent with applicable program requirements and can be supported by the project. When underwriting applications for subsequent loans, Loan Originators will follow the basic procedures presented in Chapters 4 and 5.

To approve a subsequent loan application, the Loan Originator's underwriting analysis must show that the loan meets the Agency's underwriting standards. When underwriting the loan, the Loan Originator determines whether:

- The applicant is eligible for the loan;

- The project is eligible for the loan;

- The proposed project costs are reasonable;

- The proposed project is financially feasible;

- The Agency's interests are secure; and

- The project meets suitability requirements in accordance with Chapter 6 of HB-3-3560.

The underwriting analysis for subsequent loans differs in several respects from the analysis for initial loans.

A. Applicant Eligibility

Applicants for subsequent loans must be current borrowers under the program and must meet all eligibility requirements.

B. Project Eligibility

A project must meet the eligibility requirements described in Chapter 4 for it to be eligible for a subsequent loan. However, the following rules apply with respect to the location of a project requesting a subsequent loan:

- A project for which a subsequent loan will be used to make necessary repairs or improvements to the property or to avert prepayment may be located in an area that has changed from rural to nonrural and need not be in a designated place.

- The Administrator may approve a subsequent loan in a place that is not on the list of designated places as a servicing action.

C. Reasonable Costs

As for all Agency loans, the projected costs as shown on *Form RD 1924-13* must be reasonable and comparable to costs of similar work done in the area. The guidance provided in Chapter 3 applies in making this determination. If the evaluation shows that project costs are not reasonable and comparable, the applicant should be contacted to determine whether project costs can be reduced to a level determined to be reasonable. If not, the Loan Originator must not recommend approval of the loan.

D. Project Feasibility

1. Appropriate Scope of Work?

For subsequent loans for repairs or rehabilitation, the Loan Originator must schedule a unit-by-unit inspection of the project as part of the underwriting process. When possible, the State Architect should participate in this inspection and review the cost estimate and scope of work. The purpose of the inspection is to determine whether:

- The loan is necessary;

- The loan is for a correct amount; and

- The scope of work is appropriate.

2. Financial Feasibility

When evaluating a subsequent loan request for rehabilitation, the Loan Originator must determine whether the project has the financial capacity to support the additional debt service. For projects that have been experiencing vacancies, financial feasibility should be closely examined. If the project is experiencing financial difficulties due to market conditions or poor management, the subsequent loan should not be approved because it could result in additional loss to the Government. In making this determination, the Loan Originator may take into account the past performance of the loan applicant and the extent to which the applicant has exhibited the ability and intent to effectively manage the project. If the applicant has a history of poor performance at managing the property, the loan should not be approved, and some other servicing action, such as a transfer or workout agreement, should be considered. Chapters 7 and 10 of HB-3-3560 provide details on these servicing actions.

In considering any subsequent loan, the Loan Originator must establish that the project rents will be able to withstand the additional debt that will be placed on the project by the subsequent loan. The Loan Originator must analyze the budget in *Form RD 3560-7* submitted with the loan request and determine that the subsequent loan will not require rents to increase by so much that they become unaffordable to existing tenants based on their incomes and the availability of rental assistance, and will not exceed the Conventional Rents for Comparable Units (CRCU) standard. The Agency may only approved rents above the CRCU in limited circumstances, as described in Chapter 3, paragraph 3.20 B.

Adequacy of Security

Example 1. Borrower Johnson has applied for a subsequent loan in the amount of $350,000 to make repairs and improvements. His current outstanding debt to the Agency is $500,000. The appraisal comes back valuing the property with improvements at $650,000, therefore only supporting a loan of $150,000 ($650,000 – $500,000). The project does not provide sufficient security to support the $350,000 loan. The Loan Originator may recommend approval of a $150,000 loan.

Example 2. Borrower Olson has applied for a subsequent loan in the amount of $350,000 for repairs. Her current outstanding debt to the Agency is $600,000. The appraisal comes back valuing the property with improvements at $1 million. The Loan Originator may recommend approval of the $350,000 loan.

E. Security

1. Adequacy of Security

The Loan Originator must evaluate whether the project can generate sufficient income at rents affordable to the tenants and not in excess of CRCU to cover the additional expense of the additional debt service required by a subsequent loan. If this is not possible, the Loan Originator must not recommend approval of the loan. In such an event, some other servicing action in conjunction with the subsequent loan, such as a transfer or workout agreement, must be initiated. Chapters 7 and 10 of HB-3-3560 provide details on these servicing actions.

2. Participation Loans

When an applicant is planning to use other funds or financing in conjunction with a subsequent loan from the Agency, the requirements and procedures of Chapter 6.

10.12 LOAN APPROVAL AND CLOSING

A. General Procedures

Loan Originators will follow the loan approval and the loan closing procedures detailed in Chapter 8.

B. Implementing Restrictive-Use Provisions

The required restrictive-use language for subsequent loans to repair and rehabilitate projects must be appended to the mortgage referencing all notes. The term of the new provisions begins on the date of loan closing.

10.13 RELOCATION PLANS

Subsequent loans that are made for major repair and rehabilitation may require the temporary relocation of tenants while the project is undergoing work. The applicant must provide a plan and financial assistance for relocation of displaced persons from a site on which a project will be located. Paragraph 3.19 details the requirements for relocation plans and assistance.

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SECTION 3: FINAL PAYMENTS

10.14 FINANCING FINAL PAYMENTS

The Agency may finance final payments for borrowers holding existing loans for which the Agency approved an amortization period that exceeded the term of the loan.

Financing may be made if current market studies show that a need for low-income rental housing still exists for that area and one of the following conditions has been met:

- It is more cost efficient and serves the tenant base more effectively to maintain the current project than to build a new project in the same location; or

- The project has been maintained to such an extent that it warrants retention in the current portfolio because it can be expected to continue providing decent, safe, and sanitary affordable rental units for the term of the new loan.

The term of the Agency financing for final payments will not exceed 20 years.

CHAPTER 11: SPECIAL PROPERTY TYPES *[7 CFR 3560.69* and *7 CFR 3560.70]*

11.1 INTRODUCTION

Congregate housing, group homes, manufactured homes, and cooperative housing are special property types that are eligible for Section 515 loans. Such loans are processed and underwritten through the application process at the state-level Loan Processing Office. Initial applications that the Loan Originator believes should move on to the final application stage are sent to the National Office for review. If the National Office concurs, the loan applicant is invited to submit a final application. Processing of the loan application is then resumed by the Loan Originator; the final application will only be sent back to the National Office for review if the National Office imposes certain restrictions on the loan processing.

Most of the loan processing requirements for special property types are the same as for other Multi-Family Housing loans. However, there are some differences in requirements and procedures that affect the processing and underwriting of loan applications to finance these properties. This chapter covers those differences for each of these special property types.

Loans on the special property types described in this chapter are subject to the same environmental requirements as standard Section 515 Multi-Family Housing projects. The loan docket submitted for National Office review must include the completed environmental review. For additional guidance on environmental reviews, see Chapter 3 and RD Instruction 1940-G.

SECTION 1: CONGREGATE HOUSING *[7 CFR 3560.69]*

11.2 OVERVIEW

Congregate housing is residential housing for elderly households or persons with disabilities, consisting of private apartments, central dining facilities, and a number of preestablished services, such as meals and housekeeping. Nursing services cannot be provided to tenants.

Because of the special services provided to elderly households and person with disabilities, the Agency has established the following additional requirements and standards for these projects that do not apply to other Multi-Family Housing projects:

- Additional design requirements for congregate housing to accommodate the elderly and persons with disabilities;
- In the underwriting that the Loan Originator must conduct, an additional element of analysis of the need and demand for the services that are to be provided to the tenants; and

- Documentation by the loan applicant of experience in congregate housing or similar type facilities (such as assisted living). If this is not possible, the Agency requires them to hire someone with experience.

Congregate housing projects compete for funding and are processed and underwritten in each State together with other Section 515 proposals and loan applications. However, due to the specialized nature of such housing, States will solicit the advice and input of the National Office as soon as they receive the initial application for a congregate housing project.

The remainder of this section describes the requirements that apply to congregate housing and the procedures that Loan Processing Staff must follow in processing and approving a congregate housing loan application.

11.3 RESTRICTIONS ON USE OF LOAN FUNDS

Congregate housing must comply with the eligible and prohibited loan expenses identified in **Attachments 4-B** and **4-C**. Specific costs that are prohibited in congregate projects are:

- Specialized equipment for training and therapy;
- Items that do not become affixed to the real estate security; and
- Operating capital for a central dining facility.

11.4 USE OF OPERATING CAPITAL

Borrowers may use the initial operating capital to purchase necessary items that do not become affixed to the real estate security, such as special portable equipment, furnishings, kitchen bars, dinnerware, eating utensils, movable tables and chairs, etc.

11.5 ELIGIBILITY REQUIREMENTS

Congregate projects must meet the eligibility requirements of 7 CFR 3560.55, as described in Chapter 5. Congregate housing facilities cannot be licensed healthcare facilities. There are several additional requirements which also must be met.

A. Eligible Loan Applicants

Loan applicants for congregate housing must:

- Meet the requirements of 7 CFR 3560.55;
- Review **Attachment 11-A** prior to submitting an initial application and document that they have met the provisions of the attachment; and
- Have experience in managing congregate housing or show evidence of acquiring experienced management. Operation of congregate housing requires special management expertise and skills beyond those needed to manage a typical Multi-

Family Housing project. The success or failure of a project will depend upon management's marketing skills and ability to deliver services effectively. Counseling tenants and tenant selection also add a unique dimension to management responsibilities.

B. Eligible Tenants

Eligible tenants for congregate housing must meet program income requirements, be at least 62 years old or disabled, and be a U.S. citizen or qualified alien.

C. Eligible Projects

Eligible projects are those that are located in designated places, which meet the basic Rural Rental Housing project requirements of 7 CFR part 3560, subpart B, and the supplemental requirements of 7 CFR 3565.69 for congregate housing. Congregate housing must also meet all applicable Federal, State, and local laws, statutes, codes, and/or ordinances pertaining to this type of housing and the services provided.

11.6 APPLICATION REQUIREMENTS

The package of services that must be offered to the tenants in a congregate housing project is what distinguishes congregate projects from elderly projects. Consequently, the main difference in application requirements is the additional information that the loan applicant must provide to describe the planned services.

As part of the initial loan application, the applicant must submit a separate service plan and budget detailing the costs for operation and maintenance of the services and describing delivery of services. This plan must include a letter of commitment from each service provider detailing its ability and willingness to provide services. Alternative service providers must be identified in the event a service provider is unable to provide the services in the future. Paragraph 11.8 provides detailed guidance on support services.

11.7 DESIGN REQUIREMENTS

Congregate housing must be planned and developed in accordance with RD Instruction 1924-A and RD Instruction 1924-C. The Loan Originator must require any applicant with no prior experience to obtain assistance from organizations or individuals who have experience in planning and designing congregate housing or similar assisted care housing. Exhibit 11-1 details the additional design criteria that congregate housing must meet.

Exhibit 11-1

Additional Design Requirements for Congregate Housing Projects

- **Location.** Congregate housing must be located as close to services and shopping as possible, considering the availability of suitable residential sites. The time it takes to reach services is important, especially when considering potential medical emergencies.
- **Design must accommodate support services.** Facilities needed to accommodate support services must be fully explained and justified by the market feasibility documentation (MFD) and must be designed in accordance with acceptable practices. Specific design guidelines are provided in RD Instruction 1924-A, Guide 2, Chapter 1. These facilities may be larger than necessary to meet the tenants' requirements if they are needed in the community and other sources of funds are available to pay a pro rata share of the cost.
- **Accommodations.** The design must accommodate the needs of the individuals that the housing is designed to serve. The walkways and corridors between living units and the support service facilities must be safe, comfortable, and minimal in length; include handrails; and comply with Uniform Federal Accessibility Standards (UFAS). In addition to UFAS, accommodations must comply with Fair Housing Act Accessibility Guidelines (FHA/AG), the Americans with Disabilities Act Accessibility Guidelines (ADA/AG), and any State or local requirements.
- **Separate service and delivery areas.** Areas used by the tenants must be separated as much as possible from areas needed for delivery of food and supplies and other building services. Interior spaces and finish materials must be residential in character and designed to help prevent tenants from becoming disoriented within the building(s).
- **Emergency lighting.** Emergency lighting must be provided in every public space, corridor, stairway, elevator, and other means of egress.
- **Accessibility.** The entrances to all living units must be on a route accessible to people with disabilities. Living units accessible only via exterior steps or interior stairs are not acceptable.
- **Living unit specifications.** The size of rooms and spaces in the living units must be comparable to units provided in other housing for the elderly. Kitchen facilities must be provided in all living units and include, at a minimum, a cooktop, oven, sink, refrigerator, and food preparation surface.
- **Emergency call systems.** The bathroom and one bedroom in each living unit, and any public toilet rooms, must be furnished with an emergency call system that is appropriate for the size and staffing of the housing facility.

11.8 TENANT SUPPORT SERVICES

Tenant support services must be offered to assist tenants in living independently. Such services must be reasonably priced to ensure affordability and continued use by very low- and low-income tenants. Loan applicants must meet the requirements of **Attachment 11-B** in planning services.

Services may not be of a nature that would be provided by a nursing home or special care facility. Tenants requiring additional health or medical services beyond the scope of congregate services must acquire them or provide for them within their own financial, familial, or social resources.

A. Services Plan

The loan applicant must submit a services plan with the initial application. The Loan Originator must review the services plan and confirm that the minimum services detailed in Paragraph 11.8 B below are to be provided and that the plan specifies the following:

- The services to be provided.
- The frequency of services to be provided.
- The entity or organization providing the services, including a letter of commitment from each service provider detailing its ability and willingness to provide services. The Loan Originator must confirm that this letter identifies the type, scope, cost, term and any licensing requirements of services that will be provided to the project. If a local agency on aging will provide a service, the commitment can be contingent on the local agency maintaining its level of funding.
- Alternative service providers, in the event the original provider is unable to furnish services in the future. Alternative sources must be documented even if the applicant plans to use onsite personnel for services. The availability of services from alternative sources enhances a proposal's feasibility since long-term services are crucial to the success of congregate housing.
- The procedures for advising tenants of the availability of services.
- The staff necessary to provide the services.

B. Minimum Services

Loan applicants may offer a wide variety of services; however, the services detailed below must be offered as a minimum.

1. Meals

Since some tenants will depend on the meal service for sustenance, at least one cooked meal a day, seven days a week must be provided by the primary meal provider or an alternate source. The following conditions apply to meals:

- To ensure that the meals are wholesome and meet the needs of individual tenants, a professionally trained dietitian or nutritionist must be involved in planning the menus.
- The feasibility of sustained meal service may depend on the number of people who elect to use it. Congregate housing borrowers should actively solicit tenant participation in the meal service if the economic feasibility of the service depends on user charges.

- If the entity that operates the service is eligible to accept food stamps under the regulations of the Food and Nutrition Service (FNS), USDA, the entity must be authorized by FNS to accept food stamps from tenants for the purchase of meals.

Required Services

- **Meals:** One cooked meal, seven days a week.
- **Transportation:** On a fixed schedule based on tenant needs.
- **Housekeeping:** To tenants who request assistance in keeping their units clean.
- **Personal services:** Upon request, services such as assistance with personal hygiene, nutrition counseling, and general health screening.
- **Recreational/social activities:** To the extent possible, any and all of the following services should be provided: hobby and craft classes, special dinners, a library or book exchange area, games and videos, and wellness and exercise classes.
- **Access to medical services:** Medical services must be available within reasonable proximity and transportation must be provided to tenants who require it.

2. Transportation

Transportation must be provided to the project on a fixed schedule based on tenant needs. Public and private transportation sources may be used by loan applicants to develop a dependable and economical method for providing this service. If these sources cannot provide adequate transportation, the applicant must develop a project-sponsored transportation system.

3. Housekeeping

Housekeeping services must be provided to tenants who request assistance in keeping their units clean. Light housekeeping tasks, such as dusting, vacuuming, floor washing, bathroom cleaning, and laundry for bedding generally should be provided on a weekly basis. Heavier tasks, such as oven, window, and drapery cleaning, should be provided periodically.

4. Personal Services

Limited nonmedical personal services must be made available to tenants who request them. Personal services can include beautician services, nutrition counseling, and general health screening. They do not include recurring medical assistance, such as dispensing medication or medical supervision. Space may be included in the project for a small beauty shop and health screening area. Applicants may want to consider contracting for personal services to assure their continued and dependable availability to tenants.

5. Recreational/Social Activities

Loan applicants are encouraged to offer tenants recreational and social activities, such as hobby and craft classes, special dinners, a library or book exchange area, games and videos, and wellness and exercise classes.

6. Access to Medical Services

Tenants must have access to healthcare providers. Healthcare services must be available within a reasonable traveling distance for tenants, and transportation must be provided for tenants who require it to access medical services.

C. Project Services Coordinator

Loan applicants are encouraged to include as part of their services package a Project Services Coordinator to coordinate the services provided in the project. A Project Services Coordinator is a social service staff person hired by project owners or their management company. The Coordinator is responsible for linking the elderly, especially those who are frail, and residents with disabilities to the supportive services they need to continue living independently. Such a Coordinator can do much to assist the well-being of the tenants and is an allowable project expense in congregate housing.

D. Service Agreements

As a part of the final application, the applicant must provide a service agreement for each service to be provided, detailing the information contained in the letter of commitment provided with the services plan at initial application. Initial service agreements must be effective for at least 1 year after the project becomes operational. Subsequent agreements must be effective for at least 1 year.

11.9 NONTENANT SERVICES

Nonresidents may be served by project services, such as the meal facility. If a service provider uses the facility to serve meals to nonresidents, the service provider must sign a lease with the borrower and provide payment sufficient to cover the annual operating expenses, debt service, and reserve account payments attributable to the portion of space that is being used for nontenants. In most cases, this will be a negligible amount that the meal provider can afford to pay. In addition, if this occurs, the kitchen must be metered separately so that the costs of running the kitchen can be identified.

11.10 PROCESSING APPLICATIONS

A. Agency Action

Congregate housing proposals compete for funding with proposals for other rental projects through the Notice of Funding Availability (NOFA) process and are generally processed in the same manner as all other Multi-Family Housing loans. However, the State loan processing office must send to the National Office for review and concurrence all initial congregate housing applications that the loan processing office feels should move on to the final application stage. Once the National Office concurs, processing is completed at the State loan processing level, unless the National Office imposes some restrictions that are to be reviewed again before final loan approval.

The Loan Originator will include the following information with any loan that is sent to the National Office for review:

- A summary description of the loan request;
- A copy of the loan docket (initial application information); and
- The State Director's comments and recommendations.

B. Requirements of the Applicant

1. Initial Application Package

When a project proposal for congregate housing ranks high enough to be invited to submit an initial application package, the initial application package sent by the Loan Originator to the loan applicant will contain all items identified in Exhibits 4-6 and 4-7 of Chapter 4, plus the following information:

- **Attachments 11-A** and **11-B** give the loan applicant a clear understanding of the management and support service requirements for congregate housing; and
- Notification to the loan applicant about the requirement to submit the following with the initial application:
  - ◊ Congregate services charges; and
  - ◊ A congregate services plan.

2. Final Application

The loan applicant must be informed that the following information will be required as part of the final application:

- Service agreements; and
- Schedule of charges for nonshelter services.

11.11 PRELIMINARY MEETING

In addition to all items identified in Chapter 5 as necessary to cover at the preliminary meeting, the Loan Originator must discuss with and encourage the loan applicant for congregate housing financing to take the following steps:

- Carefully read **Attachments 11-A** and **11-B** so as to fully understand the requirements of the congregate housing commitment;
- Hire an architect experienced in the design of elderly housing with supportive services; and

- Include input during the design phase from project management with housing experience to prevent long-term effects of poorly conceived design on project operations.

11.12 UNDERWRITING CONSIDERATIONS

The Loan Originator must underwrite the congregate housing loan using the basic procedures described in Chapters 4 and 5. Because of the special nature of congregate housing, the Loan Originator's underwriting considerations must also evaluate the market for this special type of housing, the adequacy and availability of the support services offered to the tenants, and the quality of the project's management.

A. Market Feasibility Documentation

The Loan Originator must make sure that the MFD for a congregate housing project indicates clearly that a market exists for the type of services that are to be offered by the project and that the services being offered are those that are in most demand in the market area.

MFD must address the market demand for meal plans. A congregate housing project's meal plan subscription must be well planned so that dining facilities do not go unused, adversely affecting the project's financial viability.

For additional market feasibility documentation requirements, see Section 3 of this chapter.

B. Tenant Services

The services that are offered to the tenants of a congregate housing project are a critical and integral part of the project. It is the services that distinguish congregate housing from other elderly projects. Consequently, the Loan Originator must ascertain that the services meet the minimum Agency requirements and are:

- Needed and desired in the market;
- Affordable to the tenants; and
- Available for the foreseeable future.

In reviewing the budget for the services plan, the Loan Originator must look at the costs and make sure that they are not excessive. If the service costs are not affordable to the tenants or in excess of what is comparable in the market, they must be reduced. The loan applicant should be contacted to discuss other options, such as community services or volunteers. If no other options are available and costs cannot be reduced, the project must be rejected as infeasible.

C. Management

The Loan Originator must review the management profile and certification to make sure that the proposed management company has experience in special senior housing, such as congregate housing. If the proposed company does not, the Loan Originator must require that the loan applicant obtain additional management expertise, which may be in the form of a consultant, to advise in the management of the congregate housing.

11.13 DESIGN CONSIDERATIONS

The Loan Originator must review project plans to make sure that the design criteria identified in Paragraph 11.7 have been met. The layout of the structure should be amenable to the tenants. For example, the common dining facility is easily accessible by a covered walkway. In addition, the design elements should have a positive effect on project management and ongoing operations. For example, service areas are well out of the way of public areas where tenants might gather. Projects proposed by applicants who have engaged the services of an architect experienced in similar type project design will generally meet these design standards. The Loan Originator must also send the plans to the State Architect, who will review them to determine whether they meet program requirements.

SECTION 2: GROUP HOMES *[7 CFR 3560.69]*

11.14 OVERVIEW

Group homes provide shared living space within a rental project for individuals who are capable of caring for themselves in the basic functions of everyday living, but who otherwise need the direction or assistance of a trained resident assistant. Group homes may be designed for individuals who are elderly or have disabilities, and may limit occupancy to certain groups of people. Although a resident assistant may provide limited medical services, such as assistance to tenants with medication, group homes are not intended as healthcare facilities.

This section discusses the procedures and requirements of loan origination that are different for group homes from those of other Multi-Family Housing loans.

11.15 PROJECT ELIGIBILITY

A. Tenancy

A group home may limit occupancy to a specific group of tenants. For example, a group home may limit occupancy to eligible elderly tenants, developmentally disabled people, or mentally impaired tenants.

Prospective tenants must be evaluated to determine if they meet the essential eligibility requirements to reside in a group home. Loan applicants are guided in this by **Attachment 11-A**.

A legal guardian (an individual) may execute a lease agreement on behalf of a tenant in a group home when that tenant does not possess the legal capacity to enter into a legal contract with the project owner.

B. Applicable Laws

Group homes must meet all applicable Federal, State, and local laws, statutes, codes and/or ordinances pertaining to these types of housing and the services provided.

C. Association with Another Organization

A group home may be associated with another organization, such as a workshop for the developmentally disabled. However, the group home must be a separate entity and able to function without being dependent on another organization.

11.16 SUPPORT SERVICES

Loan applicants must show in the initial application that adequate support services that are needed by tenants will be available on a continual, long-range basis. Support services can be provided by the project or by a State or local public agency. A nonprofit organization with an established ongoing service program also may be deemed capable of providing support services.

Loan applicants for a group home project must provide a service plan that describes how affordable services will be made available to potential residents to assist them in living independently. The plan must address the long-term availability of this assistance from specific service providers and must address how the following services will be provided or made available:

- Access to a common kitchen in which to prepare meals;
- Access to transportation;
- Nearby recreational and social activities that may be coordinated by the resident assistant, if applicable; and
- Access to medical services as necessary.

A narrative statement from any local, State, or Federal Government agencies that are expected to provide support for the current and long-range service needs for the tenants of the facilities is also required.

11.17 DESIGN REQUIREMENTS

A group home is generally designed as a single household dwelling; however, it can also be a small, multi-unit structure. Specific design criteria that must be met are provided in RD Instruction 1924-A, Guide 2, Chapter 1. In addition to these requirements, group homes must meet the following criteria:

- Interior spaces and finish materials must be residential in character.
- Appropriate common areas and facilities must be included to encourage participation by the tenants under the direction of a staff person in sharing the meal preparation, housekeeping, and social and recreational activities within the home.
- Facilities and services to address potential decreases in tenants' physical and mental capabilities must be considered in the design.
- Emergency lighting must be provided in every corridor, stairway and other means of egress.
- Entrances to all living units must be on a route accessible to persons with disabilities.
- Group homes must meet UFAS, FHA/AG, ADA/AG, and any State or local requirements.

11.18 RENTS AND RENTAL ASSISTANCE

Instructions on how to determine the per unit rental rates for group homes are stipulated in **Attachment 11-A**.

A unit in a group home consists of a space occupied by a specific tenant household, which may be an apartment unit, a bedroom, or a part of a bedroom. The provisions of 7 CFR 3560.69(g) allows Agency rental assistance to be made available to group home tenants sharing units. However, in a shared bedroom situation, rental assistance may be made available to each tenant only so long as the total rent for the unit does not exceed what other rents are in the area for conventional and comparable shared bedrooms.

11.19 APPLICATION REQUIREMENTS AND PROCESSING

Applicants for a loan to complete a group home must submit the same documentation that is required for Multi-Family Housing projects as specified in Chapters 4 and 5, as well as a service plan as described in Paragraph 11.16 and a narrative statement from any local, State, or Federal Government agency that is expected to provide support for the current and long-range service needs of the tenants.

Group home loan applications are processed through the initial application stage by the Loan Originator. If the loan application is not eligible or feasible, the application will be rejected in accordance with the procedures outlined in Chapter 4.

Any initial application that the Loan Originator feels should move on to the final application stage must be submitted with the State Director's recommendation to the National Office for review and concurrence. Once the National Office concurs, loan applicants are advised that their loan request has been selected for further processing, and processing of the loan application is completed at the State level. If the loan amount exceeds the State Director's approval authority, National Office concurrence of the final application is required before loan approval.

11.20 UNDERWRITING CONSIDERATIONS

Loans for group homes must be underwritten as are any other loans and in accordance with the standards established by Chapters 4 and 5.

As with congregate housing, the Loan Originator must review all loan documents, giving special attention to whether the loan applicant has a market for the types of tenants and services that will be provided. See Section 3 of this chapter on MFD requirements.

Specifically, the Loan Originator must determine that:

- The loan applicant has submitted all required information at each stage of the origination process, including that which is required of all Multi-Family Housing loan requests and the additional requirements described in Paragraph 11.19—the services plan and narrative statement from a Government services provider.

- If the group home is affiliated with another organization, the group home can function independently of the organization.

- A market exists for the type of services offered.

- If occupancy is restricted to a certain group of tenants, the data show that there is a need and demand by the target households for housing with the proposed services.
- Management is experienced in group homes or will hire experienced assistance.
- The design of the group home meets the criteria identified in Paragraph 11.17.

SECTION 3: MARKET FEASIBILITY CONSIDERATIONS FOR CONGREGATE HOUSING AND GROUP HOMES

11.21 ADDITIONAL MARKET FEASIBILITY DOCUMENTATION REQUIREMENTS *[7 CFR 3560.69(f)]*

MFD for congregate housing and group homes must address the need for services that are to be offered to a specific group of tenants. In addition to the MFD outlined in Chapter 4, the following requirements must be met:

- The loan applicant's MFD must address the need for housing with services and specifically, the need for the services that are proposed to be offered. Local agencies on aging and other groups familiar with the elderly can be a valuable source of information on the needs and wants of elderly people in the market area. Loan applicants can conduct a mail survey to age- and income-qualified elderly people if information is not available from other sources.

- An expanded market area may be considered only when the additional communities are part of the trade area and are so rural that they cannot support development of a congregate or group home facility. The facility itself must be located in a designated place. If an expanded market area is proposed, the MFD must establish conclusively that the community will be able to draw enough tenants from the market area to ensure feasibility of the project. The MFD must clearly identify the expanded area and contain separate information on the additional communities. If used, mail-out surveys must clearly address the probability of respondents relocating to the proposed site.

- MFD should include income information from the local Social Security Office since many elderly people are dependent on social security and/or supplemental security income. This information will assist in determining if proposed tenants would have sufficient income to afford the services provided by the project.

- MFD must contain demographic information particular to those over the ages of 62, 70, and 85.

- MFD must discuss the availability of alternative service providers.

- Continued use of meal service is important to the congregate services budget. Therefore, MFD must address the market demand for meal services.

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SECTION 4: MANUFACTURED HOUSING *[7 CFR 3560.70]*

11.22 OVERVIEW

The Agency has authority to make loans for Multi-Family Housing projects that consist of manufactured housing units. Manufactured housing is designed and constructed for permanent occupancy by a single family and contains permanent cooking, eating, sleeping, and sanitary facilities within the structure. It is transportable in one or more sections, and when erected on site is 400 or more square feet.

Manufactured housing loans compete for funding with other Multi-Family Housing projects and are underwritten at the State level. Final approval of such loans must come from the National Office.

Processing and underwriting considerations are generally the same for manufactured housing projects as they are for other Multi-Family Housing projects. However, because the housing is constructed offsite, there are some additional design and warranty requirements placed on the loan applicant that the Loan Originator must make sure are met.

11.23 ELIGIBILITY REQUIREMENTS

A. Applicant Eligibility

In addition to meeting the eligibility criteria of 7 CFR 3560.55, and described in Chapter 4, the loan applicant must be the first owner purchasing the manufactured homes for purposes other than resale.

B. Project Eligibility

In addition to meeting all construction, design, and warranty requirements specified in Paragraphs 11.24 and 11.25, a manufactured home project must meet the following requirements:

- Each manufactured home unit must not have been previously occupied as a residence or for any other purpose and be less than 1 year old from date of manufacture.
- The manufactured housing must include two or more housing units.
- A project is not eligible if the purpose of the loan is for refinancing, except as it relates to taking out a construction loan.
- A loan may be made to rehabilitate manufactured home units of an existing project only if the units to be rehabilitated are currently financed by the Agency under the Multi-Family Housing program. Rehabilitation of manufactured home units must only be undertaken by individuals who have experience with rehabilitating manufactured housing since the structural integrity of the unit may be undermined by an inexperienced individual.

- A housing proposal may include the purchase of the real property of existing manufactured housing that will be redeveloped with the placement of new manufactured homes.

11.24 DESIGN REQUIREMENTS

Manufactured housing projects, including related facilities constructed or erected on the security property, must conform to the development, installation, and setup requirements of RD Instruction 1924-A, Exhibit J.

The manufactured home, when placed on the site, will have floor space area of not less than 400 square feet, and a width of 12 feet or more for single wide and 20 feet or more for a double wide unit. The unit must:

- Be placed on a site-built permanent foundation that meets or exceeds applicable requirements of the Agency-adopted standards, that are identified in RD Instruction 1924-A, Exhibit J, or other building codes approved by the Agency;

- Be permanently attached to the foundation by anchoring devices adequate to resist all loads identified in RD Instruction 1924-A, or other building codes adopted by the Agency;

- Be constructed in compliance with Agency thermal performance construction standards specified in RD Instruction 1924-A, Exhibit D, Paragraph (IV)(G); and

- Be constructed in compliance with applicable standards and manuals adopted by the Agency as evidenced in RD Instruction 1924-A, Exhibit J. All units must conform to the HUD "Manufactured Home Construction and Safety Standards," and be identified by an affixed certification label according to Exhibit J of RD Instruction 1924-A.

Manufactured home projects must be designed to provide for a desirable residential environment. Innovative and imaginative design is encouraged. Highly stylized patterns and monotony must be avoided. All property improvements will relate to the individual characteristics of the land. The project, including structures, streets, and all site improvements, should be harmoniously, efficiently, and conveniently arranged in relation to the topography and the shape of the property.

Manufactured home projects designed for families must consider adequate recreational space to accommodate children. In addition, the units themselves should be able to handle normal wear and tear of family living.

11.25 SPECIAL WARRANTY REQUIREMENTS

The seller of the manufactured homes must deliver to the borrower the manufacturer's warranty. The warranty must identify the units by serial number.

The general contractor or dealer-contractor, as applicable, must provide a warranty in accordance with RD Instruction 1924-A. To be acceptable, the warranty must contain provisions establishing that:

- The manufactured home, foundation, positioning, anchoring to permanent foundations, and all contracted improvements are constructed in substantial conformity with applicable approved plans and specifications;

- The manufactured home sustained no hidden damage during transportation and, for double-wide units, that the sections were properly joined and sealed; and

- The manufacturer's warranty is in addition to, and not in derogation of, all other warranties, rights, and remedies that the borrower may have.

11.26 RATES AND TERMS

The amortization period and term of each loan will not exceed the lesser of the economic life of the security, taking into account probable depreciation, or 30 years. The loan appraisal will provide an economic life estimate.

11.27 LOAN PROCESSING AND UNDERWRITING

Loans for manufactured housing are processed and underwritten in accordance with the guidance established in Chapters 4 and 5. In addition, the Loan Originator must do the following:

- Establish that the project meets the additional eligibility requirements of Paragraph 11.23. The Loan Originator can verify the age of the manufactured home unit by looking at purchase agreements or bills of sale.

- Work with the State Architect to make sure that project plans meet the construction and design requirements established in Paragraph 11.24.

- Verify that the required warranties identified in Paragraph 11.25 are available at the final application stage.

If the project cannot meet these or any other program requirements, the loan application must not be approved.

11.28 LOAN CLOSING

Loans for manufactured housing projects are closed in accordance with the guidance provided by Chapter 8. In addition, the following requirements must be met at loan closing:

- A mortgage or deed of trust must be taken on the entire property purchased or improved with the loan;

- The encumbered property must be covered under a standard real estate title insurance policy or attorney's title opinion that identifies the project (including the manufactured homes) as real property and insures or indemnifies against any loss if the manufactured home is determined not to be part of the real property; and

- The property must be taxed as real estate by the jurisdiction where the project is located, if such taxation is permitted under applicable law when the loan is closed.

SECTION 5: RURAL COOPERATIVE HOUSING

11.29 OVERVIEW

Rural cooperative housing is multi-family housing owned, operated, and managed by a consumer cooperative. The consumer cooperative consists of eligible members who operate the housing at actual costs. Any income received by the consumer cooperative in excess of operating costs and expenses are assigned to members' patronage capital accounts.

Cooperative members do not earn equity in their homes; however, they are entitled to the funds that accumulate in their patronage capital accounts, which is referred to as limited equity. Paragraph 11.33 E provides additional details on patronage capital accounts.

Cooperative housing projects do not compete for funding with other Multi-Family Housing projects. Rather, they receive funds held at the National Office. Underwriting of cooperative housing is a joint effort between the State Office and the National Office. The State Office reviews the loan application through the initial application stage, and if the project appears eligible and feasible, the State Office submits the case file to the National Office. If the National Office concurs, the applicant is invited to submit a final application. The National Office makes the final decision to approve or reject the loan.

This section discusses the requirements regarding the development and operation of cooperative housing that are addressed during the loan origination process. The loan origination procedures are much the same as for those of other Multi-Family Housing projects, although there are some differences due to the nature of cooperative housing.

11.30 ELIGIBILITY AND ORGANIZATIONAL REQUIREMENTS

The consumer cooperative is the loan applicant. The consumer cooperative includes a Board of Directors elected from its members. All members, including the Board of Directors, must meet the organizational and eligibility requirements outlined in Exhibit 11-2.

The eligibility and tenancy rules for cooperative housing projects are different than those for other Agency-financed, multi-family housing but are similar to those for the Guaranteed Rural Rental Housing Program. Any person who is admitted to rural cooperative housing as an eligible member may not subsequently be deprived of membership or tenancy if the person no longer meets the original program income eligibility requirements.

Exhibit 11-2 Eligibility and Organizational Requirements		
Consumer Cooperative (Loan Applicant)	**Members of the Cooperative**	**Board of Directors**
• Must be organized under the cooperative laws of a State or a federally recognized Indian tribe. • Must consist of members from whom are elected a Board of Directors. • Must own and operate the housing on a cooperative basis solely for the benefit of the members. • Must operate at cost. • Must restrict membership in the housing to eligible persons and, to any extent the cooperative and the Agency permit, to others in special circumstances, such as when prolonged vacancies occur. • Must have no less than five directors, or whatever is allowable under State law.	• Must reside in the cooperative housing. • Must have very low, low, or moderate incomes, except that any member who is admitted as an eligible member of the cooperative may not subsequently be deprived of membership or tenancy by reason of no longer meeting the income eligibility requirements. • Must deposit a membership fee. This fee will be retained by the cooperative for as long as the person remains a member. The fee will be refunded to the person when membership is terminated. • Must execute documents committing themselves to uphold the cooperative concept.	• The composition of the Board of Directors will be drawn from the cooperative membership, initially by appointment and later by election from the general membership. • The Board must be composed of at least five members. • A membership list showing the names and addresses of each member must be maintained by the secretary of the cooperative. • The Board of Directors, with assistance from the adviser to the Board, will devise the rules and regulations under which the cooperative will operate. Additionally, the Board will be responsible for managing the cooperative.

11.31 MARKET FEASIBILITY

Market feasibility is evidenced by the names and addresses of prospective members who have definitely affirmed their intention of becoming cooperative members in the proposed project. In the event some persons cannot be accepted for membership for financial or other reasons, the cooperative should obtain more names than the number of proposed units to assure adequate feasibility coverage. **Attachment 11-D** may be used for this purpose. A professional market study is not required.

11.32 APPLICATION REQUIREMENTS

Loan applicants for cooperative housing projects must submit the following items in addition to those required for other Multi-Family Housing projects as described in Chapters 4 and 5:

- At the initial application stage:

  ◊ The names and addresses of persons who have expressed an interest in becoming members of the cooperative. Signature and date evidencing this interest from each person will be obtained to fully document the need for the cooperative housing.

  ◊ A budget that provides for accumulating a management reserve at a rate commensurate with normal management fees appropriate to the area. The reserve should be shown under the management column.

  ◊ Certification of interest from prospective members, including a statement that the prospective member understands the cooperative type of organization and the time and effort each member must spend in its operation and maintenance.

  ◊ A statement from each prospective member of monthly income and expenses showing the repayment of debts and whether those payments are current. The statement must indicate that the person will have the financial ability to meet the monthly occupancy rate requirement, while still meeting other monetary obligations. *Form RD 3560-38, Application for Cooperative Housing Membership*, will be used for this purpose.

- At the final application stage:

  ◊ An Affirmative Fair Housing Marketing Plan (AFHMP) for all cooperative projects containing over four units.

  ◊ A management statement that should the cooperative be unable, after a 12-month period, to show the ability to manage itself without professional assistance, professional management services will be obtained, and the amount to be accumulated in the management reserve account will be used to pay for this service.

  ◊ An executed copy of a limited equity agreement which substantially conforms to **Attachment 11-E**.

  ◊ A completed subscription agreement which substantially conforms to **Attachment 11-I**.

11.33 MANAGEMENT REQUIREMENTS

When underwriting loan applications for cooperative housing, Loan Originators must give consideration to the special management requirements of a cooperative housing structure. The Board of Directors of the cooperative has ultimate responsibility for management of the housing.

A. Cooperative Board of Directors

The Board will be composed of members of the cooperative with the same interests and concerns as the general membership. The Board will be responsible for establishing the policies and procedures that will govern the operation of the cooperative and enforcing those policies and procedures. For instance, instituting increases in the member occupancy rates, or terminating a member's right to cooperative ownership because of serious repeated violations of cooperative rules and regulations will be the types of actions which are taken by the Board. The members of the Board will also be affected by these decisions since they must adhere to the same rules and regulations as the rest of the cooperative community.

The Board of Directors must provide to all prospective members a description of the cooperative and its financial obligations, and a description of limited equity and what it means to the cooperative members. **Attachment 11-E** will be used for this purpose.

B. Adviser to the Board

A resident of the community who is not a member of the cooperative will serve as an adviser to the Board during the period of formation and until the Board of Directors has effectively demonstrated its ability to manage the cooperative. At that time, the adviser will maintain close contact with the cooperative and provide advice and assistance as needed. The adviser may also be an organization; however, one specific individual will have sole contact with the Board to eliminate confusion and to prevent one person from countermanding another's instructions. The adviser will closely monitor the cooperative for at least 2 years after it becomes its own manager. This time may vary, depending on the circumstances.

The adviser must be very carefully selected to ensure that adequate guidance is given to the Board. The adviser must meet specific criteria to ensure that the Board receives sound advice and direction. **Attachments 11-F, 11-G,** and **11-H**, must be used in evaluating potential advisers. While it may not be possible to find one individual or individuals who can meet all the requirements outlined, the criteria should be used to select the best candidate. The Agency will provide counsel to the cooperative during the interview period and must approve the selection of the adviser.

The adviser may require compensation for services rendered; however, the amount paid should not severely limit the amount of patronage capital accruing to the members. Compensation paid to the adviser will be shared by members through the deduction of equal amounts from their management reserve payments.

C. Committees

The success of cooperative housing projects will depend on how well the members are able to manage the cooperative themselves with assistance from the adviser to the Board. The cooperative must first develop and designate the areas of responsibilities to be delegated to committees, a list of the committees, and the functions of the committees. A copy of this information will be provided to each prospective member.

It will be necessary for the proposed Board of Directors to become familiar with how a cooperative is supposed to work before it is able to successfully assume the responsibilities of running the cooperative. This can best be achieved by participating in programs designed for the express purpose of educating potential Board members. The prospective Board members will be expected to take part in such a training program.

Participation on committees by members will be on a voluntary basis. However, if it appears a committee does not have sufficient numbers for it to adequately operate, then additional members will be expected to volunteer their time and talents. Thus, participation on committees is voluntary up to a point. If a member has experience in a particular area, that member should be encouraged to join the committee that will benefit from their experience. The cooperative will need a total commitment from the membership to assure success of self-management. Examples of the types of committees which may be considered are:

- Maintenance;
- Groundskeeping;
- Communications;
- Budget and finance;
- Rules;
- Recreation; and
- Home service.

If the cooperative is not successful in managing itself, the cooperative must hire professional management.

D. Acceptable Forms of Management

There are three forms of acceptable management options for cooperative housing: self-management, partial self-management, and contract management.

1. Self-Management

The primary management objective for many housing cooperatives is to self-manage. To achieve this goal, education and training efforts should be an ongoing part of their early years of the project operation. Accordingly, modest education costs will be permitted in the budget as a subheading under management expenses. Education must be relevant to cooperatives and conducted by a professional person with experience in cooperatives. In the beginning, it may be necessary to obtain some outside services, such as a bookkeeper. If so, then partial self-management can be used initially. It will be necessary for a qualified nonmember (individual or organization) to advise the board

during the formative years of the cooperative. **Attachments 11-F** and **11-H** will be used as a guide for determining the qualifications of the adviser.

2. Partial Self-Management

Certain management and supervisory services may be contracted from a technical service organization, housing authority, or management firm. If this additional assistance does not enable the cooperative to manage itself, then the ultimate solution will have to be contract management.

3. Contract Management

Professional services may be contracted for the day-to-day supervision of cooperative operations. The Board of Directors could develop the policies that would then be administered by the management agent. The Agency will assist the adviser to the Board in determining if and when professional management will be hired in lieu of self-management. In the event the adviser and the Agency are unable to reach an agreement regarding the hiring of professional management, the ultimate decision will rest with the Agency.

E. Management Reserves and Patronage Accounts

1. Paying for Management

A set rate for professional management will be assessed each month as part of the occupancy rate and will be maintained in a separate reserve account. If the cooperative is successful at managing its own affairs during the year, the amount accumulated in the reserve will at the end of the year be transferred to the patronage account and credited equally to each member's account. This same procedure will be followed each year, allowing a buildup of patronage capital. For budgeting purposes, contributions to the management reserve account will be tracked separately for each member. This will facilitate distribution of patronage capital should a member leave before the end of the year.

If professional management is hired by the cooperative to correct deficiencies that have arisen from poor self-management, the deposits to the management account will then be used to pay for professional management, and the amount being accrued to the members' patronage capital account will be suspended. If the amount being accumulated for management is not sufficient to cover the cost of contract management, occupancy charges will be increased to cover the expense of management. When the cooperative begins to again manage itself, the assessment for the management reserve will resume as previously stated.

Agency rental assistance proceeds are not to be used to make the member's contribution to the management reserve account. Therefore, the member must make this payment from the member's own resources. If it becomes necessary to hire full-time professional management, then the management fee will be considered part of the shelter cost and thus eligible for Agency rental assistance.

2. Patronage Capital Accounts

Any income remaining at the end of the year, including unused management reserves will be assigned as patronage capital. The cooperative must keep records to track each member's contribution to the management reserve account so that the cooperative will know how much patronage capital the member is entitled to should membership be terminated prior to the end of the fiscal year. Assignment from the patronage capital account and from the management reserve must be accomplished in accordance with the Internal Revenue Service ruling concerning patronage distribution. Inflation equity that accrues on cooperative property is not considered part of the members' limited equity and will not be taken from the project when a member vacates the project.

F. Occupancy Agreement

All members of the cooperative must sign an occupancy agreement, which is a contract setting forth the rights and obligations of the cooperative member and the cooperative, including the amount of the monthly occupancy charge and the other terms under which the member will occupy the housing. An example of such an agreement is provided in **Attachment 11-C**.

11.34 COOPERATIVE MEMBERSHIP FEE

Cooperatives require a membership fee. The membership fee is established by the Board of Directors and must be equal to 1 month's occupancy charge. Once the fee has been established, that amount is uniformly applied to all members. Members unable to pay a membership fee in full should be permitted to make monthly payments without interest, until the membership fee is paid; however, a down payment of at least $25 should be required at occupancy. The period of payment on the membership fee should not exceed 12 months.

11.35 LOAN PROCESSING

Applications for cooperative housing will be solicited through a NOFA, but considered for funding from an administrative reserve.

Applications for cooperative housing loans will be processed in the order in which a complete project proposal is received. When a request for a cooperative housing loan is received, the State Director will contact the National Office to determine if sufficient funds are available to make the loan. If so, and if the project proposal appears preliminarily eligible and feasible, the Loan Originator will invite the applicant to submit an initial application in accordance with Chapter 5 and including the additional information outlined in Paragraph 11.32. If funds are not available in the current funding cycle, the initial application will be considered for funding in the next funding cycle.

The Loan Originator will review all initial applications for cooperative housing loans for eligibility and feasibility. In cases where the proposal is not eligible or feasible, the proposal will be rejected and appeal rights provided in accordance with RD Instruction 1900-B. Proposals that appear eligible and feasible will be forwarded to the National Office for review and authorization.

If authorized by the National Office, the State Director will notify the applicant that the application appears eligible and feasible. The Loan Originator will then invite the applicant to submit a final application. Loan Originators will use the procedures presented in Chapter 5 to process final applications and obtain loan approval.

11.36 LOAN CLOSING AND POST-CLOSING ACTIVITIES

Loan Originators will follow the procedures described in Chapters 8 and 9 to close the loan, monitor construction, and oversee initial project occupancy.

ATTACHMENT 11-A

MANAGEMENT OF CONGREGATE HOUSING AND GROUP HOMES

I. PURPOSE: This exhibit prescribes additional requirements for the management of congregate housing and group homes. It applies in addition to other requirements in 7 CFR Part 3560.

II. OBJECTIVE: The objective in the management of congregate and group home housing is to provide shelter and predetermined services as separate components, based on a market study identification of need, that are affordable to the housing's tenant base. It is further the objective to permit resident tenants to cover their individual medical and discretionary needs, and/or service needs or preferences not provided or arranged by the housing provider, within their own financial, familial and social resources.

III. DEFINITIONS:

Congregate housing. Residential housing for persons or families who are elderly, or have handicaps, or disabilities, consisting of private apartments and central dining facilities in which a number of preestablished services are provided to tenants (short of those services provided by a health care facility that provides health related care and services recognized by the Medicaid program). Tenants requiring additional services not provided by the facility will acquire them or provide for them within their own financial, familial, or social resources.

Group home. Housing that is occupied by individuals who are elderly or have handicaps/disabilities, sharing living space within a rental unit in which a group home resident assistant may be required.

Service agreement. A written agreement between the borrower and the congregate or group home service provider detailing the specific service to be provided, the cost of the service, and the length of time the service will be provided.

Service contract. A written contract between the borrower and the tenant listing the package of services selected by the tenant that will be provided or arranged by the borrower, the fee or fees to be charged, and applicable conditions and agreements pertaining thereto.

Service plan. A written plan describing how services will be provided to congregate housing or group home projects. At a minimum, the plan must specify the services to be provided, the frequency of the services, who will provide the services, how tenants will be advised of the availability of services, and the staff needed to provide the services.

Tenant base. The demographic and economic profile of eligible people in a housing market area who would benefit, whether by need or preference, from the housing and supportive services provided by a congregate housing or group home facility located in the market area.

IV. RENT SUBSIDY OPPORTUNITIES: Subsidy discussed in that paragraph cannot be used to pay for services in congregate housing or group homes.

V. MANAGEMENT OPERATIONS: Borrowers must comply with 7 CFR Part 3560 in managing congregate housing and group homes. In addition, borrowers must submit a service plan that explains how services will be provided.

A. Borrower's experience. Borrowers and management agents must outline their experience and plans for providing congregate and group home services when completing the management plan in 7 CFR 3560.102(e)(2). Borrowers who are not experienced with congregate housing/group homes must obtain assistance from organizations or individuals experienced with congregate issues in developing management and servicing plans. The service provider's experience and ability to furnish the services must be documented.

B. Management plan. In addition to the general requirements for a management plan described in 7 CFR 3560.102, the management plan should describe the plan for management of features unique and essential to congregate/group home housing. This portion of an overall management plan may either be incorporated within the framework of the management plan or as an addendum to the plan. The following areas should be described:

1. Tenant mix. For congregate housing, describe the mix of tenants who will have a greater number of services and tenants who will have a lesser number of services that the project is designed to accommodate. For group home housing, describe the "group(s)" of tenants the group home is intending to serve such as elderly tenants, developmentally disabled, or mentally impaired persons.

2. Marketing plan. Describe the strategies, ways and means that marketing and advertising will be focused to attract and retain tenants from the market area (tenant base) that would benefit by the congregate/group home housing project.

3. Service package. Describe the basic and any alternative "package" of service(s), or combination of service packages, that a tenant may acquire at the project. Describe any deviations to a service package that can be accommodated on an individual tenant basis by the project in a reasonable and practical manner.

4. Referral service. Describe the plan for identifying other services available to tenants and for establishing liaison between the project and the other services. Describe the plan to make the information of such services available and known to tenants. Describe what arrangements the project can provide as part of a service package to help tenants use referral services.

5. Tenant consultation. Describe how the project management staff will use tenant consultation to assist tenants with information, modification of service package, referral to medical, clinical, family or other services, and identifying what, if any, reasonable accommodations or assistance are needed and whether they are feasible and practical to provide.

6. Emergency evacuation plan. Describe what the project will do to inform and train tenants on safe evacuation of an apartment and building. Describe which community/public services will be informed about and incorporated into the project evacuation plan.

C. Service plan. Congregate housing/group home borrowers must submit a service plan as defined in paragraph III of this attachment and in 7 CFR 3560.11. The service plan will be an addendum to the management plan when appropriate, or subject to the signature and authorization requirements of the management plan when the service provider is not the borrower or management agent.

D. Service agreements. Borrowers must submit a service agreement for each service they do not provide directly. The agreement must stipulate the specific service to be provided, the cost of the service and the length of time the service will be provided. The service agreement will be an addendum to the management agreement when appropriate or subject to the signature and authorization requirements of the management agreement when the service provider is not the borrower or management agent. Initial service agreements must be effective for at least 1 year after the project becomes operational. Subsequent agreements must be effective for at least 1 year.

E. Service contract. Borrowers must submit a sample of the service contract for Agency review for compliance with Fair Housing Act requirements/restrictions and Agency requirements. The service contract may not be a requirement for occupancy in the congregate housing project and it must be made separate and apart from the occupancy lease agreement.

VI. RENTING PROCEDURE: In addition to meeting the conditions of 7 CFR 3560.104, borrowers must meet the following conditions.

A. Eligible tenants. Tenants must meet the general provisions of 7 CFR 3560.152 and be eligible to occupy congregate or group home housing as defined in paragraph III of this attachment. Borrowers must be careful to follow the conditions described in 7 CFR 3560.104 when inquiring about the applicant's or tenant's request for congregate/group home housing and the services it provides.

B. Tenant selection. Borrowers must meet the provisions of 7 CFR 3560.154. Borrowers should be further guided by the following in selecting tenants for congregate housing and group homes:

1. Congregate housing.

a. Tenant mix. It is the primary intent of a congregate housing project to provide or arrange for service packages made up of various component services to serve the needs of tenants needing such services. If it is not feasible to provide service packages to all tenants, the borrower may serve tenants needing services and tenants not needing services. The number of tenants that can be served with service package(s) will be described in the project management plan. Project management should be consulted when establishing the tenant mix. The plan should establish a percentage of tenants who will use a service package with a greater number of component services as differentiated from tenants whose service package will contain fewer services. As existing tenants age and new tenants move in, the percentage may fluctuate. Rural Development must concur with the proposed plan.

b. Selecting services needed or wanted by tenants in congregate housing.

(1) It is the borrower's responsibility to inform applicants or tenants about the supportive services provided at or by the congregate project. Such services or service packages need to be identified on the project's application form as part of an application package.

(2) It is the applicant's or tenant's responsibility to identify and request the services or service package provided by the project which that person desires or needs.

(3) The borrower may have the applicant/tenant provide only such essential information about the person's desire for provided service(s) to determine whether the project provides the services desired by the applicant/tenant and/or to determine how to best serve the applicant's/tenant's request for services with reasonable accommodation, referral services, etc. The essential information may include an explanation by the applicant/tenant. In the case of a group home, it may also include an assessment by a professional medical examiner or practitioner, social service caseworker, representative of an advocacy group, member of the clergy, etc. that the tenant/applicant provides to support the application for housing and services.

c. Waiting lists. To sustain the number of tenants requesting services, management may maintain waiting lists for tenants requesting large component service packages, small component service packages, and those wanting a service package at a later time. Management may choose tenants from the lists in such manner to maintain the feasibility in providing services, however, priority in tenant selection should go to an applicant requesting a service package over one requesting a service package at some later date. The other provisions contained in 7 CFR 3560.154(f) concerning waiting lists are applicable.

2. Group home. A group home may limit occupancy to a specific group of tenants. For example, a group home may limit occupancy to eligible elderly tenants, developmentally disabled people, or mentally impaired tenants. This limitation will be outlined in the borrower's management plan. The following will apply to group homes:

a. Applicants for group home housing must demonstrate their need for such housing.

b. Tenants of group homes cannot be required to be a part of an ongoing training or rehabilitation program sponsored by the applicant or other organization.

c. Tenants should be selected from the local area before considering other areas.

C. Determining per unit rental rates for group living arrangements. A "unit" in a group home consists of the space occupied by a specific tenant household. It may be a traditional apartment unit, a bedroom, or a portion of a bedroom. Rents are determined as follows:

1. When all units are of equal size, divide operational costs equally.

2. When all units are not of equal size, determine the size of each unit and divide operational costs accordingly.

a. The size of traditional units is their square footage.

b. The size of nontraditional units is the bedroom or portion of bedroom occupied by the household and portion of the common area to be used by all potential units in nontraditional units.

3. A unit occupied by a resident assistant is not considered a revenue producing unit and would be excluded from the rent determination.

VII. VERIFICATION AND CERTIFICATION OF TENANT INCOME, AND/OR EMPLOYMENT AND REVIEW OF SUPPORT SERVICES: The provisions of 7 CFR 3560.152(a) apply. In addition to recertifying income, management should consult with each tenant to explain the available support services and determine if the tenant desires any available services not presently used and/or if any other practical and feasible accommodations can be provided to the tenant.

VIII. LEASE AGREEMENTS: In addition to the conditions contained in 7 CFR 3560.156, the following should be addressed:

A. Tenants who request services in congregate housing. If a tenant requests services, the lease must contain the following clauses:

1. "I understand that use of the service package I have selected is not mandatory, and if I later choose to modify or not renew my service contract, such action on my part will not cause default under the terms of this lease agreement. I further understand and agree that I may not use any aspect of dissatisfaction with my service contract as grounds to withhold rents due under the terms of this lease agreement."

2. "The lessor warrants that the following basic services will be made available to all tenants for a fee separate and apart from any rent described in the terms of this lease. The basic services are: _____ _____. If these services cannot later be provided, such failure or inability to provide the services will not constitute a breach of this lease agreement and the lessor will hold the tenant harmless should the tenant elect to terminate this lease on the grounds that provision of these services was cause for the tenant to apply for and accept occupancy in this congregate housing project."

B. Services provided to people other than tenants of Rural Development financed congregate housing. If the meal facility serves people other than the tenants of the project, the borrower must obtain a lease from the service provider and require payment sufficient to cover the annual operating expenses, debt services and reserve account attributable to the portion of increased space that is in excess of the needs of the tenants in the project. Tenants of the congregate housing must have priority in receiving the services. When the facilities are provided with loan funds, the following conditions must be met:

1. The services to be provided and the fees to be charged (if any) must be fully documented in the service plan, if provided by the applicant, or in the service plan and lease agreement if the services will be provided by others.

2. Any lease agreement must be approved by the State Director or the loan approving official and contain the following statement: "This agreement will not be effective until approved by the State Director of the Rural Development, U.S. Department of Agriculture, or the State Director's delegated representative."

IX. RENT COLLECTION: The provisions of 7 CFR 3560.209 will apply for services as well as rent. Tenants must pay charges for the services as documented in their lease. The payment for rent or services may be made separately or combined; however, payments for rent and services must be accounted for separately.

X. BORROWER PROJECT BUDGETS: Borrowers must separate the revenue and expenses of project operations from the service component. *Form RD 3560-7, Multiple Family Housing Project Budget/Utility Allowance*, must reflect project operations only. Also, if project employees provide any part of the services, the project operation budget and the services budget must reflect the proration of employee compensation between the respective budgets as further described in 7 CFR 3560.102(i).

XI. ACCOUNTING AND REPORTING REQUIREMENTS AND FINANCIAL MANAGEMENT ANALYSIS: Borrowers must maintain separate financial records for the operation and maintenance of the project and the service component. Funds allocated to the operation and maintenance of the project may not be used to supplement the cost of services, nor may service component funds be used to supplement the project operation and maintenance. Detailed financial reports on the service component will not be required unless specifically requested by Rural Development, and then only to the extent necessary for Rural Development and the borrower to discuss the affordability (and competitiveness) of the service component by the tenant base in keeping with the objective stated in paragraph II of this attachment. The project audit, or verification of accounts on *Form RD 3560-10, Borrower Balance Sheet*, together with an accompanying *Form RD 3560-7* showing actuals, must allocate revenue and expense between project operations and the service component.

XII. TERMINATION OF TENANCY AND EVICTION. In keeping with the spirit and provisions of the Fair Housing Amendments Act of 1988, a tenant living in congregate or group home housing project may remain as long as they are eligible to occupy and the tenant expresses or otherwise maintains they can care for themselves with or without services provided by the project, or by familial or social services from outside the project. Tenants are otherwise bound by the terms of their lease and their occupancy may be terminated only according to the provisions contained in 7 CFR 3560.158 and 3560.159.

ATTACHMENT 11-B

SUPPORT SERVICES FOR CONGREGATE HOUSING AND GROUP HOMES

I. PURPOSE: This attachment prescribes support services for congregate housing and group homes.

II. GENERAL: The success of congregate housing and group homes will depend on the quality and affordability of the service component. Congregate housing applicants should explore the feasibility of providing services individually to ensure affordability by very low-income tenants.

III. EXISTING COMMUNITY SERVICES AND REQUIREMENTS: Applicants should check local service agencies to determine what services are already available in the community. Services can often be provided more inexpensively through local service agencies or other groups which assist in providing services. In many communities there are established volunteer groups that may be willing to provide volunteer assistance to congregate housing tenants. Volunteer groups with a history of assisting elderly people may be able to supplement the delivery of services and help keep the costs affordable. Applicants should explore the availability of volunteers from the Retired Senior Volunteer Program (RSVP), local church groups and other community organizations. If volunteer groups are used, an alternative method of service delivery must be addressed in case the availability of volunteers ceases in the future. Applicants must also verify State and local licensing and certification requirements and include relevant information in the loan request.

IV. SERVICE AGREEMENTS: Applicant must submit a service agreement(s) for services that will be provided by employees of the project. If services will be provided by employees of the project, the applicant must submit a separate budget for services and describe how tenants will be billed for services. Employees of congregate housing facilities who perform tasks for the management of the building and spend an appreciable amount of time in providing services to tenants should have their salaries prorated between the project's operation and maintenance budget and the services budget.

V. SERVICES FOR CONGREGATE HOUSING: The following services must be made available to tenants of congregate housing projects:

A. Meals. At least one nutritious meal a day 7 days a week, must be provided in accordance with 7 CFR 3560.69(c)(1). The following information concerning the meal service must be included with the loan request:

1. Who will provide the meals (i.e., meals offered by a local agency with tenant contribution; supplied or conducted for by owner with charge to tenant)?

2. If the service will be provided by employees of the project, a proposed breakdown of costs for the meal service. The breakdown should include the cost of food, personnel and utilities needed to prepare and serve the meals. Information concerning the proposed staffing should be included.

3. The cost to the tenant. Will tenants pay by the meal or be charged a rate for a specified time?

4. A statement concerning the frequency of meals, including the number of meals to be served per week.

5. Information concerning how when and where the meals will be served (i.e., waiter style, buffet, tray service).

6. Any licensing requirement necessary for the service.

B. Transportation. Adequate transportation must be provided to shopping, medical and other services to meet the needs of the tenants. Applicants are encouraged to locate congregate housing facilities so that tenants can use public services. In many cases, service is available and the applicant can arrange for the project to be included in the schedule established by the provider. The following information concerning the transportation service must be included with the loan request:

1. Who will provide the service (i.e., transportation provided by a local agency with tenant contribution; vehicle leased or purchased by applicant with charge to tenant)?

2. If the service will be provided by employees of the project, a proposed breakdown of costs for the transportation service. The applicant should address the following costs: vehicle purchase or lease payment; personnel to operate the vehicle; fuel; maintenance; and insurance.

3. The cost to the tenant. Will tenants pay for each trip or will they be charged a monthly rate?

4. A typical proposed schedule.

C. Housekeeping. Housekeeping services must be offered to assist congregate tenants with household tasks. The applicant must address the following concerning the housekeeping service:

1. Who will provide the service (i.e., housekeeping offered by a local agency with tenant contribution; supplied or contracted for by applicant with charge to tenant)?

2. If the service is provided by employees of the project, a proposed cost breakdown for the service which includes the cost of labor and supplies.

3. The type of tasks that will be offered (i.e., light housekeeping, laundry, shampooing carpeting). What is the planned frequency of the tasks?

4. The cost to the tenant.

D. Personal services. Personal services include such items as assistance with personal hygiene, nutrition counseling and general health screening (blood pressure checks, etc.). The following information concerning the personal services must be submitted with the loan request:

1. Who will provide the service (i.e., personal services offered by a local agency with tenant contribution; volunteer health services; contracted for by applicant with charge to tenant)?

2. If the service is provided by employees of the project, a proposed cost breakdown for the service which includes the cost of labor and supplies.

3. The type of tasks that will be provided.

4. The cost to the tenant.

5. Any licensing requirement necessary for the services.

E. Recreational/social. Recreational and social activities must be offered to tenants to encourage interest in a variety of areas. The following areas could be considered: hobby and craft classes; dinners for holidays, birthdays, etc.; educational lectures; wellness and exercise programs; and a library. The applicant should encourage recreational/social activities which cause interaction between tenants, the project and the community. The following information concerning the recreational/social service must be included with the loan request:

1. Who will provide the service (i.e., recreational/social activities offered by a local agency with tenant contribution; supplied or contracted for by applicant with charge to the tenant)?

2. If the service is provided by employees of the project, a proposed cost breakdown which includes the cost of labor and supplies.

3. The types and frequency of recreational/social activities that will be offered.

4. The cost to the tenant.

VI. SERVICES FOR GROUP HOMES: The following services must be made available to tenants of a group home:

A. Meals. At least three nutritious meals a day, 7 days a week, must be provided if tenants are not capable of preparing their meals. If meals are provided, the budget may include only the cost of food if tenants assist a staff person in preparing meals. Tenants in

some group homes may be able to prepare meals on their own with supervision from project personnel. In these cases, applicants must ensure that the tenants will be preparing nutritious meals.

B. Transportation. Applicants must submit information on the transportation service as detailed in paragraph V B of this attachment.

C. Housekeeping. Applicants must provide a narrative explaining how housekeeping will be accomplished. In many cases, group home tenants assist with housekeeping chores with little expense being borne by the project. Applicants should detail expenses that will be part of the service budget.

D. Personal services. A higher percentage of tenants in a group home may require personal services. Applicants must detail the services to be offered and the cost to tenants.

E. Recreational/social. In most cases, there will be little expense for recreational/social opportunities in a group home. Applicants should explain what will be offered to the tenants and the projected cost to tenants.

VII ADDITIONAL ITEMS NECESSARY FOR CONGREGATE HOUSING/GROUP HOMES THAT CANNOT BE FINANCED WITH RURAL DEVELOPMENT LOAN FUNDS: Congregate housing/group home projects require additional items that will not become affixed to the real estate. These items can include special portable equipment, furnishings, kitchen bars, dining ware, eating utensils, movable tables and chairs, steamtables, etc. In accordance with 7 CFR 3560.69(d), loan funds cannot be used to finance these items. As a part of the loan request, applicants must include a proposed list of additional items that will be needed by the project and state how these items will be paid for.

ATTACHMENT 11-C

OCCUPANCY AGREEMENT

THIS AGREEMENT, dated _____, by and between _____(hereinafter referred to as the "Cooperative"), at _____ _____ and _____ (hereinafter referred to as "Member").

WITNESSETH: WHEREAS:

The purpose of the Cooperative is to acquire, own, and operate a cooperative housing project and its members shall have the right to occupy its dwelling units under the terms and conditions set forth in this agreement:

Member is the owner and holder of a certificate of membership of the Cooperative and intends to occupy a dwelling unit in the project as permanent residence; and

Member has certified to the accuracy of the statements in Member's application and agrees and understands that household income and other eligibility requirements are substantial and material requirements of his initial and continuing occupancy.

TO HAVE AND TO HOLD dwelling unit Number _____ on the terms and conditions set forth in this agreement, in the corporate charter, bylaws, and any other rules and regulations of the Cooperative. The term of this agreement shall be for a three-year period ending on _____, 20 __, 1/ renewable for successive three-year periods under the conditions provided for in this agreement.

ARTICLE 1. OCCUPANCY CHARGES.

Section 1.01. Commencing at the time indicated in ARTICLE 2, the Member agrees to pay to the Cooperative a monthly sum referred to as the "Occupancy Charge." This amount will be equal to one-twelfth of the Member's proportionate share of the total amount required by the Cooperative, as estimated by its board of directors, to meet its annual expenses and the requirements of the Rural Development loan. These include but are not limited to, the following items:

1/ The termination date to be inserted should be three years from the date of the occupancy agreement. (These terms may be for periods longer than 3 years if mutually agreeable to the member and to the cooperative.)

(a) Project operating expenses and cost of services furnished.

(b) Necessary management reserve and administrative costs.

(c) Taxes and assessments levied against the project or the Cooperative which it is required to pay.

(d) Fire and extended coverage insurance on the project and any other insurance which the Cooperative may require.

(e) The cost of furnishing any water, electricity, heat gas, garbage and trash collection, and other utilities, if furnished by the Cooperative.

(f) Payments to other reserves set up by the board of directors.

(g) Estimated costs of repairs, maintenance, and replacements of project property to be made by the Cooperative.

(h) The amount of principal, interest, and any other required payments on any indebtedness of the Cooperative, including any loan made or insured by Rural Development, United States Department of Agriculture.

(i) Any other expenses of the Cooperative approved by the board of directors and by Rural Development, while mortgagee, including operating deficiencies, if any, for prior periods.

Section 1.02. The board of directors shall determine the amount of the occupancy charges annually, but may do so at more frequent intervals should circumstances so require. No Member shall be charged with more than the appropriate share determined by the board of directors. That amount of the occupancy charge required for payment on the principal of mortgage of the Cooperative or any other capital expenditures shall be credited upon the books of the Cooperative as a capital contribution by the Members. Until further notice from the Cooperative, the monthly charge for the above-mentioned dwelling unit shall be $_____.

ARTICLE 2. WHEN PAYMENT OF OCCUPANCY CHARGES TO COMMENCE.

Section 2.01. After thirty days' notice by the Cooperative that the dwelling unit is available for occupancy, or upon acceptance of occupancy, whichever is earlier, Member shall make a payment for occupancy charge covering the unexpired balance of the month. Thereafter, Member shall pay occupancy charge in advance on the first day of each month. Dates of payments may be changed by mutual agreement of the Cooperative and Rural Development.

Section 2.02. The Member agrees to furnish to the Cooperative, each year, a certificate of income on which the Member's occupancy charge will be determined.

ARTICLE 3. PATRONAGE REFUNDS.

Section 3.01. The Board shall, on the books of the Cooperative, assign to Member in accordance with the Internal Revenue Service ruling concerning patronage capital, a

proportionate share of money collected in excess of the amount needed for Cooperative expenses, including reserves designated as management reserve, and Members will be notified of the amount assigned each year.

ARTICLE 4. MEMBER'S OPTION TO RENEW.

Section 4.01. It is agreed that the term of occupancy shall be renewed for further periods of three years from the expiration of the initial term (or for a longer term as mutually agreed to by the member and the cooperative). Such renewals shall be based upon the same agreements as contained in this agreement unless: (1) notice of Member's decision not to renew is given to the Cooperative in writing at least 4 months prior to expiration of the current terms, and (2) Member, before expiration of said term, shall (a) endorse membership certificate for transfer to Cooperative and deposits same with the Cooperative, (b) meet all obligations and pay all amounts due under this agreement before said expiration, and (c) vacate and leave the premises in good state of repair. Upon compliance with foregoing provisions (1) and (2), Member shall have no further liability under this agreement. If extenuating circumstances warrant, the Member's four-month notification of intention to vacate may be modified appropriately. The Member will be entitled to the patronage capital which has accrued and been assigned during the term of this agreement provided that provisions (1) and (2) have been met.

ARTICLE 5. PREMISES TO BE USED FOR RESIDENTIAL PURPOSES ONLY.

Section 5.01. Member shall occupy the dwelling unit covered by this agreement as a private dwelling unit for the Member and/or immediate household and for no other purpose. The Member shall have use of all common community property and facilities of the project so long as Member continues to own a membership certificate of the Cooperative, occupies the assigned dwelling unit, and abides by the terms of this agreement. Any sublessee of the Member, if approved pursuant to Article 7 hereof, may enjoy the rights to which Member is entitled under this Article 5, except that the sublessee will have no voting rights in the affairs of the Cooperative.

Section 5.02. Member shall not permit or suffer anything to be done or be kept upon said premises which will increase the rate of insurance on the building, or on its contents. Member will not obstruct or interfere with the rights of other occupants, or annoy them by unreasonable noises or otherwise permit any nuisance on the premises, or allow any illegal act to be committed. Member shall comply with all the requirements of the Board of Health and of all other governmental authorities with respect to the said premises. If, by reason of the occupancy or use of these premises by Member, the rate of insurance on the building is increased, Member shall become personally liable for the additional insurance premiums.

ARTICLE 6. MEMBER'S RIGHT TO PEACEABLE POSSESSION.

Section 6.01. In return for Member's continued fulfillment of the terms and conditions of this agreement, the Cooperative agrees that the Member may at all times while this agreement remains in effect, have and enjoy for the Member's sole use and benefit the dwelling unit and community facilities hereinabove described.

ARTICLE 7. NO SUBLETTING WITHOUT CONSENT OF CORPORATION.

Section 7.01. This agreement shall not be assigned nor Member's dwelling unit sublet without the written consent of the Cooperative and Rural Development, while mortgagee. Under this agreement the Member shall be liable for the conduct of the sublessee. Any unauthorized subleasing shall, at the option of the Cooperative and of Rural Development, while mortgagee, result in termination and forfeiture of Member's rights under this occupancy agreement.

ARTICLE 8. TRANSFERS.

Section 8.01. Neither this agreement nor Member's right of occupancy shall be transferable or assignable except as provided in the bylaws of the Cooperative for the transfer of membership.

ARTICLE 9. MANAGEMENT, TAXES AND INSURANCE.

Section 9.01. The Cooperative shall provide necessary management, operation, and administration of the project; pay or provide for the payment of all taxes or assessments levied against the project; procure and pay or provide for the payment of fire insurance and extended coverage, and other insurance as the Cooperative may deem advisable on property in the project. The Cooperative will not, however, provide insurance on Member's personal property.

ARTICLE 10. UTILITIES.

Section 10.01. The Cooperative shall arrange for utilities (water, electricity, heat, and gas) for common areas of the structure(s) in amounts which it deems reasonable and in conformance with 7 CFR 3560.303(b). (Strike out any of the foregoing items in this Article which are not applicable.) Each unit will be separately metered and Member shall pay directly to the supplier for the utilities billed to Member.

ARTICLE 11. REPAIRS.

Section 11.01. By Member. Member agrees to repair and maintain Member's dwelling unit at own expense as follows:

(a) Any repairs or maintenance necessitated by Member's own negligence or misuse;

(b) Any redecoration of own dwelling unit authorized, done or contracted for by Member;

(c) Any repairs, maintenance, or replacements required on the following items: (Insert the items desired, subject to Rural Development approval.)

Section 11.02. By Cooperative. The Cooperative shall provide and pay for all necessary repairs, maintenance, and replacements except as specified in Section 11.01. Member agrees to the right of the officers of the Cooperative to authorize entrance to Member's dwelling unit in order to complete necessary repairs, maintenance, and replacements and to authorize entrance for such purposes by employees of any contractor, utility company, municipal agency, or others at

any reasonable hour of the day and upon reasonable notice. In the event of emergency, the unit may be entered at any time. Notification of entry will be left for the member by the person performing the maintenance or repair.

Section 11.03. Right of Cooperative to Make Repairs at Member's Expense. In case Member shall fail to effect and pay for the repairs, maintenance, or replacements specified in Section 11.01, in a manner satisfactory to the Cooperative, the board may do so and add the cost of repairs to Member's next month's occupancy charge payment.

ARTICLE 12. ALTERATIONS AND ADDITIONS.

Section 12.01. The Member shall not, without the written consent of the Cooperative make any structural alterations in the premises or in the water, gas or steampipes, electrical conduits, plumbing or other fixtures connected therewith, or remove any additions, improvements, or fixtures from the premises.

Section 12.02. If Member for any reason ceases to be an occupant of the premises, Member shall surrender to the Cooperative possession thereof, including any alterations, additions, fixtures, and improvements.

Section 12.03. Member shall not, without the prior written consent of the Cooperative install or use in dwelling unit any air conditioning equipment, electric heater, or power tools. Member agrees that the Cooperative or Rural Development, while mortgagee, may require the prompt removal of any such equipment at any time, and that failure to remove such equipment upon request shall constitute a default within the meaning of Article 13 of this agreement.

ARTICLE 13. DEFINITION OF DEFAULT BY MEMBER AND EFFECT THEREOF.

Section 13.01. If, at any time after the happening of any event specified in clauses (a) through (k) below, the Cooperative gives to Member a 30-day notice of expiration, this agreement and all Member's rights under this agreement will expire on the date specified in such notice. In the meantime the default may be cured in a manner deemed satisfactory by the Cooperative. After 10 days following such expiration of Member's rights, the Cooperative may reenter the dwelling unit and remove all persons and personal property therefrom, by any means available to it by law, and may repossess the dwelling unit in its former state as if this agreement had not been made.

(a) If, during the term of this agreement, Member ceases to be the owner and legal holder of a membership of the Cooperative.

(b) If Member attempts to transfer or assign this agreement in a manner inconsistent with the provisions of the bylaws.

(c) If, during continuance of this agreement, Member is declared bankrupt under the laws of the United States so as to be released from any debt or obligation to the Cooperative or to interfere with his full exercise of his rights as Member and occupant.

(d) If, during continuance of this agreement, a receiver of Member's property is appointed under the laws of the United States or of any State.

(e) If, during continuance of this agreement, Member shall make a general assignment for the benefit of creditors.

(f) If, during continuance of this agreement, any of the membership rights in the Cooperative owned by Member are duly levied upon and sold under the process of any court.

(g) If Member fails to effect and/or pay for repairs and maintenance as provided for in Article 11.

(h) If Member fails to pay any sum due pursuant to Article 1.

(i) If default occurs with respect to any obligation of Member under this agreement.

(j) If, during the term of this agreement, Member fails to comply promptly with all requests by the Cooperative for information and certifications concerning the total current income of Member and Member's household or any other eligibility requirements for membership or occupancy.

(k) If, during the term of this agreement, limitations for continued occupancy are established from time to time by the Rural Development and are exceeded.

Section 13.02. Member hereby expressly waives any and all right to reenter the dwelling if the eviction is by judgment of any court or judge. The words "enter," "reenter," or "reentry" as used in this agreement are not restricted to their technical legal meaning. In the event of a breach by Member of the terms of this agreement, the Cooperative shall have the right of injunction and the right to invoke any remedy allowed at law or in equity, as if reentry, summary proceedings, and other remedies were not provided for.

Section 13.03. Failure by the Cooperative to avail itself of any remedy given under this agreement shall not waive or destroy any right of the Cooperative to avail itself of remedies for any similar or other breach or default by Member.

Section 13.04. Notice by the Cooperative under any of the conditions described in Article 13 shall be in writing. The cooperative shall not evict any member except by judicial action pursuant to State or local law and in accordance with the requirements of 7 CFR 3560.158 or 3560.159.

ARTICLE 14. MEMBER TO COMPLY WITH ALL CORPORATE REGULATIONS

Section 14.01. Member agrees to preserve and promote the cooperative ownership principles on which the Cooperative has been founded and to abide by the charter, bylaws, rules and regulations of the Cooperative, and amendments. The Member agrees to make diligent

effort in performing duties and accepting responsibilities either through volunteering or by assignment from the board of directors. By acts of cooperation with other members, Member will strive to bring about and maintain a high standard in home and community conditions. The Cooperative agrees to deliver to Member its rules and regulations and/or to distribute them in such other manner as to constitute adequate notice.

ARTICLE 15. EFFECT OF FIRE LOSS ON INTERESTS OF MEMBER

Section 15.01. In the event of loss or damage by fire or other casualty to Member's dwelling unit without fault or negligence of Member, the Cooperative shall determine (1) whether Rural Development to restore the damaged premises and, if not, to restore (2) the amount to be paid to Member to redeem membership and for reimbursement for any loss sustained by the Member.

Section 15.02. If, under such circumstances, the Cooperative decides to restore the premises, occupancy charges shall stop wholly or partially, as determined by the Cooperative, until the premises have been restored. If, on the other hand, the cooperative decides not to restore the premises, the occupancy charges shall cease from the date of such loss or damage.

ARTICLE 16. INSPECTION OF DWELLING UNIT

Section 16.01. Member agrees that the representatives of any mortgagee holding a mortgage on the property of the Cooperative, the officers of the Cooperative, or authorized representative of the Cooperative shall have the right to enter the dwelling unit of Member and make inspections and, with the approval of the Cooperative, the employees of any contractor, utility company, municipal agency, or others shall have the right to enter the dwelling unit of Member and make inspections at any reasonable hour of the day, upon reasonable notice, and at any time in the event of emergency.

ARTICLE 17. SUBORDINATION CLAUSE

Section 17.01. The Cooperative housing project of which Member's dwelling unit is a part is planned to be constructed by the Cooperative with the assistance of a loan to the Cooperative made or insured by the Rural Development. Therefore, this agreement and all rights, privileges, and benefits hereunder shall be at all times subject and subordinate to a first mortgage lien or any documents executed by the Cooperative to secure its obligations to Rural Development and to any extensions and removals and to any security instrument which may be made in replacement thereof or at any time hereafter be placed on the property of the corporation. Member hereby agrees to execute, at the Cooperative's request and expense, any instrument which the Cooperative or any lender or mortgagee may deem necessary or desirable to subordinate this Agreement to any such security instrument. Member hereby appoints the Cooperative and each and every officer thereof, and any future officer, as irrevocable attorney-in-fact during the term of the agreement to execute any such instrument on behalf of Member.

ARTICLE 18. LATE CHARGES AND OTHER COSTS IN CASE OF DEFAULT

Section 18.01. In addition to all other sums due or to become due under this agreement, Member shall pay to the Cooperative a late charge, not to exceed $10.00, at any time payment of occupancy charges, or part thereof, is more than 10 days late. This late fee may be waived, depending on the circumstances and at the discretion of the board.

Section 18.02. If, because of default by Member under any obligation in this agreement, the Cooperative obtains the services of an attorney, Member shall pay to the Cooperative all costs and fees involved, including reasonable attorney's fees and the costs of any resulting law suit, if such an action becomes necessary.

ARTICLE 19. NOTICES

Section 19.01. Whenever any bylaw of Cooperative, any law, or this agreement requires notice to be given to either party, any notice or demand by the Cooperative to Member shall be considered to have been duly given if the same is delivered to Member at Member's unit or to Member's last known address. Any notice or demand by Member to the Cooperative shall be considered to have been duly given if delivered to an officer of the Cooperative. Such notice may also be given by depositing same in the United States mails addressed to Member as shown on the books of the Cooperative, or to the president of the cooperative, as the case may be, and the time of mailing shall be the time of giving such notice.

ARTICLE 20. ORAL REPRESENTATION NOT BINDING

Section 20.01. No representation other than those contained in this Agreement and in the charter and the bylaws of the Cooperative shall be binding upon the Cooperative.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be signed and sealed the day and year first above written.

_____
Cooperative

By:_____(SEAL)

_____
Member

TO BE DULY ACKNOWLEDGED

ATTACHMENT 11-D

COOPERATIVE HOUSING SURVEY

BEFORE ATTEMPTING TO ANSWER THESE QUESTIONS, PLEASE READ THE GUIDELINES FOR UNDERSTANDING THE PRINCIPLES OF COOPERATIVE HOUSING. NOW TAKE TIME TO ANSWER THE FOLLOWING QUESTIONS AS HONESTLY AS YOU CAN.

(Circle yes or no)

1. Are you willing to share the responsibilities required of a cooperative member?

yes no

2. If asked, will you serve on the board of directors or on a committee?

yes no

3. Are you willing to help in maintaining the cooperative property?

yes no

4. Do you now have a better idea of what cooperative housing really is?

yes no

5. Do you want to ask more about the cooperative before deciding whether to join?

yes no

6. If the answer to question 5 is "yes," will you come to an information meeting to be held in town?

yes no

7. Have you answered the questions truthfully? Did you answer “no” to any of questions 1, 2, or 3? If so, this type of housing is not for you. If you are interested, please go on to complete the second portion of this survey.

1. How many persons in your household?

adults children

_____ _____

2. Approximate annual income from all sources: $_____

3. Are you or members of the household handicapped or impaired and in need of specifically designed housing arrangements?

yes no

4. An informal meeting is scheduled for _____a.m./p.m., on _____, 20____, for the purpose of discussing a proposed ____-unit cooperative planned for this community.

At that time, a representative of the cooperative will be on hand to answer other questions you may have. So that we may know how many persons to expect at the meeting, we ask that you give us your name, address, and phone number.

NAME _____

ADDRESS _____

_____

PHONE _____

ATTACHMENT 11-E

LIMITED EQUITY AGREEMENT

This Agreement, dated _____, by and between _____(hereinafter referred to as the "Cooperative"), a corporation having its principal office and place of business at _____ _____and Rural Housing Service, United States Department of Agriculture (hereinafter referred to as RHS).

WITNESSETH WHEREAS

The purpose of the cooperative is to own and operate cooperative housing on behalf of its members, and the cooperative has applied to RHS for mortgage financing as authorized under Section 515 of the Housing Act of 1949, as amended.

The purpose of RHS is to provide long term housing financing for very-low, low-, and moderate-income persons and households, although initially eligible cooperative members may remain in occupancy after exceeding the income limit established for moderate income.

The additional purpose of RHS is to maintain the availability of units financed by RHS for very-low, low-, and moderate-income persons for as long as possible up to the 30-year maximum life of the loan.

As a means for implementing and carrying out these purposes, the cooperative pledges to RHS that:

(a) Equity accumulated by the cooperative, other than through the appreciation in value of real estate, furnishings, and equipment of the cooperative, will be assigned on the cooperative's books equally to members at the end of its fiscal year and in accordance with the Internal Revenue Service ruling concerning patronage capital.

(b) The members will be notified, in writing, of the amount assigned to his or her patronage account each year after the assignment has been made.

(c) The officers, board of directors, and members of the cooperative may not act to dissolve the cooperative for the purpose of distributing equity, or for other reasons, except as necessary due to default or other circumstances beyond the cooperative's control, and

(d) Should it become necessary to dissolve the cooperative, all property and assets of the cooperative will be transferred to another nonprofit or such other municipal organization and be maintained for the same purposes for which it was started.

(e) Only membership fees and money accrued in the members' patronage capital accounts will be distributed to the members and represents the entire equity payment to which the members are entitled. The cooperative reserves the right to withdraw from the equity payment or membership fee any amount due the cooperative through member's delinquency in payment of occupancy charge or through damage to the premises.

In witness thereof, the parties hereto have caused this agreement to be signed and sealed the day and year first above written.

_____

(Cooperative)

_____ BY: _____ (Seal)

(Witness) (Member)

This agreement will be filed with the member's record.

ATTACHMENT 11-F

QUALIFICATIONS FOR AN ADVISER TO THE BOARD

In the Board's analysis of the talents and abilities of a person to handle the job of adviser, the first attribute most desirable is the capacity to be a friend. The definitions of a friend include (1) a person whom one knows, likes, and trusts; (2) one with whom one is allied in a struggle or cause; (3) one who supports, sympathizes with, or patronizes a group, cause, or movement.

The adviser must care about the person he or she is trying to help. That means having patience and understanding during the trial and error period of a new cooperative's operation and also when it becomes necessary to explain complicated regulations or legal documents more than just once to those who have had less educational opportunities than the adviser.

The adviser must teach a totally new housing concept to persons who have only had experience with a rental environment. This means that the adviser must be able to talk to each and every person who is interested in the cooperative housing and explain just what the person is facing. The adviser must also be able to listen to those who rely on someone's "being there" to hear their problems and ideas. The adviser must be someone who is able to work with low-income persons and one who both understands their particular circumstances and strives to improve their well-being. The adviser, in this regard, must be able to learn as well as to teach.

The adviser must be dedicated to those persons with whom he or she is associated as well as to have the capacity to work with city officials, Government officials, politicians, and other professionals to achieve the goal of housing the local citizens.

EDUCATIONAL BACKGROUND

a. Experience in working with - low-income people and with the problems inherent within this group.

b. Administrative background for -

1. setting up system for management, including detailed financial, personal, and activity records;

2. setting up system for maintenance for buildings, grounds, and equipment.

c. Training to -

1. accept the major responsibility of teaching and have the experience to carry this out.

2. make certain that members are learning while doing, whatever the activity.

3. know how to use group dynamics.

4. be ready to assist individual members resolve problems.

5. recognize a need for social casework when required, then be able to give or obtain that assistance. (Individual problems quickly affect cooperatives.)

6. have knowledge of and make effective use of resources.

7. handle the business of a cooperative while teaching members how to manage it themselves.

8. understand complexity of management and maintenance.

9. be able to understand, interpret, and teach the contents of documents from funding agencies.

Ideally, a background in social work would be the most logical experience, but others can be considered.

ATTACHMENT 11-G

RELATIONSHIP OF ADVISER TO MEMBERS

I. The adviser must be able to teach the members and the members must be willing to learn management and maintenance of total Cooperative while they gradually assume more and more responsibilities, until the cooperative is completely self-managed.

II. In order to be effective, the adviser should have the ability to teach to members:

a. The complete procedures and techniques of management and maintenance.

b. A cooperative approach to everything involved while member lives in a cooperative.

c. An ability to deal with persons in authority.

d. Resources and how to use them.

e. Board procedures and specific duties.

f. Functions and responsibilities of Committees.

g. Regulatory documents and their importance.

h. Attitudes and procedures that will help member to:

1. learn while doing.

2. make payments on time.

3. develop a willingness to do his or her fair share of the work and the decision-making.

4. cultivate a concern for his or her neighbor.

5. consider the good of the group, ahead of self-interest.

6. use his or her vote and know it counts: within the cooperative for directors and officers of the board; outside for local, state, and national Government.

7. cooperate with board and committees.

III. The adviser must be able to help the people understand that there are rules which must be followed. The adviser must make certain that the members realize that, by signing their occupancy agreement, they are agreeing to live up to all aspects of that agreement. In so doing, they are agreeing to abide by all of the funding agency's regulations pertaining to the

cooperative. These regulatory documents must be taught over and over and consulted by the members in all major decisions. The adviser would also be expected to:

a. work with families or individuals with specific problems.

b. consider each activity as an opportunity for the members to learn - learning while doing must be the members' primary goal.

c. become involved in the early planning stage of the cooperative.

d. involve members in decision-making during the planning stage, including the selection of living unit.

e. feel a part of the group of members and break down regulations and instructions into language understood by them.

f. give members the freedom and encouragement to express ideas and to carry out ideas accepted by the majority unless they are contrary to Government regulations.

g. interpret Government regulations and guidelines, being able to apply and teach them.

ATTACHMENT 11-H

ADVISER RESPONSIBILITIES

Responsibilities of the adviser to the board will include -

a. serving as backup manager while teaching self-management and maintenance to the members.

b. assisting in organizing the board of directors and standing committees and meeting regularly with them.

c. assisting in continual evaluation and monitoring of operations.

d. developing an educational plan and being responsible for its implementation.

e. assisting in setting up systems and procedures for-

1. management, including detailed financial, personal, and activity records;

2. maintenance of buildings, grounds, and equipment.

f. assisting with financial questions that are not of sufficient complexity to require referral to an outside auditor.

g. advising in evaluation of new applicants for membership.

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ATTACHMENT 11-I

SUBSCRIPTION AGREEMENT

Dwelling Unit NO._____

Date _____

1. Subscription Amount:

   (a) I/We _____, a legal resident(s) of _____, hereinafter called "Subscriber," hereby subscribe for membership in _____, a cooperative housing corporation hereinafter called the "Cooperative," and hereby subscribe to a Membership Certificate in said Cooperative having a par value of $_____.

   (b) Subscriber hereby agrees to pay for the Membership Certificate, also referred to as Membership Fee, as follows:

      (1) $_____ upon signing this agreement.

      (2) $_____ in monthly payments of $_____ payable over _____ consecutive months (not to exceed 12 months).

2. Ratification of Other Provisions. Subscriber has read and agrees to be bound by all provisions of the articles of incorporation, bylaws, and occupancy agreement, copies of which are attached hereto and receipt of which is hereby acknowledged, and agrees to be bound by requirements of the Rural Development as long as it remains mortgagee.

3. Priority of Mortgage Lien. This agreement and all rights hereunder are and at all times shall be subject and subordinate to the lien of the mortgage and accompanying documents to be executed by the Cooperative to Rural Development and to any and all modifications, extensions, and renewals thereof; and to any mortgage or deed of trust which may at any time hereafter be placed on the property of the Cooperative or any part thereof.

4. Occupancy Agreement. Subscriber, if approved for membership, will be entitled to occupancy of the above numbered dwelling unit under provisions of the above-mentioned occupancy agreement. Estimated initial charge per month for said unit will be established prior to signing the occupancy agreement. Future charges will be based on family income, as provided for in the occupancy agreement. I/We agree to execute the occupancy agreement on demand and to comply with all the terms thereof.

5. Cancellation Rights.

(a) The Cooperative reserves the right at any time before it has notified the Subscriber of his/her acceptability for membership, for reasons deemed sufficient by the Cooperative, and approved by Rural Development, to return the amount paid by the Subscriber under this agreement. In the event the Subscriber shall have died prior to becoming a member, the Cooperative reserves the right to return the amount paid by the Subscriber under this agreement to Subscriber's estate or legal representative, and thereupon all rights of the Subscriber shall cease and terminate without further liability on the part of the Cooperative.

(b) It is understood that the Subscriber's credit is subject to approval by Rural Development, and that said Subscriber's total household income must not exceed any limitations for initial occupancy established by Rural Development. In the event Rural Development determines that the Subscriber does not meet Rural Development credit, income limitation, or other eligibility requirements for participation in this project, the Cooperative shall return to Subscriber the sums paid hereunder. In the event Rural Development determines that the necessary loan to finance the Cooperative housing project cannot be made or insured by Rural Development, or the Cooperative withdraws its application for such loan, the Cooperative shall return to Subscriber all sums paid by Subscriber hereunder. Upon either determination by Rural Development and the return of the sums to Subscriber as provided in this paragraph, this agreement shall become null and void and all rights and liabilities hereunderof the parties shall cease and terminate.

(c) If the Subscriber within <u>five (5) days</u> after the execution of this subscription agreement, notifies the Cooperative in writing that he wishes to withdraw from the agreement, the amounts paid by the Subscriber under this agreement will be returned to the Subscriber and thereupon all rights and liabilities of the Subscriber hereunder shall cease and terminate. If, at the end of the <u>five-day</u> period, the Subscriber has not exercised this right to withdraw, the right will be terminated. If Rural Development determines that membership has not been achieved to the extent required by Rural Development, the Subscriber will again have the right to withdraw within a <u>five-day</u> period.

(d) If the Subscriber defaults in any obligation under this agreement, and such default continues for <u>fifteen (15) days</u> after notice sent by registered mail by the Cooperative to the Subscriber at the address given below, then at the option of the Cooperative, the Subscriber shall lose any and all rights under this agreement. Any amount paid toward this subscription price at the option of the Cooperative may be retained by the Cooperative as liquidated damages or be returned, less the Subscriber's proportionate share of expenses incurred by the Cooperative as determined solely by the Cooperative. The Cooperative may, at its option, release the obligations of the Subscriber under this agreement in the event the Subscriber secures an assignee of this agreement who assumes the obligations herein contained and is satisfactory to the Cooperative and Rural Development while mortgagee. This agreement is not otherwise assignable.

6. Oral Representation Not to be Relied Upon. This agreement will supersede any prior understandings and agreements and constitutes the entire agreement between the Subscriber and the Cooperative, and no oral representation or statements shall be considered a part hereof.

WITNESS:

_____
Subscriber

_____

_____
Subscriber

_____
Address

_____

_____
Telephone

CHAPTER 12: FARM LABOR HOUSING LOANS AND GRANTS

12.1 INTRODUCTION

This chapter describes the loan and grant origination process for Farm Labor Housing projects. While the origination process for loans and grants to these projects has many similarities to the process for Section 515 loans, there are several important differences. This chapter will highlight the additional requirements and procedures that are specific to the process of making Farm Labor Housing loans and grants.

When processing Farm Labor Housing loan or grant applications, Loan Originators will follow the basic procedures presented in Chapters 4 and 5. While these chapters focus on the procedures for processing Section 515 loan applications, these procedures also apply to farm labor housing. This chapter supplements this guidance by describing how these procedures apply to farm labor housing.

Section 1 discusses the loan and grant origination process for Off-Farm Labor Housing projects, including the selection of applications through a Notice of Funding Availability (NOFA) process, the awarding of funding on a ranking basis, and the processing of applications through State Offices.

Section 2 details the procedures for processing applications for On-Farm Labor Housing loans, including the award of funds through the National Office on a first-come, first-served basis, and the review and processing of applications by the Field Office.

SECTION 1: OFF-FARM LABOR HOUSING LOANS AND GRANTS

12.2 OVERVIEW

Off-Farm Labor Housing projects are designed to increase the supply of affordable housing for farm laborers regardless of the farm where they work. Loans, grants, or both may finance these projects. Developers of these projects may apply for Agency rental assistance contracts. In addition, under Section 516(i) of the Housing Act of 1949 (42 U.S.C. 1486(i)), the Agency may award technical assistance grants to eligible private and public nonprofit agencies to encourage the development of farm labor housing.

Off-farm labor housing is normally developed by broad-based nonprofit organizations or public bodies that see a need for labor housing as a specific market area. It is <u>not</u> restricted by the designated places requirement that applies to Section 515 loans and may be constructed in either urban or rural areas so long as the applicant can justify the need. Each year the Agency establishes a specific allocation of funding for the development of off-farm labor housing.

Announcement of this allocation is published annually through a NOFA. Interested applicants may then submit project applications to their Field Office to seek funding. Just like Section 515

projects, applications are selected for further processing, and later, applicants must submit final applications.

For Section 514 and 516 programs, farm labor is a service or services in connection with cultivating the soil or raising or harvesting any agriculture or aquaculture commodity; or in catching, netting, handling, planting, drying, packing, grading, storing, or preserving in the unprocessed stage, without respect to the source of employment (but not self-employed), any agriculture or aquaculture commodity; or delivering to storage, market, or a carrier for transportation to market or to processing any agricultural or aquacultural commodity in its unprocessed stage. For a more complete description of farm labor, see **Attachment 12-A**.

12.3 APPLICANT ELIGIBILITY FOR OFF-FARM LABOR HOUSING *[7 CFR 3560.555]*

A. Eligible Applicants for Farm Labor Housing Loans

To be eligible for a Section 514 Farm Labor Housing loan, the applicant must meet the eligibility requirements as described in Section 3 of Chapter 4, and the requirements established under 7 CFR 3560.555. Applicants must be one of the following to be eligible:

- A broad-based nonprofit organization. A nonprofit entity must meet the requirements for nonprofit organizations established in Section 3 of Chapter 4, and have a membership that reflects a variety of interests of the area where the housing will be located.

- A limited partnership with a nonprofit general partner. This type of limited partnership must meet the requirements established under 7 CFR 3560.55(d).

- A nonprofit organization of farmworkers. A nonprofit organization of farmworkers must have representation on the Board of Directors from the area where the housing is located. Directors may be elected who are not members of the organization but are experienced in such fields as real estate management, finance, or related businesses provided member directors represent a majority of the board.

- A Federally recognized Indian tribe.

- An agency or political subdivision of State or local government.

B. Eligible Applicants for Farm Labor Housing Grants

To be eligible for a Section 516 Farm Labor Housing grant, the applicant must also meet the following requirements:

- A broad-based nonprofit organization. A local nonprofit entity must meet the requirements for nonprofit organizations established in Section 3 of Chapter 4, and

have a membership that reflects a variety of interests of the area where the project will be located.

- A nonprofit organization of farmworkers. A nonprofit organization of farmworkers must have representation on the Board of Directors from the area where the housing is located. If member directors represent a majority of the Board, directors who are not members of the organization may be elected, but they must be experienced in such fields as real estate management, finance, or related businesses.

- A Federally recognized Indian tribe.

- An agency or political subdivision of State or local government.

1. Maximum Grant Amount

The maximum grant amount is limited to no more than 90 percent of the total development cost (TDC) of the project or that portion of the TDC that exceeds the sum of any amount provided by the applicant from their own resources plus the amount of any loans approved for the applicant, considering the capacity of the applicant to amortize the loan. The remaining portion must be available at the time of loan closing and may come from a variety of sources, including an Off-Farm Labor Housing loan. If a Farm Labor Housing loan is needed, the applicant will file an application for a combination loan and grant at the same time.

2. Documented Need for the Project

The applicant must document that the housing and related facilities will fulfill a pressing need in the area in which the project is or will be located and that there is reasonable doubt that such housing can be provided without the grant.

12.4 TECHNICAL ASSISTANCE GRANTS

The Agency may award technical assistance grants to eligible private and public nonprofit agencies. These grant recipients will, in turn, assist other organizations to obtain loans and grants for the construction of farm labor housing.

Technical assistance services may not be funded under both this paragraph and under 7 CFR 3560.53(o). In addition, technical assistance will not be funded by the Agency when an identity-of-interest (IOI) exists between the technical assistance provider and the loan or grant applicant.

12.5 PROJECT ELIGIBILITY

For a project application to be eligible to receive a loan or grant under the Off-Farm Labor Housing program, it must meet specific project eligibility requirements. These requirements include site requirements and design requirements.

A. Site Requirements *[7 CFR 3560.558]*

Off-Farm Labor Housing projects must comply with the site requirements developed in 7 CFR 3560.558 with the exception of the requirement that the property be located in a designated place. Farm labor housing may be developed in both urban and rural areas.

Off-Farm Labor Housing project applications will not be considered for funding when:

- RHS has selected another Farm Labor Housing loan/grant request in the same market area for further processing;
- A previously approved Agency, U.S. Department of Housing and Urban Development (HUD), or other assisted Multi-Family Housing project or similar project in the same market area in which farmworkers are eligible tenants has not been completed, has not reached its projected occupancy level, or is experiencing high vacancy levels;
- A Special Note Rent (SNR) or similar servicing tool in the same market area is pending or in effect; or
- The need in the market area is for additional rental assistance or similar subsidy, not for additional housing units.

B. Design Requirements *[7 CFR 3560.559]*

Applications for Off-Farm Labor Housing loans and grants must meet the design requirements established in 7 CFR 3560.559.

1. Interior/Exterior Washing Facilities

Applications should consider incorporating interior and exterior washing facilities for tenants, as necessary to protect the asset and the tenants from excess dirt and chemical exposure. Such facilities might include a boot washing station, hose bibs, or bathroom within the dwelling unit that is accessible to the dwelling entrance, depending on the type of work that farmworkers in the local area perform. Applicants should include documentation of the type of work that proposed tenant laborers will perform, as well as what outdoor washing facilities will accommodate the project’s needs as part of the application.

2. Seasonal Labor Housing

Seasonal farm labor housing that will be occupied for 8 months or less per year by migrant farmworkers while they are away from their residence may be constructed in accordance with RD Instruction 1924-A, Exhibit I, as opposed to RD Instruction 1924-C. The application should clearly document the standards under which the applicant proposes to develop the housing.

12.6 LOAN AND GRANT FUND USES

A. Eligible Uses of Funds *[7 CFR 3560.53(k)* and *(o)]*

In addition to the eligible uses of loan funds listed in **Attachment 4-B**, loan and grant funds may also be used to provide:

- Reimbursement for technical assistance received from another nonprofit organization, including legal, technical, and professional fees of up to 4 percent of TDC to assist in the organization's formation and in the development and packaging of a loan application;

- Initial operating expenses of up to 2 percent of the development cost for any type of applicant except an individual farm owner, family farm corporation or partnership, an association of farmers, or a limited partnership;

- Tenant-related facilities that the applicant can document are necessary, such as daycare facilities and computer learning centers; and

- Facilities for seasonal or temporary use with appropriate furnishings and equipment.

B. Prohibited Uses of Funds *[7 CFR 3560.554]*

Loan and grant funds may not be used for any purpose prohibited by 7 CFR 3560.554, the same prohibitions that apply to Section 515 loans, except that Section 514/516 funds may be used to finance the development of housing to serve primarily temporary and transient residents (see **Attachment 4-C**).

12.7 SUBMISSION AND PROCESSING OF INITIAL APPLICATIONS

A. Content of Initial Applications

Initial applications for off-farm labor housing have the same basic submission requirements as Section 515 project applications (see Exhibits 4-6 and 4-7).

B. Completeness Review

Loan Originators must review initial applications for completeness in accordance with the instructions in Section 2 of Chapter 4.

C. Eligibility Review

In reviewing an application for eligibility, a loan originator should ensure that the request for funds is in compliance with Paragraphs 12.3 through 12.6, and in accordance with Chapter 4. Loan Originators need to remember that the designated places requirements do not apply to farm labor housing, and applications should not be removed from processing because of failure to be located in a designated place.

D. Scoring and Ranking of Initial Applications

State Offices will then score and rank initial applications for Farm Labor Housing loans and grants in accordance with the requirements of the NOFA and the procedures described in Chapter 4, Section 2. A Loan Review Committee must review the scoring and the ranking of the applications prior to forwarding them to the National Office for selection for funding.

E. National Ranking and Selection of Initial Applications

1. Ranking of Initial Applications on the National Level

The Agency will review, score, and rank loan and grant applications according to criteria periodically published in the NOFA.

Once the ranking and scoring process has been completed in each State, State Offices must forward all eligible applications to the National Office for selection through the national funding process.

Each year the National Office will notify State Offices of the deadline for submitting applications for consideration in the national funding selection process.

2. Selection of Initial Applications by the National Office

Off-Farm Labor Housing applications will be ranked on a national basis according to the scoring awarded to each application on the local level. Funds will then be awarded to the top-scoring applications.

If, after award, an applicant chooses not to proceed to the next stage or is not successful in completing the project, then the next highest-ranked application will be eligible to use the funds reserved for the unsuccessful project.

F. Notification of Initial Applications Selection

The National Office will inform each State Office of the initial applications that have been selected from the State for funding. The State Office, in turn, will notify the applicants selected by the National Office and invite them to submit a final application in accordance with Chapter 4. All applicants should receive one of three types of letters. Any letter that the Agency sends for any reason other than to invite an application, must include the standard ECOA notice, a copy of which is provided in **Attachment 1-A**.

1. Handbook Letter 106 (3560), Notice of Pre-application Review Action

This letter would go to all applicants who were selected for further processing in the national competition.

2. Handbook Letter 107 (3560), A Letter Informing the Applicant of the Lack of Funds

This letter is sent to all applicants who were not awarded funds in the national competition. The letter should advise the applicant that if one of the selected applications does not proceed to the next stage, the applicant's application could be funded.

3. Handbook Letter 108 (3560), Letter Denying Funding due to Ineligibility

This letter would be sent to any applicant who was not considered for funding because of ineligibility. Ineligibility would normally be determined before the application is submitted for funding consideration either on the State or national level.

12.8 FURTHER PROCESSING OF INITIAL APPLICATIONS

For the Off-Farm Labor Housing program, the further processing of initial applications should be performed in accordance with Chapters 4 and 5. However, because there are additional requirements for Off-Farm Labor Housing projects, some procedures for reviewing initial applications are different. These procedures are covered below.

A. Project Eligibility

When reviewing initial applications for project eligibility, Loan Originators must address the following considerations.

- Inform applicants that the proposed project does not have to be located in a rural location or meet the designated places criteria;
- Confirm that the applicant adequately provided for exterior washing facilities in the project budget; and
- Check that the applicant adequately addressed whether the project will be used year-round or seasonally and to what standards the housing will be built.

B. Applicant Eligibility

When determining applicant eligibility, the Loan Originator must consider the following items:

- The applicant must qualify as one of the five eligible entities listed in Paragraph 12.3.
- If applicants are also requesting grant funding, they must have demonstrated or documented that:
  - ◊ The organization is a permanent one with the purpose of providing low-income housing for farmworkers;
  - ◊ The source of the balance of the total development costs for the project that would not be paid for with grant funds; and
  - ◊ The pressing need for the project and that such a need cannot be fulfilled without grant funding.

C. Project Feasibility

The applicant must demonstrate in the initial application a need for affordable farm labor housing in the market area as described in Paragraph 4.18. Applicants should provide the following analysis with their initial application to justify project feasibility:

- Current and projected future levels of agricultural activity in the market area; and
- Current and projected future levels of need for farmworkers that meets the program eligibility requirements. The market study must exclude those that are not eligible (e.g., farmworkers who are not citizens of the United States or legally admitted for permanent residence).

D. Calculation of the Allowable Grant Amount

The State Office will calculate the allowable grant amount, using an automated cash flow analysis tool and project economic data furnished by the applicant. Final loan/grant levels will be determined by assessing area rents, operating and maintenance expenses, rental assistance availability, the resources of the applicant, and the ability of the applicant to repay the loan.

12.9 SUBMISSION AND PROCESSING OF FINAL APPLICATIONS

A. Security Value and Borrower Contributions

Loan Originators should follow the processing procedures outlined in Chapter 5 for Off-Farm Labor Housing projects. A key exception to consider in processing the final loan applications is that the amount of any grant may not exceed the lesser of 90 percent of the TDC or that portion of the TDC that exceeds the sum of any amount provided by

the applicant from their own resources plus the amount of any loans approved for the applicant, considering the capacity of the applicant to amortize the loan.

1. Determining the Security Value of the Loan

In determining the security value of the Farm Labor Housing project, the Loan Originator must take into account the total amount of both the loan and the grant proposed for the project.

2. Determining the Contribution of the Borrower

- **For projects requesting only a Section 514 loan.** The equity contribution of the borrower will be determined in accordance with Section 3 of Chapter 5.

- **For projects requesting grant funds.** The borrower must comply with 7 CFR 3560.555(b) and ensure that the difference between the grant amount and the TDC will be covered either from the borrower's own or other resources. This variance could be fulfilled in the form of a Section 514 Farm Labor Housing loan.

3. Setting Loan and Grant Rates and Terms [7 CFR 3560.566]

For Off-Farm Labor Housing projects, the interest rate is set at 1 percent. The term of any loan is 33 years. The term of any grant is for as long as there is a need for the housing.

B. Establishing a Profit Base on Initial Investment Return

In the case of a limited partnership using tax credits with an equity position, a return is permissible in accordance with Paragraph 5.12 A through D.

12.10 LOAN/GRANT APPROVAL AND CLOSING *[7 CFR 3560.571]*

Off-Farm Labor Housing loans and grants will be approved and closed in accordance with the procedures in Chapters 5 and 8. However, the following additional loan closing documents will be required.

A. Loan Resolution or Loan Agreement

An organization must have its Board of Directors adopt an Agency-approved loan resolution and furnish a certified copy for the loan docket before loan approval. All other loan applicants will execute an Agency-approved loan agreement in accordance with Chapter 5.

B. Labor Housing Grant Agreement and Resolution

A Farm Labor Housing grant agreement, prepared and authorized by the Agency, must be dated and executed by the applicant on the date of grant closing. The form of resolution to be adopted by the applicant must contain policy and procedural

requirements that should be read and be fully understood by the applicant's Board of Directors and officers. Included in the resolution will be provisions authorizing the Agency to prescribe requirements regarding the operation of the housing and related facilities and other provisions including the following:

- The rents charged tenants must not exceed such amounts as are approved by the Agency after considering the income of the occupants and the necessary costs of operation, debt service, and adequate maintenance of the housing;

- The housing will be maintained at all times in a safe and sanitary condition in accordance with standards prescribed by State and local law, and as required by the Agency; and

- In granting occupancy of the housing, an absolute priority will be given at all times to domestic farm labor.

The obligations incurred by the applicant, as a condition of accepting the grant, will be in accordance with the Farm Labor Housing grant agreement.

C. Restrictive-Use Provisions

All Farm Labor Housing loans made pursuant to a contract entered into on or after the effective date of 7 CFR part 3560 are subject to the restrictive-use provisions contained in 7 CFR 3560.72(a)(2). All other Off-Farm Labor Housing loans are subject to the restrictive-use provisions contained in their loan documents and as outlined in Chapter 15 of HB-3-3560.

12.11 CONSTRUCTION FINANCING

The requirements established in 7 CFR 3560.71 apply to all Farm Labor Housing loans and grants. In addition, the following requirements apply:

- Equity contributions being made by a borrower or grantee must be contributed and disbursed prior to any disbursement of interim loan funds and any loan or grant funds from the Agency; and

- If the Agency is providing both loan and grant funds, loan funds must be fully released and expended prior to the release of grant funds by the Agency.

Construction financed with the assistance of a Section 516 grant will be subject to the provisions of the Davis-Bacon Act (40 U.S.C. 276a – 276a-5 and 276a-7), and the implementing regulations published by the U.S. Department of Labor in 29 CFR Parts 1, 3, and 5.

12.12 MONITORING CONSTRUCTION AND PROJECT LEASE-UP

Construction monitoring and project lease-up oversight will be conducted in accordance with Chapters 8 and 9.

12.13 ESTABLISHING DIMINISHED NEEDS FOR FARM LABOR HOUSING

As a basis for Agency approval or disapproval of the borrower's determination of diminished need, the borrower must submit a current analysis of need and demand to the Agency, identical to the market analysis that is required of a loan applicants in the loan origination process. This market analysis must determine project viability, economic conditions and farm worker demographics. The market analysis must determine that, based upon the market study, local economic conditions will not significantly improve in the next one to two years. The market study should identify any known changes in the local economy. For example, if farms were sold to developers to build houses. Market studies or market surveys must identify farm worker demographics. Furthermore, the market study or market survey must represent eligible tenants for off-farm labor housing properties. According to 7 CFR 3560.577, eligible tenants of off-farm labor housing are: citizens of the United States; permanent resident aliens; retired or disabled domestic farm laborers from the local market who were domestic farm laborers at the time of retirement or became disabled; and other retired and disabled farm laborers. This summary should qualify eligible tenants as discussed above within the farm worker demographics sample and provide the reference/source of the information. All market studies or market surveys must provide a summary of the sample of farm workers used to document the need for off-farm labor housing.

In addition to the above viability determinations and market study or market survey criteria, borrowers must also provide the following:

1. A Form HUD-935.2, stated in part 4 or part 7 efforts to attract eligible tenants of farm labor housing according to 7 CFR 3560.577;
2. Sample marketing or advertisements representing 7 CFR 3560.577 from the most recent three years; and
3. Complete Attachment 4-F of this Handbook, to determine diminished need.

If (1) and (2) above do not identify efforts to attract eligible farm labor tenants according to CFR 3560.577, then (1) or (2) must be updated. Additionally, the borrower must market an additional 12 months from the initial diminished need request. After 12 months, an updated (1) and (2) should be submitted.

7 C.F.R. part 3560 section 3560.576(e) allows non-farm laborer tenants to reside in farm labor housing if the diminished need for such housing has been determined. If a diminished need is determined, units may be made available to (1) very low-income households, low-income households and moderate-income households, or (2) persons eligible under the requirements established to qualify for housing benefits by sources other than Agencies like HUD and LIHTC, as stated in 7 CFR 3560.152(a)(2) and (3).

SECTION 2: ON-FARM LABOR HOUSING LOANS

12.14 OVERVIEW

On-Farm Labor Housing projects are designed to increase the supply of affordable housing for farmworkers and are specific to the farm where those laborers work. Loans funds are provided to farmowners and associations of farmers who wish to provide housing to the farmworkers they employ.

On-farm labor housing is also not restricted by the designated places requirements and may be constructed in either urban or rural areas, on or off the farm, so long as the applicant can justify the need. Each year the Agency establishes a specific allocation of funding for the development of on-farm labor housing. Field Offices are notified of this allocation through RD Instruction 1940-L, which is published in the *Federal Register*. Interested applicants may then submit information to their Field Office to determine their likelihood for funding. Applications are funded on a first-come, first-served basis from National Office funds.

12.15 ON-FARM LABOR HOUSING LOAN CHECKLIST

Applications for on-farm facilities are accepted any time during the year and are funded on a first-come, first-served basis, based on the availability of funds. On-farm applications should include the following:

1. Form RD 3560-51 “Multi-Family Housing Obligation -Fund Analysis”	
2. SF 424 “Application For Federal Assistance”	
3. Form RD 1910-11, “Applicant Certification Federal Collection Policies for Consumer or Commercial Debts”	
4. Form RD 400-4, “Assurance Agreement”	
5. Form RD 400-1, “Equal Opportunity Agreement”	
6. Form RD 400-6, “Compliance Statement”	
7. Appraisal Report	
8. Organizational Documents If Partnership Or Corporation	
9. Survey	
10. Form RD 1940-22 “Environmental Checklist For Categorical Exclusions”	

11. FEMA Form 81-93 “Standard Flood Hazard Determination”	
12. Information Submitted For LH Loans Items A – J	
13. Form RD 3550-1 “Authorization to Release Information”	
14. Form AD 1047 “Certification Regarding Debarment”	
15. Credit Report	
16. Form RD 1910-5 “Request for Verification of Employment”	
17. Form RD 410-7 “Notification to Applicant On Use Of Financial Information From Financial Institution”	
18. Form RD 440-58 “Estimate of Settlement Costs” (Document In Running Record)	
19. Check Debarment List. Document At Receipt Of Application	
20. Form RD 1944-61 “Credit History Worksheet”	
21. Form RD 2006-38 “Civil Rights Impact Analysis Certification”	
22. Form RD 3560-7A “On Farm LH Project Budget”	
23. Labor Housing Management Plan	
24. ADPS – Current/Past Debt Inquiry	
25. Eligibility Documentation	
26. Form AD-622 “Notice Of Pre-Application Review Action”	
27. Form RD 440-34 “Option To Purchase Real Property Real Property”	

28. Form RD 1924-2 “Description Of Materials”	
29. Form RD 1924-1 “Development Plan” (If Applicable)	
30. Building Plans	
31. Cost Estimate Or Bid	
32. Document Site Visit	
33. Warning Of Lead Based Paint Hazards (Document File)	
34. AMAS Input Data (M1AM, M1AA)	
35. Form 3560-43 “Verification of Occupancy of Domestic Farm Laborer”	
36. RD Form 3560-40 “Loan Agreement” (Labor Housing Loan to Individual)	
37. Form RD 1922-15 “Administrative Appraisal Review for Single Family Housing”	
38. Form RD 1927-19/20 “Certification Of Attorney Certification of Title Insurance Company”	
39. Form RD 1927-4 “Transmittal Of Title Information”	
40. Form RD 1927-9 “Preliminary Title Opinion”	
41. Form RD 1927-15 “Loan Closing Instructions and Statement”	
42. Check Debarment List – Document Prior To Loan Closing	
LOAN CLOSING	

43. Form RD 1927-1 Real Estate Mortgage or Deed of Trust for (State)" Clauses Civil Rights Restrictive Use Loan Agreement	
44. Form RD 3560-52 "Promissory Note"	
45. Form RD 1927-5 "Affidavit Regarding Work Improvement"	
46. Insurance Binder, Receipt For 1 Year Fire Insurance Premium	
47. Form RD 1927-10 "Final Title Opinion"	
48. Input Loan Closing (M1F)	
Preconstruction Conference/Final Inspection	
Form RD 400-3 "Notice To Contractors and Applicants"	
Form RD 402-1 "Deposit Agreement"	
Form RD 402-2 "Statement Of deposit And Withdrawals"	
Form RD 1924-6 "Construction Contract"	
Form RD 1924-9 "Certification Of Contractor's Release"	
Form RD 1924-10 "Release By Claimants"	
Form RD 1924-19 "Builder's Warranty"	
Termite Inspection Certification	
Plumbing/Water/Sewage Certifications	

Electric/Heat/Cooling Certifications	
Submit File To State Office For Post Loan Review	

In addition to the above, 1-4 unit On-Farm Labor Housing properties must provide a Truth in Lending and Real Estate Settlement Procedures Act documents according to HB-1-3550, section 3.6 (c).

12.16 APPLICANT ELIGIBILITY *[7 CFR 3560.605]*

To be eligible for a Section 514 Farm Labor Housing loan, the applicant must meet the same eligibility requirements as Section 515 applicants and the additional requirements established under 7 CFR 3560.605 and described below. In addition to the applicant eligibility requirements described in Section 3 of Chapter 4, applicants must also meet the following requirements to be eligible.

- The borrower entity must be a farmowner, a family farm partnership, a family farm corporation, or an association of farmers whose farming operations demonstrate a need for farm labor housing;

- The borrower entity must be engaged in agricultural or aquacultural farming operations and must own the housing and operate it on a nonprofit basis;

- The borrower entity must intend to use the housing for labor employed in its farming operations or the farming operations of its members;

- The applicant must certify that the farmworkers for whom the housing is intended are currently involved in agricultural or aquacultural farming operations; and

- The applicant must, as determined by the Agency, be unable to provide the necessary housing from the applicant's own resources and be unable to obtain credit from any other source upon terms and conditions that the applicant could reasonably be expected to fulfill.

  ◊ If the applicant is an association of farmers or family farm corporation or partnership, the individual members, individually and jointly, must be unable to provide the necessary housing by utilizing their own resources and be unable, by pledging their personal liability, to obtain other credit that would enable them to provide housing for farmworkers at rental rates they can afford to pay.

  ◊ The individual resources of family farm corporation or partnership members with less than a 10 percent corporate or partnership interest should not be considered when determining if the applicant can obtain credit elsewhere.

The Agency might make an exception to the requirement that an applicant be unable to obtain the necessary credit elsewhere *[7 CFR 3560.55(a)(2)]* when all of the following conditions exist:

- There is a need in the area for housing for migrant farmworkers, and the applicant will provide such housing; and

- There are no qualified State or political subdivisions or public or private nonprofit organizations currently available or likely to become available within a reasonable period of time who are willing and able to provide the housing.

12.17 PROJECT ELIGIBILITY *[7 CFR 3560.605]*

For an application to be eligible to receive a loan under the On-Farm Labor Housing program, it must meet specific project eligibility requirements. These requirements are designed not only to meet the immediate need of specific farmers to provide housing for their laborers, but to ensure that in the event the market shifts or the farmer no longer desires to remain in the farming industry, this housing may be used for other eligible populations. The Agency has established the following site and design requirements for On-Farm Labor Housing projects:

- Housing that is being designed for seasonal occupancy, whether single-family or multi-family type housing, may be located on the farm as long as it is not located near farm service buildings. Seasonal housing may be constructed in accordance with Exhibit I of RD Instruction 1924-A. If constructed in accordance with Exhibit I, the housing must be suitable to allow for conversion to full-year occupancy if the need for migrant farmworkers in the area declines.

- Single-family type housing is defined as an individual or a group of individual single-family detached dwelling units. All sites shall be planned and constructed in accordance with RD Instruction 1924-C.

- On-Farm Labor Housing sites must provide access to road frontage, when feasible.

- Manufactured housing is not required to meet the contiguous lot requirement established in 7 CFR 3560.70. Manufactured housing may be proposed as a single unit.

On-farm labor housing that consists of buildings with less than three units is not subject to the requirement that 5 percent of the units be constructed as fully accessible units, as described in 7 CFR 3560.60(d). This does not, however, eliminate any other accessibility requirements.

12.18 LOAN FUND USES

A. Eligible Uses of Funds *[7 CFR 3560.603]*

In addition to the eligible uses of loan funds listed in **Attachment 4-B**, loan funds may also be used to provide facilities for seasonal or temporary use with appropriate furnishings and equipment.

B. Prohibited Uses of Funds *[7 CFR 3560.604]*

Loan funds may not be used for any purpose prohibited by 7 CFR 3560.554. These are the same prohibitions that apply to Section 515 loans, except that Section 514 funds may be used to finance the development of housing to serve primarily temporary and transient residents (see **Attachment 4-C)**.

For On-Farm Labor Housing projects, loan funds may not be used to provide housing for the applicant or members of the immediate family of the applicant when the applicant is an individual farmowner, family farm corporation or partnership, or an association of farmers. Immediate family in this instance includes mother, father, brothers, sisters, sons, and daughters of applicant(s) and spouse.

12.19 PRIORITIES FOR FUNDING

There are no priorities for funding for On-Farm Labor Housing applications. Applications are funded on a first-come, first-served basis.

12.20 SUBMISSION AND PROCESSING OF INITIAL APPLICATIONS

For the On-Farm Labor Housing program, the submission and processing of initial applications should be performed in accordance with Chapter 4. There are several areas where additional information should be considered prior to requesting the submission of a final application for processing.

A. Project Eligibility

When reviewing initial applications for project eligibility, Loan Originators must address the following considerations:

- The proposed project does not have to be located in a rural location or meet the designated places criteria;

- The applicant adequately provided for interior and exterior washing facilities in the project budget; and

- The applicant adequately addressed whether the project will be used year round or seasonally and to what standards the housing will be built.

B. Applicant Eligibility

When determining applicant eligibility, the Loan Originator must consider the following items.

- The applicant must qualify as an eligible entity as outlined in Paragraph 12.3.

- If applicants are also requesting a waiver of the "necessary credit elsewhere test" *[7 CFR 3560.55(a)(2)]*, proper documentation must be provided. The interest rate of such loans is in accordance with 7 CFR part 1810, subpart A (RD Instruction 440.1).

C. Project Feasibility

The applicant must demonstrate a need for on-farm labor housing in the market area. This can be done by documenting their employees' need for housing.

D. Financial Capacity

The 7 CFR 3560.55(a)(3) states that applicants must possess the legal and financial capacity to carry out the obligations required for the loan or grant. Therefore, the Multi-Family Housing Processing Division has created a methodology to determine an applicants financial capacity. The Multi-Family Processing Division created an On-farm Labor Housing Worksheet to determine an applicant's financial capacity. The On-farm Labor Housing Worksheet must be completed using the most recent financial statements, and made apart of the loan file.

Upon completing the On-farm Labor Housing Worksheet, multiply line 19 by the Present Value of an Ordinary Annuity (PVA) to determine the borrower's financial capacity. The PVA formula is:

$$PVA = \frac{1-1/(1-i/i)^n}{i}$$

I= interest rate

N=years

Applicants who are determined eligible according to 7 CFR 3560.605(a) are to multiply line 19 of the On-farm Labor Housing by 27.9902. Applicants who are determined eligible according to 7 3560.605(b) must calculate the PVA using the above formula at the interest rate determined in accordance with 7 CFR part 1810.

Repeat the above steps using the prior year's financial statements. Then take the average of the PVA of the two years to determine the maximum financial capacity of an on-farm borrower.

12.21 SUBMISSION AND PROCESSING OF FINAL APPLICATIONS

Loan Originators should follow the processing procedures outlined in Chapter 5, for On-Farm Labor Housing projects. Some key exceptions to consider in processing the final loan applications follow:

A. Determining Loan Limits, Rates, and Terms *[7 CFR 3560.612* and *616]*

1. Maximum Loan Amount

The amount of the loan may not exceed 100 percent of the allowable TDC of on-farm labor housing as described in Paragraph 12.16 or the value of the security for the loan as determined by an appraisal, less the unpaid principal balance, plus past due interest of any prior liens that will or will likely exist against the security after the loan is closed.

2. Determining the Security Value of the Loan

The security value of the loan will be determined in accordance with Section 3 of Chapter 5.

3. Setting Loan Rates and Terms

For On-Farm Labor Housing projects, the effective interest rate will be 1 percent, except for those borrowers determined eligible under 7 CFR 3560.67. In the latter situation, the interest rate will be calculated in accordance with RD Instruction 440.1. The amortization period for each loan will be scheduled on an annual basis, but the maximum term for the On-Farm Labor Housing loan will not exceed 33 years.

B. Establishing a Profit Base on Initial Investment Return

For On-Farm Labor Housing loans, no profit base will be permitted as a return on a borrower's investment. All on-farm labor housing must be operated in a nonprofit manner with no return to the borrower.

12.22 LOAN APPROVAL AND CLOSING *[7 CFR 3560.621]*

Loans will be closed in accordance with Chapters 5 and 8. However, for On-Farm Labor Housing loans, the following additional loan closing documents are required:

A. Loan Resolution or Loan Agreement *[7 CFR 3560.571]*

The organization must have its Board of Directors adopt an Agency-approved loan resolution and furnish a certified copy for the loan docket before loan approval. All other

loan applicants will execute an Agency-approved loan agreement in accordance with Chapter 5.

B. Security Documents *[7 CFR 3560.610]*

Loan Originators must confirm that the following documents have been properly prepared for the project:

- When feasible, the On-Farm Labor Housing will be located on a tract of land that is surveyed such that, for security purposes, it is considered separate and distinct from the farm. The security for the loan must have adequate value to protect the Federal Government's interest. The Agency will seek a first or parity lien position on Agency-financed property in all instances, however, the Agency may accept a junior lien position if the Federal Government's interests are adequately secured.

- If necessary to provide adequate security for the loan, the Agency may require that any household furnishings purchased with loan funds also be secured.

- Personal liability will be required of the members of an association of farmers.

C. Title Companies and Closing Attorneys

To allow the Agency the ability to minimize potential fraud, waste, abuse, kick backs, referral fees and equity skimming; all closing instructions must inform closing agents/attorneys to indicate the recipient of section 514 loans and section 516 grants. This information must be stated on the HUD 1 "Settlement Statement". The above instructions must be stated on Form RD 3550-25 section Other.

If all information cannot be stated on Form 3550-25, an Attachment may be added and indicate on Form RD 3550-25: "See Attachment A or B".

12.23 CONSTRUCTION MONITORING

Construction monitoring oversight will be conducted in accordance with Chapter 9.

12.24 CONTRUCTION COST NORMS

Construction cost norms must be calculated by using RSMeans or Marshall and Swift construction cost guides. The RSMeans and Marshall and Swift guides are updated annually and contain modifiers to make the cost applicable in any locality. Construction cost can not exceed the construction cost norms established by RSMeans or Marshall and Swift. Additionally, the above calculation must be done by the State Architect or by the State Architect in the neighboring State Office near the property.

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ATTACHMENT 12-A
CLARIFYING THE DEFINITION OF "FARM LABOR"

Background

The purpose of the Rural Housing Service's (RHS) Farm Labor Housing (FLH) program is to provide decent, safe, and sanitary housing for "domestic farm laborers." The Housing Act of 1949, which authorizes the FLH program, provides the following definition of a *domestic farm laborer*:

> "...any person (and the family of such person) who receives a substantial portion of his or her income from **primary production of agricultural or aquacultural commodities or the handling of such commodities in the unprocessed stage**, without respect to the source of employment, except that (A) such person shall be a citizen of the United States or a person legally admitted for permanent residence; (B) such term includes any person (and *the family of such person) who is retired or disabled, but who was domestic farm labor at the time of retirement or becoming disabled;…"

Section 514(f) (3) of the Housing Act of 1949 (42 U.S.C. 1484(f) (3)) was amended on June 18, 2008 to expand the definition of domestic farm labor to include processing workers by deleting "or the handling of such commodities in the unprocessed stage", and replacing it with "or the handling of agricultural or aquacultural commodities in the unprocessed stage, or the processing of agricultural or aquacultural commodities". The definition now reads:

> "...any person (and the family of such person) who receives a substantial portion of his or her income from primary production of agricultural or aquacultural commodities or the handling of agricultural or aquacultural commodities in the unprocessed stage, or the processing of agricultural or aquacultural commodities , without respect to the source of employment, except that (A) such person shall be a citizen of the United States or a person legally admitted for permanent residence; (B) such term includes any person (and *the family of such person) who is retired or disabled, but who was domestic farm labor at the time of retirement or becoming disabled;…"

This statutory definition requires that one of two requirements be met concerning farm income. Farm laborers must receive a substantial portion (refer to Attachment 6-H) of their income from either the "primary production of agricultural or aquacultural commodities" or from "the handling of agricultural or aquacultural commodities in the unprocessed stage, or the processing of agricultural or aquacultural commodities." Further guidance is provided by 7 CFR 3560.11. It defines "farm labor" as follows:

> *"Farm labor. Services in connection with cultivating the soil, raising or harvesting any agriculture or aquaculture commodity; or in catching, netting, handling, planting, drying, packing, grading, storing, or preserving in the unprocessed stage, without respect to the source of employment (but not self-employed), any agriculture or aquaculture commodity; or delivering to storage, market, or a carrier for transportation to market or to processing any agricultural or aqua cultural commodity in its unprocessed stage."*

The definition of "farm labor" contains the following three components and all three must be met for the activities to be considered as farm labor: All of the components of the definition focus on the nature of the work being done.

1st Component: "Services in connection with…"
2nd Component: One of four specific classes of work:

a. the "cultivating the soil, raising or harvesting"; or
b. the "catching, netting, handling, planting, drying, packing, grading, storing, or preserving its unmanufactured state"; or in;
c. the "delivering to storage, market, or day hauling the product for market, processing or distribution"
d. the "working with the product in a processing facility until it is shipped for distribution".

3rd Component: "Any agricultural or aquacultural commodity."

There is no restriction on who employs the farm laborer. It also needs to be emphasized that the definition does not restrict farm labor to work done on a farm. Paragraphs 2.b, 2.c and 2.d. expand the definition to include working with the product in other off farm locations including, (1) in a processing facility, and (2) in handling and day hauling the commodity in an unmanufactured or manufactured state to be marketed, processed or distributed. Day hauling is the hauling of the agricultural or aquacultural commodity from the site of eligible activity to the site of eligible or ineligible activity within standard work hours.

Thus, a farm laborer may be working for a farmer, a farm labor contractor, a custom agricultural service provider, or a large vertically integrated corporation, etc. The nature of the worker's job is what defines "farm laborer" and not necessarily the nature of the employer.

A good way to understand the definition is to bear in mind the sequence of farming activities in an agriculture enterprise. Fundamentally, it consists of five stages:

Stage 1: The raising of the agricultural or aquacultural commodity on the farm;
Stage 2: The transportation of the agricultural or aquacultural commodity after harvest;
Stage 3: The post-harvest handling, storage, processing and packaging of the agricultural or aquacultural commodity;
Stage 4: The delivery to market; and, finally,
Stage 5: The market itself – which may either, be a wholesale or retail market (if the commodity is a fresh market commodity) or a food processing manufacturer (if the commodity is a processing commodity).

Exhibit A identifies the presence of farm labor in five stages of an agricultural enterprise .

Distinction - Post-Harvest Handling vs. Processing – Stage 3

While both are eligible activities, to distinguish between post-harvest handling and processing, it is often helpful to consider the condition that the commodity is in when the laborer does his or her work.

An agricultural or aquacultural commodity in an "unmanufactured state" is essentially raw produce in its natural state – still "the way that nature made it." Implicit in paragraph 2.b. is that a commodity can remain in this unmanufactured state even though it has been handled, dried, graded, packed, stored, and preserved. This is because all of these activities do not necessarily change the fundamental nature of the commodity.

Thus, activities of the following three types are included in farm labor as post harvest handling:

1. Sorting produce and placing it in containers. When it is harvested and transported from the field, a commodity must be containerized in some fashion. Frequently, commodities go through several sequential stages of sorting, grading, and packing. However, the mere fact that a commodity is in a particular container or package does not change the nature of the commodity itself. Produce in a bag, tray, basket, bunch, box, bin, or wrap is still unmanufactured.

2. Handling to preserve the commodity. Actions such as cleaning, washing, and waxing fruits and vegetables; drying grain or prunes for safe storage; and holding produce in control atmosphere storage – all are examples of services that do not change the essentially unmanufactured state of the commodity. They merely allow the commodity to be stored safely and preserved.

3. Handling to extract the commodity, without acting on the commodity itself. Actions such as removing the hull from almonds and walnuts, or the tops from carrots are examples. In these cases, extraneous parts of the commodity are removed, but the commodity itself is unchanged and unmanufactured.

The "processing" of an agricultural or aquacultural commodity means acting on the commodity itself, usually with tools, so as to change the fundamental nature of the commodity from that which it had when it was taken from the farm. Examples of processing activities include: crushing, cutting, chopping, dicing, slicing, pitting, blending, pureeing, juicing, drying, dehydrating, freeze-drying, expressing, flavoring, heating, freezing, cooking, steaming, roasting, slaughtering, butchering, pasteurizing, and churning. Thus, canneries, wineries, slaughterhouses, creameries, frozen food plants, salad mix plants, and other such food processing plants act on the raw commodity itself and therefore, employees of such are to be considered "food processing workers".

Another distinction is that “farm labor” ceases once the commodity is day hauled “to market or the distributor.” Thus, the distributor’s intake’ shipping gate is where farm labor ends. Farm labor is also involved in wholesaling packaging but not retail packaging. If the market destination of a commodity is a produce wholesaler’s warehouse or a retail grocery store’s produce department, then this is the point where non-farm labor takes over.

However, when dealing with vertically-integrated farm operations (where the same farm raises, harvests, handles, stores, and then processes and/or markets the crop), it may be necessary to determine the specific job an employee does. Many times, one employee within a company or facility may be classified under the definition as a “farm laborer” and another employee working in the same facility is not. These employees, who may work on a farm operation and whom do not perform “farm labor activities”, are not eligible. For example, a custodian who sweeps the floor of a packing house, or a bookkeeper who performs accounting duties in the farm office, would not be defined as a farm laborer, whereas as their coworkers, who sort, clean, pack, or load the commodity would. On the other hand, laborers providing services for nonvertically-intergrated farm operations (i.e. installing sprinklers) are eligible if employed by the farm operation.

In all cases, the trucker who day hauls the agricultural or aquaculture commodity from the site of the eligible activity to the site of the ineligible activity is considered to be engaged in farm labor. However, the trucker who day hauls the product for market or distribution must work for the processing manufacture to be eligible.

There are, of course, a number of other FLH eligibility factors besides the mere involvement of a worker in “farm labor.” For example, applicants for On-Farm Labor Housing, for processing worker housing, must meet the eligibility criteria according to the 7 CFR part 3560, subpart L section 3560.605. Other eligibility factors are covered in detail in 7 CFR part 3560, subparts L and M.

Exhibit A

Presence of "farm labor" in stages of the agricultural economy

Stage 1. Raising the commodity on the farm.

Eligible activities include:
Field workers – hand work, field preparation, planting, irrigating, weeding, spraying, thinning, picking, pruning, loading, flagman, livestock caretakers, milkers
Agricultural equipment operators – tractors, sprayers (including aerial sprays), harvesters, combines
Professional crop services – agronomists, veterinarians, pest advisors, orchard managers

Ineligible activities include:
Support activities – mechanics, chemical handlers, bookkeepers, farm labor contractors
Agricultural suppliers – seed, chemical, equipment, and supply dealers
Professional support services – bookkeepers, attorneys, financial consultants

Stage 2. Transporting the commodity after harvest.

Eligible activities include:
Harvester/combine operators
Truck drivers
Loading and unloading commodities prior to processing

Ineligible activities include:
Fuel dealers
Truck mechanics
Truck dispatchers

Stage 3. Post-harvest handling, storage, processing and packaging.

Eligible activities include:
Boxing, crating, loading and unloading produce, hulling nuts, drying grain
Working in a post-harvest commodity storage facility

Ineligible activities include:
Handling which constitutes marketing
Stage 4. Delivery to market or processing.

Eligible activities include:
Truck drivers, loading and unloading commodities prior to processing
Trucking processed agricultural products (when employed by Processing Plant)

Ineligible activities include:
Fuel dealers
Off-farm truck mechanics
Truck dispatchers

Stage 5. Processing or marketing.

Eligible activities include:
Processing plant workers – canneries, salad mix, creameries, frozen foods, dried fruit, slaughterhouse

Ineligible activities include:
Grocery store workers – produce department Restaurant workers Auction yard workers produce wholesalers and wholesale warehouse workers.

Exhibit B
Presence of “farm labor” and “processing worker” in selected agricultural enterprises

Enterprise	Farm Worker Activities	Processing Worker Activities
Aquaculture	Seeding, care, management, or harvest of fish, shellfish, & other aquatic organisms	Seafood /Wholesalers Packing
Bees	Hive care and management Honey extraction	Confection manufacturing
Berries	Field work and harvest, including field pack Sorting, packing, and storage	Produce wholesalers Packing Juicing
Cattle	Herd management Feedlot	Slaughterhouse
Cotton	Field work and harvest Pre-gin storage	Ginning
Dairy	Milking barn Herd care and management	Creamery Cheese production
Eggs	Layer flock management Egg sorting, grading, and packing	Egg yolk separation
Fruit trees – avocados, dates	Grove operations and harvest Sorting, packing, and storage	Guacamole production
Fruit trees – citrus	Grove operations and harvest Sorting, packing, and storage	Juicing Canning
Fruit trees – figs	Orchard operations and harvest Sorting, packing, drying and storage	Fig confections
Fruit trees – olives	Orchard operations and harvest Sorting, packing, and storage	Brine operations Cannery operations
Fruit trees – apples, kiwis, peaches, pears, and plums	Orchard operations and harvest Sorting, packing, and storage	Cannery operations Freezer operations Drying operations
Fruit trees – prunes (dried plums)	Orchard operations and harvest Sorting, packing, drying and storage	Re-hydrating and processing Cannery operations
Garlic	Field work and harvest Sorting, packing, and storage	Wholesale produce operation and Packing Drying & dehydrating operations
Grain – barley, corn, oats, rice, wheat	Field work and harvest Grain drying and bulk storage	Milling
Grapes – raisins	Vineyard work, including field dry & pack Sorting, packing, and storage	Re-hydrating and processing Cannery operations

Grapes – table	Vineyard work and harvest Boxing grapes	Wholesale produce operation packing
Grapes – wine	Vineyard work and harvest	Grape crushing and fermenting
Hay	Hay production and harvest Hay baling, stacking, and storage Silage production by farmer	Hay compressor or pelletizer operation Feed mix preparation Hay broker Feed store
Melons	Field work and harvest, including field pack Sorting, packing, and storage	Wholesale produce operations packing
Nurseries	Field and greenhouse work Sorting and packing for shipment	Sorting and packing for shipment
Nut trees – almonds, Walnuts	Orchard operations and harvest Hulling	Shelling Expressing oils Roasting and making nut products
Oilseeds	Field work and harvest Storage in bulk	Oil expresser operations
Potatoes	Field work and harvest Storage in bulk in cellars Packing and bagging at potato shed	Potato chipping
Poultry	Poultry production	Hatcheries/Slaughterhouse/ Processing Plant
Seed production	Field work and harvest Sorting, packing, and storage	Seed certification
Sheep	Flock management Shearing and wool storage	Auction yard Slaughterhouse Yarn production
Sugar beets	Field work and harvest	Sugar refineries
Vegetables for fresh market (artichokes, asparagus, broccoli, carrots, cauliflower, celery, lettuce, greens, mushrooms, onions, Peppers, tomatoes)	Field work and harvest, including field pack Sorting, packing, and storage	Produce wholesalers Salad mix operations

Vegetables for processing (artichokes, asparagus, broccoli, carrots, cauliflower, celery, greens, mushrooms, onions, peppers, tomatoes)	Field work and harvest, including field pack	Cannery operations Freezer operations Drying operations

Appendix 1

7 CFR PART 3560--DIRECT MULTI-FAMILY HOUSING LOANS AND GRANTS

TABLE OF CONTENTS

Subpart A--General Provisions and Definitions

Sec.		Page
3560.1	Applicability and purpose.	20
3560.2	Civil rights.	20
3560.3	Environmental requirements.	21
3560.4	Compliance with other Federal requirements.	21
3560.5	State, local or tribal laws.	22
3560.6	Borrower responsibility and requirements.	22
3560.7	Delegation of responsibility.	22
3560.8	Administrator's exception authority.	22
3560.9	Reviews and appeals.	22
3560.10	Conflict of interest.	23
3560.11	Definitions.	23
3560.12-3560.49 [Reserved]		34
3560.50	OMB control number.	34

Subpart B--Direct Loan and Grant Origination

3560.51	General.	35
3560.52	Program objectives.	35
3560.53	Eligible use of funds.	35
	(a) Construct housing.	35
	(b) Purchase and rehabilitate buildings	35
	(c) Subsequent loans	35
	(d) Purchase and improve sites	35
	(e) Develop and install necessary systems	35
	(f) Landscaping and site development.	36
	(g) Tenant-related facilities.	36
	(h) Management-related facilities.	36
	(i) Purchase and install equipment and appliances.	36
	(j) Household furnishings (Section 514/516)	36
	(k) Initial operating capital	36
	(l) Builder’s profit, overhead and general requirements.	36
	(m) Legal, technical and professional services	36
	(n) Permit and application fees.	36

Sec.		Page
	(o) Reimbursement to nonprofit organizations and public bodies	37
	(p) Educational programs.	37
	(q) Interest and customary charges	37
	(r) Purchase housing from interim lender.	37
	(s) Uniform Relocation Assistance and Real Property Acquisition Act of 1970.	37
	(t) Demonstration programs.	37
	(u) Conversion of section 502 properties.	37
3560.54	Restrictions on the use of funds.	37
	(a) Ineligible use of funds.	37
	(b) Obligations incurred before loan approval.	38
3560.55	Applicant eligibility requirements.	39
	(a) General.	39
	(b) Additional requirement for applicants with prior debt.	39
	(c) Additional requirement for nonprofit organizations.	40
	(d) Additional requirements for Limited Liability Companies (LLCs).	40
3560.56	Processing section 515 housing proposals.	40
	(a) Notice of Funding Availability (NOFA) responses.	40
	(b) Preliminary proposal assessment.	41
	(c) Scoring and ranking project proposals.	41
	(d) Processing initial loan applications.	42
	(e) Processing order of initial applications.	43
	(f) Other assistance.	43
	(g) Proposal withdrawal or rejection.	43
	(h) Final applications.	43
	(i) Rural cooperative housing proposals.	43
3560.57	Designated places for section 515 housing.	43
	(a) Establish a list of designated places	43
	(b) Establishing partnership designated place list.	44
	(c) Administrator’s discretion.	44
	(d) Restrictions on loans in certain designated places.	44
3560.58	Site requirements.	45
	(a) Location.	45
	(b) Structures located in central business areas.	45
	(c) Site development costs and standards.	45
	(d) Densities.	45
	(e) Flood or mudslide-prone areas.	6

Sec.		Page
3560.59	Environmental requirements.	46
3560.60	Design requirements.	46
	(a) Standards.	46
	(b) Residential design.	46
	(c) Economical construction, operation and maintenance.	46
	(d) Accessibility.	47
3560.61	Loan security.	48
	(a) General.	48
	(b) Lien position.	48
	(c) Liability.	48
	(d) Housing and loan ownership.	48
3560.62	Technical, legal, insurance, and other services.	49
	(a) Legal services.	49
	(b) Title clearance.	49
	(c) Architectural services.	49
	(d) Insurance.	49
	(e) Surety bonding.	49
3560.63	Loan limits.	49
	(a) Determining the security value.	49
	(b) Limitation on loan amounts.	50
	(c) Equity contribution.	50
	(d) Review of assistance from multiple sources.	50
	(e) Limits on equity loans.	51
	(f) Cost overruns.	51
3560.64	Initial operating capital contribution.	51
3560.65	Reserve account.	52
3560.66	Participation with other funding or financing sources.	52
	(a) General requirements.	52
	(b) Rental assistance.	52
	(c) Security requirements.	53
	(d) Reserve requirements.	53
	(e) Design requirements.	53
3560.67	Rates and terms for section 515 loans.	53
	(a) Interest.	53
	(b) Interest credit.	53
	(c) Amortization period and term.	53

Sec.		Page
3560.68	Permitted return on investment (ROI).	54
	(a) Permitted return.	54
	(b) Calculation of permitted return.	54
	(c) Return on additional investment.	54
	(d) Compensation to nonprofit organizations.	54
3560.69	Supplemental requirements for congregate housing and group homes.	54
	(a) General.	54
	(b) Design criteria.	54
	(c) Services.	54
	(d) Necessary items.	55
	(e) Association with other organizations.	55
	(f) Market feasibility documentation.	55
	(g) Rental assistance for group homes.	55
3560.70	Supplemental requirements for manufactured housing.	56
	(a) Design requirements.	56
	(b) Eligible properties.	56
	(c) Terms.	56
	(d) Security.	56
	(e) Special warranty requirements.	56
3560.71	Construction financing.	57
	(a) Construction financing plan.	57
	(b) Interim financing.	57
	(c) Multiple advances.	57
3560.72	Loan closing.	57
	(a) Requirements.	57
	(b) Cost certification.	58
	(c) Notice of cancellation.	58
3560.73	Subsequent loans.	59
	(a) Applicability.	59
	(b) Application requirements and processing.	59
	(c) Amortization and payment period.	59
	(d) Equity contribution.	59
	(e) Environmental requirements.	59
	(f) Design requirements.	59
	(g) Architectural services.	59
	(h) Restrictive-use requirements.	59
	(i) Designation changes from rural to normal.	60
	(j) Agency's discretion.	60

Sec.		Page
3560.74	Loan for final payments.	60
	(a) Use.	60
	(b) Requirements.	60
	(c) Term.	60
3560.75 - 3560.99 [Reserved]		60
3560.100	OMB control number.	60
Subpart C--Borrower Management and Operations Responsibilities		
3560.101	General.	60
3560.102	Housing project management.	61
	(a) General.	61
	(b) Management plan.	61
	(c) Management plan effective period.	62
	(d) Housing projects with compliance violations.	62
	(e) Acceptable management agents.	63
	(f) Self-management.	63
	(g) Identity-of-interest disclosure.	62
	(h) Management agreement.	64
	(i) Management fees.	64
	(j) Management certification.	69
	(k) Procurement.	70
	(l) Electronic submission of data to Agency.	70
3560.103	Maintaining housing projects.	70
	(a) Physical maintenance.	70
	(b) Maintenance systems.	74
	(c) Capital budgeting and planning.	75
3560.104	Fair housing.	75
	(a) General.	75
	(b) Affirmative Fair Housing Marketing Plan.	75
	(c) Accommodations and communication.	77
	(d) Housing sign requirements.	78
3560.105	Insurance and taxes.	79
	(a) General.	79
	(b) General insurance requirements.	79
	(c) Borrower failure or inability to meet insurance requirements.	79
	(d) Credits, refunds, or rebates.	79

Sec.		Page
	(e) Insurance company requirements.	80
	(f) Property insurance.	80
	(g) Liability insurance.	82
	(h) Fidelity coverage.	82
	(i) Taxes.	84
3560.106-3560.149 [Reserved]		84
3560.150	OMB control number.	84
Subpart D--Multi-Family Housing Occupancy		
3560.151	General.	84
	(a) Applicability.	84
	(b) Civil rights requirements.	84
3560.152	Tenant eligibility.	84
	(a) General requirements.	84
	(b) Exception.	85
	(c) Requirements for elderly housing, elderly units in mixed housing, congregate housing, and group homes.	85
	(d) Ineligible tenant waiver.	85
	(e) Tenant certification and verification.	86
3560.153	Calculation of household income and assets.	87
3560.154	Tenant selection.	87
	(a) Application for occupancy.	87
	(b) Additional information	88
	(c) Application submission.	88
	(d) Selection of eligible applicants.	88
	(e) Recordkeeping.	88
	(f) Waiting lists.	89
	(g) Priorities and preferences for admission.	89
	(h) Notices of ineligibility or rejection.	90
	(i) Purging waiting list.	90
	(j) Criminal activity.	90
3560.155	Assignment of rental units and occupancy policies.	90
	(a) General.	90
	(b) Rental units accessible to individuals with disabilities.	90
	(c) Transfer of existing tenants within a housing project.	90

Sec.		Page
	(d) Applicant placement.	91
	(e) Occupancy policies.	91
	(f) Agency concurrence.	91
3560.156	Lease requirements.	91
	(a) Agency approval.	91
	(b) Lease requirements.	91
	(c) Required items and provisions.	92
	(d) Prohibited provisions.	95
	(e) Housing projects and units receiving HUD assistance.	96
	(f) State and local requirements.	96
3560.157	Occupancy rules.	97
	(a) General.	97
	(b) Requirements.	97
	(c) Modification of occupancy rules.	97
	(d) Federal, state and local requirements.	97
	(e) Pets/Assistance Animals.	97
	(f) Tenant organizations.	98
	(g) Community rooms.	98
3560.158	Changes in tenant eligibility.	98
	(a) General requirements.	98
	(b) Tenants no longer eligible.	98
	(c) Temporary continuation of tenancy.	98
	(d) Surviving and remaining household member.	98
3560.159	Termination of occupancy.	99
	(a) Tenants in violation of lease.	99
	(b) Lease expiration or tenant eligibility.	100
	(c) Other terminations.	100
	(d) Criminal activity.	100
3560.160	Tenant grievances.	100
	(a) General.	100
	(b) Applicability.	101
	(c) Borrower responsibilities.	101
	(d) Reasons for grievance.	101
	(e) Notice of adverse action.	102
	(f) Grievances and responses to notice of adverse action.	102
	(g) Hearing process.	102
	(h) Requirements governing the hearing.	104
	(i) Decision.	104

Sec.		Page
3560.161-3560.199 [Reserved]		105
3560.200	OMB control number.	105

Subpart E—Rents

3560.201	General.	105
3560.202	Establishing rents and utility allowances.	105
	(a) General.	105
	(b) Agency approval.	105
	(c) Rents.	105
	(d) Utility allowances.	106
	(e) Funds contributed to reduce rents.	106
	(f) Rents for resident manager, caretaker, or owner-occupied unit.	106
	(g) LIHTC.	106
3560.203	Tenant contributions.	106
	(a) Tenant contributions.	106
	(b) Adjustment of tenant contribution.	107
	(c) Overage.	107
3560.204	Security deposits and membership fees.	107
	(a) General.	107
	(b) Allowable amounts.	107
	(c) Payment plans.	108
	(d) Charges for damage or loss.	108
	(e) State and local security deposit requirements.	108
	(f) Unclaimed security deposits.	108
3560.205	Rent and utility allowance changes.	108
	(a) General.	108
	(b) Agency approval.	108
	(c) Timing of request for changes.	108
	(d) Tenant notification.	109
	(e) Approval.	109
	(f) Denial of change request.	109
	(g) Notice of denial.	109
3560.206	Conversion to Plan II (Interest Credit).	109
3560.207	Annual adjustment factors for Section 8 units.	109
	(a) General.	109
	(b) Establishing rents in housing with HUD rent assistance.	109
	(c) Excess HUD rents.	110

Sec.		Page
3560.208	Rents during eviction or failure to recertify.	110
	(a) Rents during eviction.	110
	(b) Rents when tenants fail to recertify.	110
	(c) Unauthorized assistance due to tenant recertification failure.	110
	(d) Rents when borrowers fail to recertify tenants.	110
	(e) Unauthorized assistance due to borrower recertification failure.	110
3560.209	Rent collection.	110
	(a) General.	110
	(b) Fees for late rent payments.	110
	(c) Improperly advanced rents.	111
3560.210	Special note rents (SNRs).	111
3560.211-3560.249	[Reserved]	111
3560.250	OMB control number.	111
Subpart F--Rental Subsidies		
560.251	General.	111
3560.252	Authorized rental subsidies.	111
	(a) General.	111
	(b) Forms of rental subsidies.	111
	(c) Multiple rent subsidies.	112
	(d) Agency rental assistance (RA).	112
3560.253	[Reserved]	112
3560.254	Eligibility for rental assistance.	112
	(a) Eligible housing.	112
	(b) Eligible units.	113
	(c) Eligible households.	113
3560.255	Requesting rental assistance.	113
	(a) Submitting requests.	113
	(b) Denial of requests.	113
3560.256	Rental assistance payments.	114
	(a) Borrower submission requirements.	114
	(b) Basis of RA requests.	114
	(c) Payments to borrowers.	114
	(d) Utility payments to tenants.	114
	(e) Administrative errors.	114

Sec.		Page
3560.257	Assigning rental assistance.	114
	(a) Priorities for rental assistance.	114
	(b) Continued eligibility.	115
	(c) Assignment of rental assistance.	115
	(d) Incorrectly assigned rental assistance.	115
3560.258	Terms of agreement.	115
	(a) Term of agreement.	115
	(b) Replacing expiring obligations.	115
3560.259	Transferring rental assistance.	115
	(a) Agency authority.	115
	(b) Agency review before transferring rental assistance.	116
	(c) Transferring rental assistance for displaced tenants.	116
3560.260	Rental subsidies from non-Agency sources.	116
	(a) General.	116
	(b) HUD vouchers.	116
	(c) Loan proposals using non-Agency rental subsidy.	116
	(d) Rental subsidy agreement.	116
3560.261	Improperly advanced rental assistance.	117
3560.262-3560.299	[Reserved]	117
3560.300	OMB control number.	117
Subpart G--Financial Management		
3560.301	General.	117
3560.302	Accounting, bookkeeping, budgeting, and financial management systems.	117
	(a) General.	117
	(b) Acceptable methods of accounting.	117
	(c) Account requirements.	117
	(d) Documentation of separate accountability.	119
	(e) Records.	119
	(f) Forms generated by automated systems.	119
	(g) Farm labor housing.	120
3560.303	Housing project budgets.	120
	(a) General requirements.	120
	(b) Allowable and unallowable project expenses.	120
	(c) Priorities.	124
	(d) Agency review and approval.	124

Sec.		Page
3560.304	Initial operating capital.	125
	(a) Purpose.	125
	(b) Authorized uses of initial operating capital.	125
	(c) Withdrawal of initial operating capital.	125
3560.305	Return on investment.	126
	(a) Borrower's return on investment.	126
	(b) Unpaid return on investment.	126
3560.306	Reserve account.	126
	(a) Purpose.	126
	(b) Financial management of the reserve account.	126
	(c) funding of the reserve account.	126
	(d) Transfer of surplus general operating account funds.	126
	(e) Account requirements.	127
	(f) Funds invested in securities.	127
	(g) Use of the reserve account.	127
	(h) Allowable uses.	128
	(i) Records.	128
	(j) Changes to reserve requirements.	128
	(k) Excess reserves.	128
	(l) Procurement.	129
3560.307	Reports.	129
	(a) Required reports.	129
	(b) Quarterly and monthly reports.	129
3650.308	Annual financial reports.	129
	(a) General.	129
	(b) Engagement requirements.	129
	(c) Performance standards.	130
	(d) Other financial reports.	130
3560.309	Advancement (loan) of funds to a RRH project by the owner, member of the organization, or agent of the owner.	130
3560.310-3560.349	[Reserved]	131
3560.350	OMB control number.	131

Subpart H--Agency Monitoring

3560.351	General.	131
3560.352	Agency monitoring scope, purpose, and borrower responsibilities.	132
	(a) Scope of Agency monitoring activities.	132

Sec.		Page
	(b) Purpose of Agency monitoring activities.	132
	(c) Borrower responsibilities.	132
3560.353	Scheduling of on-site monitoring reviews.	133
3560.354	Borrower response to monitoring review notifications.	133
3560.355-3560.399	[Reserved]	133
3560.400	OMB control number.	133
Subpart I--Servicing		
3560.401	General.	133
	(a) Purpose	133
	(b) General servicing policies.	133
	(c) Special servicing actions.	134
3560.402	Loan payment processing.	134
	(a) Predetermined Amortization Schedule System (PASS) requirements.	134
	(b) Required conversion to PASS.	134
	(c) Exceptions.	134
3560.403	Account servicing.	134
	(a) Payment due dates.	134
	(b) Payment application order.	134
	(c) Late fees.	135
	(d) Interest on unpaid overdue principal.	135
3560.404	Final loan payments.	135
	(a) Payoff statements.	135
	(b) Final payments.	135
	(c) Final payment loans.	135
	(d) Loan prepayment requests.	135
	(e) Payment forms.	136
	(f) Release of security instruments.	136
	(g) Special circumstances.	136
3560.405	Borrower organizational structure or ownership interest changes.	136
	(a) General.	136
	(b) Agency requirements.	136
	(c) Documentation of organizational structures and ownership interests.	137

Sec.		Page
3560.406	MFH ownership transfers or sales.	137
	(a) General.	137
	(b) Agency consent requirements.	137
	(c) Consent request requirements.	138
	(d) Requirements for ownership transfers or sales.	138
	(e) Equity payments.	140
	(f) Equity payment funding sources.	141
	(g) Restrictive-use requirement.	141
	(h) Subsequent loans.	141
	(i) Loan assumption interest rates.	141
	(j) Loan assumption terms.	142
	(k) Processing ownership transfers or sales.	142
	(l) Ownership transfers or sales under special rates, terms and conditions.	142
3560.407	Sales or other disposition of security property.	143
	(a) General.	143
	(b) Request requirements.	143
3560.408	Lease of security property.	143
	(a) General.	143
	(b) Leases to public housing authorities.	144
	(c) Lease of a portion of the security property.	144
	(d) Mineral leases.	144
3560.409	Subordinations or junior liens against security property.	144
	(a) General.	144
	(b) Consent request requirements.	145
	(c) Required conditions for subordinations and junior liens.	146
	(d) Other liens against a property or other assets.	146
3560.410	Consolidations.	146
	(a) General.	146
	(b) Loan consolidations.	146
	(c) Loan agreement or loan resolution consolidations.	146
3560.411-3560.449	[Reserved]	147
3560.450	OMB control number.	147

(02-24-05) SPECIAL PN

Sec.		Page
Subpart J--Special Servicing, Enforcement, Liquidation, and Other Actions		
3560.451	General.	147
	(a) Agency obligations.	147
	(b) Relationship to workout agreements.	147
3560.452	Monetary and non-monetary defaults.	147
	(a) General.	147
	(b) Monetary defaults.	147
	(c) Nonmonetary defaults.	148
	(d) Default notice.	148
	(e) Agency action.	148
3560.453	Workout agreements.	148
	(a) General.	148
	(b) Workout agreement approval.	149
	(c) Workout agreement required content.	149
	(d) Workout agreement budgets.	150
	(e) Workout agreement terms and cancellations.	150
3560.454	Special servicing actions related to housing operations.	150
	(a) Changing rents or revising budgets.	150
	(b) Occupancy waivers.	150
	(c) Additional rental assistance (RA).	150
	(d) Special note rents.	151
	(e) Termination of management agreement.	151
3560.455	Special servicing actions related to loan accounts.	151
	(a) General.	151
	(b) Loan reamortizations.	152
	(c) Loan writedowns.	152
3560.456	Liquidation.	153
	(a) Before acceleration.	153
	(b) Acceleration.	153
	(c) Voluntary liquidation.	153
	(d) Foreclosure.	154
	(e) Acquisition of chattel properties.	154
3560.457	Negotiated debt settlement.	154
	(a) Borrower proposals to settle debt.	154
	(b) Required information.	154

Sec.		Page
	(c) Effective date of approval.	154
	(d) Appraisal requirement.	154
	(e) Disposition of security prior to offer.	154
	(f) Final release condition.	154
3560.458	Special property circumstances.	155
	(a) Abandonment.	155
	(b) Other security.	155
	(c) Taking of additional security to protect Agency interests.	155
	(d) Due diligence.	155
3560.459	Special borrower circumstances.	155
	(a) Deceased borrower, bankruptcy, insolvency, and divorce actions.	155
	(b) Membership liability agreements.	156
	(c) Security issues in participation loans.	156
3560.460	Double damages.	156
	(a) Action to recover assets or income.	156
	(b) Amount recoverable.	156
	(c) Time limitation.	157
	(d) Continued availability of other remedies.	157
3560.461	Enforcement provisions.	157
	(a) Equity skimming.	157
	(b) Civil monetary penalties.	157
	(c) Conditions for renewal extension.	159
3560.462	Money laundering.	159
3560.463	Obstruction of Federal audits.	159
3560.464-3560.499	[Reserved]	159
3560.500	OMB control number.	159

Subpart K--Management and Disposition of Real Estate Owned (REO) Properties

3560.501	General.	159
3560.502	Tenant notifications and assistance.	159
3560.503	Disposition of REO property.	160
3560.504	Sales price and bidding process.	160
3560.505	Agency loans to finance purchases of REO properties.	161
3560.506	Conversion of single family type REO property to MFH use.	162
3560.507-3560.549	[Reserved]	162
3560.550	OMB control number.	162

Sec.		Page
Subpart L--Off-Farm Labor Housing		
3560.551	General.	163
3560.552	Program objectives.	163
3560.553	Loan and grant purposes.	163
3560.554	Use of funds restrictions.	163
3560.555	Eligibility requirements for off-farm labor housing loans and grants.	164
	(a) Eligibility for loans.	164
	(b) Eligibility for grants.	164
	(c) Limitation	164
3560.556	Application requirements and processing.	164
3560.557	[Reserved]	164
3560.558	Site requirements.	164
3560.559	Design and construction requirements.	164
	(a) General.	164
	(b) Additional requirements.	164
	(c) Davis-Bacon wage requirements.	165
3560.560	Security.	165
3560.561	Technical, legal, insurance and other services.	165
3560.562	Loan and grant limits.	165
	(a) Determining the security value.	165
	(b) Maximum amount of loan.	165
	(c) Maximum amount of grant.	165
3560.563	Initial operating capital.	165
3560.564	Reserve accounts.	165
3560.565	Participation with other funding or financing sources.	166
3560.566	Loan and grant rates and terms.	166
	(a) Amortization period.	166
	(b) Interest rate.	166
	(c) Term of grant agreement.	166
3560.567	Establishing the profit base on initial investment.	166
3560.568	Supplemental requirements for seasonal off-farm labor housing.	166
3560.569	Supplemental requirements for manufactured housing.	166
3560.570	Construction financing.	166
3560.571	Loan and grant closing.	166
3560.572	Subsequent loans.	167
3560.573	Rental assistance.	167

Sec.		Page
3560.574	Operating assistance.	167
	(a) Project eligibility requirements.	167
	(b) Operating assistance limits.	168
	(c) Owner responsibilities.	168
3560.575	Rental structure and changes.	168
3560.576	Occupancy restrictions.	169
	(a) Restrictions on conditions of occupancy.	169
	(b) Eligible households.	169
	(c) Tenant eligibility requirements for operating assistance rents.	170
	(d) Ineligible tenants.	170
	(e) Non-farm laborer tenants.	170
3560.577	Tenant priorities for labor housing.	170
3560.578	Financial management of labor housing.	171
3560.579	Servicing off-farm labor housing.	171
3560.580-3560.599	[Reserved]	171
3560.600	OMB control number.	171
Subpart M--On-Farm Labor Housing		171
3560.601	General.	171
3560.602	Program objectives.	171
3560.603	Loan purposes.	171
3560.604	Restrictions on use of funds.	172
3560.605	Eligibility requirements.	172
3560.606	Application requirements and processing.	173
3560.607	[Reserved]	173
3560.608	Site and construction requirements.	173
	(a) General.	173
	(b) Permanent units.	173
	(c) Seasonal units.	173
	(d) Accessibility.	174
3560.609	[Reserved]	174
3560.610	Security.	174
3560.611	Technical, legal, insurance and other services.	174
3560.612	Loan limits.	174
3560.613	[Reserved]	174
3560.614	Reserve accounts.	174
3560.615	Participation with other funding sources.	174
3560.616	Rates and terms.	175
3560.617	[Reserved]	175
3560.618	Supplemental requirements for on-farm labor housing.	175

Sec.		Page
3560.619	Supplemental requirements for manufactured housing.	175
3560.620	Construction financing.	175
3560.621	Loan closing.	175
3560.622	Subsequent loans.	175
3560.623	Housing management and operations.	175
3560.624	Occupancy restrictions.	176
3560.625	Maintaining the physical asset.	176
3560.626	Affirmative Fair Housing Marketing Plan.	176
3560.627	Response to resident complaints.	176
3560.628	Establishing and modifying rental charges.	176
3560.629	Security deposits.	176
3560.630	Financial management.	176
3560.631	Agency monitoring.	176
3560.632-3560.649	[Reserved]	177
3560.650	OMB control number.	177

Subpart N--Housing Preservation

3560.651	General.	177
3560.652	Prepayment and restrictive-use categories.	177
3560.653	Prepayment requests.	178
3560.654	Tenant notification requirements.	179
3560.655	Agency requested extension.	181
3560.656	Incentives offers.	181
3560.657	Processing and closing incentive offers.	184
	(a) Borrower responsibilities.	184
	(b) Waiting lists.	184
	(c) Unfunded incentive offers.	184
3560.658	Borrower rejection of the incentive offer.	185
3560.659	Sale or transfer to nonprofit organizations and public bodies.	186
	(a) Sales price	186
	(b) Marketing to nonprofit organizations and public bodies.	186
	(c) Preference for local nonprofit and public bodies.	187
	(d) Eligible nonprofit organizations.	187
	(e) Requirements for nonprofit organizations and public bodies.	187
	(f) Selection priorities.	188
	(g) Loans made by the Agency or other sources to nonprofit organizations and public bodies.	188
	(h) Advances for nonprofit organizations and public bodies.	188
	(i) Waiting list.	188
	(j) Withdrawal from sales process.	189
	(k) When no offer to purchase is received.	189
3560.660	Acceptance of prepayments.	189
3560.661	Sale or transfers.	189
3560.662	Restrictive-use provisions and agreements.	190

Sec.		Page
3560.663	Post-payment responsibilities for loans subject to continued restrictive-use provisions.	191
3560.664-3560.699 [Reserved]		191
3560.700	OMB control number.	192

Subpart O--Unauthorized Assistance

3560.701	General.	192
3560.702	Unauthorized assistance sources and situations.	192
3560.703	Identification of unauthorized assistance.	192
3560.704	Unauthorized assistance determination notice.	192
3560.705	Recapture of unauthorized assistance.	193
3560.706	Offsets.	194
3560.707	Program participation and corrective actions.	194
3560.708	Unauthorized assistance received by tenants.	194
3560.709	Demand letter.	195
3560.710-3560.749 [Reserved]		196
3560.750	OMB control number.	196

Subpart P--Appraisals

3560.751	General.	196
3560.752	Appraisal use, request, review, and release.	196
	(a) Appraisal uses.	196
	(b) Appraisal requests.	196
	(c) Appraisal review.	198
	(d) Release of appraisals.	198
3560.753	Agency appraisal standards and requirements.	198
	(a) General.	198
	(b) Appraisers.	198
	(c) Appraisal report.	198
	(d) Highest and best use statement and analysis.	199
	(e) Valuation methods and variances.	199
	(f) Real estate history.	199
	(g) Reserve accounts.	199
	(h) Escrow accounts.	199
	(i) Rental rates comparison.	199
	(j) Description of housing and property rights.	200
	(k) Exclusion of rental units from valuation.	200
	(l) Non-contiguous sites.	200
3560.754-3560.799 [Reserved]		200
3560.800	OMB control number.	200

7 CFR Part 3560

7 CFR PART 3560 – DIRECT MULTI-FAMILY HOUSING LOANS AND GRANTS

Subpart A--General Provisions and Definitions

§3560.1 Applicability and purpose.

(a) This part sets forth requirements, policies, and procedures for multi-family housing (MFH) direct loan and grant programs to serve eligible very-low, low- and moderate-income households. The programs covered by this part are authorized by title V of the Housing Act of 1949 and are:

(1) Section 515 Rural Rental Housing, which includes congregate housing, group homes, and Rural Cooperative Housing. Section 515 loans may be made to finance multi-family units in rural areas as defined in §3560.11.

(2) Sections 514 and 516 Farm Labor Housing loans and grants. Housing under these programs may be built in any area with a need and demand for housing for farm workers.

(3) Section 521 Rental Assistance. A project-based tenant rent subsidy which may be provided to Rural Rental Housing and Farm Labor Housing facilities.

(b) The programs covered by this part provide economically designed and constructed rural rental, cooperative, and farm labor housing and related facilities operated and managed in an affordable, decent, safe, and sanitary manner.

(c) Internal Agency procedures containing details for Agency processing under these regulations can be found in the program handbooks, available in any Rural Development office, or from the Rural Development Web site.

§3560.2 Civil rights.

(a) As per the Fair Housing Act, as amended and section 504 of the Rehabilitation Act of 1973, all actions taken by recipients of loans and grants will be conducted without regard to race, color, religion, sex, familial status, national origin, age, or disability. These actions include any actions in the sale, rental, or advertising of the dwellings, in the provision of brokerage services, or in residential real estate transactions involving Rural Housing Service (RHS) assistance. It is unlawful for a borrower or grantee or an agent of a borrower or grantee:

(1) To refuse to make reasonable accommodations in rules, policies, practices, or services that would provide a person with a disability an opportunity to use or continue to use a dwelling unit and all public and common use areas; or

(2) To refuse to provide a reasonable accommodation at the borrower's expense that would not cause an undue financial or administrative burden, or to refuse to allow an individual with a disability to make reasonable modifications to the unit at their own expense with the understanding that the owner may require the tenant to return the unit to its original condition when the unit is vacated by the tenant making the modifications (see §3560.104(c)).

(b) Borrowers and grantees must take reasonable steps to ensure that Limited English Proficiency (LEP) persons receive the language assistance necessary to afford them meaningful access to USDA programs and activities, free of charge. Failure to ensure that LEP persons can effectively participate in or benefit from federally-assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d and Title VI regulations against national origin discrimination. USDA has issued guidance to clarify the responsibilities of recipients and subrecipients who receive financial assistance from USDA and to assist them in fulfilling their responsibilities to LEP persons under Title VI of the Civil Rights Act, as amended, and implementing regulations.

(c) Any tenant/member or prospective tenant seeking occupancy in or use of facilities financed by the Agency who believes he or she is being discriminated against because of race, color, religion, sex, familial status, national origin, or disability may file a complaint in person with, or by mail to the U. S. Department of Agriculture's Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, Washington, DC 20410. Complaints received by Agency employees must be directed to the National Office Civil Rights staff through the State Civil Rights Manager/Coordinator.

(d) Borrowers or grantees that fail to comply with the requirements of federal civil rights requirements are subject to sanctions authorized by law. The following are the major civil rights laws affecting multifamily housing loan and grant programs:

(1) Equal Credit Opportunity Act (ECOA).
(2) Title VI of the Civil Rights Act of 1964.
(3) Title VIII of the Civil Rights Act of 1968.
(4) Section 504 of the Rehabilitation Act of 1973.
(5) Age Discrimination Act of 1975.
(6) Title IX of the Education Amendments of 1972.

§3560.3 Environmental requirements.

RHS will consider environmental impacts of proposed housing as equal with economic, social, and other factors. By working with applicants, Federal agencies, Indian tribes, state and local governments, interested citizens, and organizations, RHS will formulate actions that advance program goals in a manner that protects, enhances, and restores environmental quality. Loan and grant processing and servicing actions taken by RHS under this part are subject to an environmental review conducted in accordance with 7 CFR part 1940, subpart G or any successor regulation.

§3560.4 Compliance with other Federal requirements.

RHS is responsible for ensuring that the application is in compliance with all applicable Federal requirements, including the following specific requirements:

(a) Intergovernmental review. 7 CFR part 3015, subpart V, or any successor regulation, including the Agency supplemental administrative instruction, RD Instruction 1970-I, available in any Rural Development office.

(b) National flood insurance. The National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973; the National Flood Insurance Reform Act of 1994; and 7 CFR part 1806, subpart B, or any successor regulation.

(c) Clean Air Act and Water Pollution Control Act Requirements. For any contract, all applicable standards, orders or requirements issued under section 306 of the Clean Air Act; section 508 of the Clean Water Act, Executive Order 11738, and 40 CFR part 32.

(d) Historic preservation requirements. The provisions of 7 CFR part 1901, subpart F or any successor regulation.

(e) Lead-based paint requirements. The applicable provisions of 24 CFR part 35, subparts A through D, J, and R, as published by the U.S. Department of Housing and Urban Development.

§3560.5 State, local or tribal laws.

Borrowers must comply with all applicable state and local laws, and laws of Federally-recognized Indian tribes to the extent they are not inconsistent with this part.

§3560.6 Borrower responsibility and requirements.

(a) Borrower responsibilities and requirements specified in this part may be carried out by an individual or entity designated by the borrower to act on behalf of the borrower such as a resident manager or management agent. Ultimate accountability to the Agency, however, is with the borrower whether or not the borrower designated another person or entity to act on the borrower's behalf.

(b) Borrowers who have not executed a loan agreement, and who were not required to execute a loan agreement by the regulations in effect at the time of their loan closing are exempt from the requirements of subparts D through G of this part, as long as the borrower is not in default of any applicable requirement, security instrument, payment, or any other agreement with the Agency. Such borrowers must provide evidence of tenant income eligibility in accordance with §3560.152(a), except in Farm Labor Housing where the tenant is not paying shelter cost.

§3560.7 Delegation of responsibility.

The RHS Administrator may delegate, on an individual or other basis, any decision-making responsibility for Agency programs, unless otherwise noted.

§3560.8 Administrator's exception authority.

The RHS Administrator may make an exception to any provision of this part or address any omissions provided that the exception is consistent with the applicable statute, does not adversely affect the interest of the Federal Government, and does not adversely affect the accomplishment of the purposes of the MFH programs or application of the requirement would result in undue hardship on the tenants. Exception requests presented to the RHS Administrator must have the concurrence of a Rural Development State Director or a Deputy Administrator for MFH.

§3560.9 Reviews and appeals.

Rural Housing Service decisions may be appealed pursuant to 7 CFR part 11.

§3560.10 Conflict of interest.

To reduce the potential for employee conflict of interest, all RHS activities will be conducted in accordance with 7 CFR part 1900, subpart D.

§3560.11 Definitions.

Unless otherwise noted, terms listed in this part shall be defined as follows:
Administrator. The head of the Rural Housing Service who reports directly to the Under Secretary for Rural Development in the U.S. Department of Agriculture.

Agency. The Rural Housing Service within the Rural Development mission area of the U.S. Department of Agriculture.

Amortization. Payment of debt in regular, periodic installments of principal and interest, as opposed to interest only payments.

Applicant. An individual, partnership or limited partnership, consumer cooperative, trust, state or local public agency, corporation, limited liability company, nonprofit organization, Indian tribe, association, or other entity that will be the owner of the project for which an application for funding from the Agency is submitted.

Appraisal. As used by the Agency, a written report developed by a qualified appraiser as established in subpart P that concludes an opinion of value(s) for a specific real property.

Assistance. Financial assistance in the form of a loan, grant, interest credit, or rental assistance.

Association of farmers. Two or more farmers acting as a single legal entity. Association members may include the individual members of farming partnerships or corporations.

Borrower. An individual, partnership or limited partnership, consumer cooperative, trust, state or local public agency, corporation, limited liability company, nonprofit organization, Indian tribe,
association, or other entity that has received a loan from the Agency.

Capital Needs Assessment. A Capital Needs Assessment is designed to capture and report on the immediate and the long-range capital needs of an individual property. It includes attention to site features, mechanical and electrical systems, building exterior and common area systems, and dwelling unit interiors.

Caretaker. An individual employed by a borrower or a management agent to handle routine interior and exterior maintenance and upkeep of a MFHMFH project.

Congregate housing. A housing program authorized by section 515 of the Housing Act of 1949 which provides housing for elderly persons, individuals with disabilities, and families who require some supervision and central services but are otherwise able to care for themselves. Such housing does not include any licensed healthcare facility.

Consumer cooperative. A corporation organized under the cooperative laws of a state or Federally recognized Indian tribe that will own and operate the housing on a cooperative basis solely for the benefit of its members.

Conventional rents for comparable units (CRCU). Market rents for comparable rental units in conventional housing located in the same geographic area as a particular Section 514, 515, or 516 project.

Current appraisal. An appraisal with a report date that is no more than 1 year old.

Daily Interest Accrual System (DIAS). A system where interest is charged daily on outstanding principal. Level loan payments are made by the borrower. The amount of interest due on any date is equal to the unpaid daily interest that has accrued.

Default. Failure by a borrower to meet significant monetary or non-monetary obligations or terms of a loan, grant, or other agreement with the Agency which remain unpaid or unperformed for more than 30 days after the date such obligation is due or required to be paid or performed, or within time periods specified in notices of compliance violations.

Disability. The term disability is considered equivalent to the term handicap. Eligibility requirements for fully accessible units are contained in §§3560.154(g)(1)(i) and 3560.155(b). A person is considered to have a disability if either of the following two situations occur:

(1) As defined in section 501(b) of the Housing Act of 1949. The person is the head of household (or his or her spouse) and is determined to have an impairment which:

(i) Is expected to be of long-continued and indefinite duration;

(ii) Substantially impedes his or her ability to live independently; and

(iii) Is of such a nature that such ability could be improved by more suitable housing conditions, or if such person has a developmental disability as defined in section 102(7) of the Developmental Disability and Bill of Rights Act (42 U.S.C. 6001(7)).

(2) As defined in the Fair Housing Act; the Americans with Disabilities Act; and section 504 of the Rehabilitation Act of 1973. The person has a physical or mental impairment which substantially limits one or more of such person's major life activities; a record of such impairment; or being regarded as having such an impairment. The term does not include current, illegal use of or addiction to a controlled substance. As used in this definition, physical or mental impairment includes:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine;

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term “physical or mental impairment” includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance), and alcoholism;

(iii) Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

(iv) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities;

(v) Is regarded as having an impairment means:

(A) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by the borrower or management agent as constituting such a limitation;

(B) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

(C) Has none of the impairments described in this definition but is treated by another person as having such an impairment.

Disabled domestic farm laborer. An individual with a disability as separately defined in this paragraph and who was a domestic farm laborer at the time of becoming disabled.

Domestic farm laborer. A person who, consistent with the requirements in §3560.576(b)(2), receives a substantial portion of his or her income from farm labor employment (not self-employed) in the United States, Puerto Rico, or the Virgin Islands and either is a citizen of the United States or resides in the United States, Puerto Rico or the Virgin Islands after being legally admitted for permanent residence. This definition may include the immediate family members residing with such a person.

Due diligence on hazardous substances. Due diligence is the process of inquiring into the environmental conditions of real estate, in the context of a real estate transaction to determine the presence of contamination from hazardous substances, and to determine the impact such contamination may have on the market value of the property.

Elderly household or individual with a handicapped household. A household in which the tenant or co-tenant of the household is 62 years old or older or is an individual with a disability. An elderly household may include persons younger than 62 years old and the household of an individual with a handicap may include persons without disabilities.

Elderly person. A person who is at least 62 years old. The term also means a person with a disability as separately defined in this paragraph, regardless of age.

Engagement. An Agency defined financial review of a housing project's financial status that a borrower will contract with a certified public accountant or other qualified individual to perform. An engagement will result in annual financial reports for use by the Agency as described in §3560.308.

Familial status. One or more individuals (who have not attained the age of 18 years) being domiciled with a parent or another person having legal custody of such individual or individuals; or the designee of such parent or other person having such custody, with the written permission of such parent or other person. The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

Family farm corporation or partnership. A private corporation or partnership involved in agricultural production in which at least 90 percent of the stock or interest is owned and controlled by persons related by blood, which shall include parents, siblings, and children, or law. If more than three separate households are supported by the farming operation, the family farm corporation or partnership must be:

(1) Legally organized and authorized to own and operate a farm business within the state;

(2) Legally able to carry out the purposes of the loan; and

(3) Prohibited from the sale or transfer of 90 percent of the stock or interest to other than family members by either the articles of incorporation, bylaws or by agreement between the stockholders or partners and the corporation or partnership.

Farm. A tract or tracts of land, improvements, and other appurtenances that are used or will be used in the production of crops, livestock, or aquaculture products for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term “farm” also includes the term “ranch.” It may also include land and improvements and facilities used in a non-eligible enterprise or the residence that, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

Farmer. A person who is actually involved in day to day on-site operations of a farm and who devotes a substantial amount of time to personal participation in the conduct of the operation of a “farm.”

Farm labor. Services in connection with cultivating the soil, raising or harvesting any agriculture or aquaculture commodity; or in catching, netting, handling, planting, drying, packing, grading, storing, or preserving in the unprocessed stage, without respect to the source of employment (but not self-employed), any agriculture or aquaculture commodity; or delivering to storage, market, or a carrier for transportation to market or to processing any agricultural or aquacultural commodity in its unprocessed stage.

Farm labor contractor. A person--other than an agricultural employer, a member of an agricultural association, or an employee of an agricultural employer or agricultural association--who recruits, solicits, hires, employs, furnishes, or transports any year-round or seasonal migrant farm laborer for money or other valuable consideration.

Farm labor housing. On-farm or off-farm housing for farm laborers authorized by section 514 and section 516 of the Housing Act of 1949.

Farm owner. A natural person, persons, or legal entity who are the owners of a “farm” as this term is further defined in this section.

Foreclosure. A proceeding in or out of court to extinguish all rights, title, and interest of the owners of property in order to sell the property to satisfy a lien against it.

General overhead. Includes general operation items necessary for the contractor to be in business. They may include, but are not limited to the following: tools and minor equipment; worker's compensation and employer's liability; unemployment tax; Social Security and Medicare; manager's, clerical, and estimator's salaries; pension and bonus plans; main office insurance, rental, utilities, miscellaneous expenses; general liability insurance; legal, accounting, and data processing; automotive and light truck expense; vehicle expenses; depreciation of overhead capital expenditures; and office equipment maintenance.

General requirements. Includes items that are required in the construction contract for the contractor to provide for the specific project. They do not include items that pertain to a specific trade nor overhead expenses of the contractor's general operation. Items may include, but are not limited to, the following: Field supervision; field engineering such as field office, sheds, toilets, phone; performance and payment or latent defects bonds; cost certification; building permits; site security; temporary utilities; property insurance; and cleaning or rubbish removal.

Grantee. An entity that has received a grant from the Agency.

Group home. Housing that is occupied by elderly persons or individuals with disabilities who share living space within a rental unit and in which a resident assistant may be required.

Household. The tenant or co-tenant and the persons or dependents living with a tenant or co-tenant, but not including a resident assistant.

Household furnishings. Basic durable items such as stoves, refrigerators, drapes, drapery rods, tables, chairs, dressers and beds.

Housing project. A property with two or more affordable, decent, safe and sanitary rental units and related facilities operated under one management plan and financed with funds appropriated under the authority of sections 515, 514, or 516 of the Housing Act of 1949.

Identity-of-Interest (IOI). A relationship between applicants, borrowers, grantees, management agents, or suppliers of materials or services described under, but not limited to, any of the following conditions:

(1) There is a financial interest between the applicant, borrower, grantee and a management agent or the supplying entity;

(2) One or more of the officers, directors, stockholders or partners of the applicant, borrower, or management agent is also an officer, director, stockholder, or partner of the supplying entity;

(3) An officer, director, stockholder, or partner of the applicant, borrower, or management agent has a 10 percent or more financial interest in the supplying entity;

(4) The supplying entity has or will advance funds to an applicant, borrower, or management agent;

(5) The supplying entity provides or pays on behalf of the applicant, borrower, or management agent the cost of any materials or services in connection with obligations under the management plan or management agreement;

(6) The supplying entity takes stock or a financial interest in the applicant, borrower, or management agent as part of the consideration to be paid them; or

(7) There exists or come into being any side deals, agreements, contracts or understandings entered into thereby altering, amending, or canceling any of the management plan, management agreement documents, organization documents, or other legal documents pertaining to the property, except as approved by the Agency.

Indian tribe. The term "Indian tribe" means any Indian tribe, band, group, and nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan-Native Village, which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Public Law 93-638) or under the State and Local Fiscal Assistance Act of 1972 (Public Law 92-512).

Interest credit. A form of assistance available to eligible borrowers that reduces the effective interest rate of the loan.

Lease. A contract setting forth the rights and obligations of a tenant or cooperative member and a property owner, including charges and terms under which a tenant or cooperative member will occupy or use the housing or related facilities.

Legal or qualified alien. Legal or qualified alien refers to any person lawfully admitted to the country who meets the criteria in section 214 of the Housing and Community Development Act of 1980, 42 U.S.C. 1436a.

Letter of Priority Entitlement (LOPE). A letter issued by the Agency providing a tenant with priority entitlement to rental units in other Agency-financed housing projects for 120 days from the date of the LOPE.

Life cycle cost. The life cycle cost has 2 purposes: (1) To determine the expected usable life (utility) of a building component or furnishing and (2) to determine which building components or furnishings are the most cost efficient over the life of the building. Cost efficient is not to be construed to mean the least initial cost.

Life cycle cost analysis. Life cycle cost analysis is the comparison of different materials to examine anticipated useful life and the cost of using a specific material or building component. The analysis has multiple uses, such as: (1) To conduct a cost efficiency comparison between products, (2) for developing component replacement time tables, and (3) for estimating future component replacement costs. Life cycle cost analysis can be accomplished through various methods, such as; insurance actuary tables or Agency documentation of a component's life expectancy. Life cycle cost analysis is conducted by a design professional. For Agency financed projects, a life cycle cost analysis is to be conducted for specific components: (1) drives and parking, (2) roofing system and roofing material, (3) exterior finishes, and (4) energy source items.

Limited Liability Company (LLC). An unincorporated organization of one or more persons or entities established in accordance with applicable state laws and whose members may actively participate in the organization without being personally liable for the debts, obligations or liabilities of the organization.

Limited partnership. An ownership arrangement consisting of general and limited partners; general partners manage the business, while limited partners are passive and liable only for their own capital contributions.

Loan agreement. A written agreement between the Agency and the borrower that sets forth the borrower's responsibilities with respect to Agency financing.

Low-income household. A household that has an adjusted income that is greater than the Department of Housing and Urban Development's (HUD) established very-low income limit, but that does not exceed the HUD established low-income limit (generally 80 percent of median income adjusted for household size for the county where the property is or will be located).

Low-Income Housing Tax Credit (LIHTC). A federal tax credit allowed for investment in qualified low-income housing administered by the Internal Revenue Service (IRS) under section 42 of the Internal Revenue Code.

Management agent. A firm or individual employed or designated by a borrower to act on the borrower's behalf in accordance with a written management agreement.

Management agreement. A written agreement between a borrower and a management agent setting forth the management agent's responsibilities and fees for management services.

Management fee. The compensation provided to a management agent for services provided in accordance with a management agreement.

Management plan. A detailed description of the policies and procedures to be followed by the borrower in managing a MFH project.

Manufactured housing. Housing, constructed of one or more factory-built sections, which includes the plumbing, heating, and electrical systems contained therein, which is built to comply with the Federal Manufactured Home Construction and Safety Standards (FMHCSS), and which is designed to be used with a permanent foundation.

Market area. The geographic or locational delineation of the market for a specific project, including outlaying areas that will be impacted by the project, i.e., the area in which alternative, similar properties effectively compete with the subject property.

Market rent. The most probable rent that a property should bring in a competitive and open market reflecting all conditions and restrictions of the specified lease agreement, including term, rental adjustment and revaluation, permitted uses, use restrictions, and expense obligations; the lessee and lessor each acting prudently and knowledgeably, and assuming consummation of a lease contract as a specified date and the passing of the leasehold from lessor to lessee.

Maximum debt limit. The maximum amount that the Agency will lend or grant for a MFHMFH project based on the appraised value or total development cost excluding costs ineligible for payment from loan or grant funds, whichever is less, reduced by all funding available to the borrower from sources other than the Agency, multiplied by 95, 97, or 102 percent depending upon the applicant entity and their use of the low-income housing tax credit, in accordance with §3560.63(b).

Member or co-member. A stockholder or other person who has executed documents or stock pertaining to a cooperative housing type of living arrangement and has made a commitment to upholding the cooperative concept.

Migrants or migrant agricultural laborer. A person (and the family of such person) who receives a substantial portion of his or her income from farm labor employment and who establishes a residence in a location on a seasonal or temporary basis, in an attempt to receive farm labor employment at one or more locations away from their home base state, excluding day-haul agricultural workers whose travels are limited to work areas within one day of their residence.

Minor. An individual under 18 years of age who is a dependent of a tenant or an individual age 18 or older who is a full-time student and a dependent of a tenant.

Moderate-income household. A household that has an adjusted income that is greater than the HUD-established low-income limit, but does not exceed the low-income limit by more than $5,500.

Mortgage or Deed of Trust. A form or security instrument or consensual lien on real property.

Net recovery value. The value realized from the Government's acquisition of security property in a default situation after subtracting all costs, actual or anticipated, from acquiring, holding, and disposing of the security property.

New construction. A MFHMFH project being constructed to be occupied for the first time.

Nonprofit organization. A private organization that:

(1) Is organized under state or local laws;

(2) Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; and

(3) Is approved by the Secretary of Agriculture and considered to be financially responsible.

Nonprofit organization for section 515 program (Prepayment or Purchase). To be eligible to purchase properties under the conditions of subpart N of this part, nonprofit organizations may not have among their officers or directorate any persons or parties with an identity-of-interest (or any persons or parties related to any person with identity-of-interest) in loans financed under section 515 that have been prepaid or have requested prepayment.

Nonprofit organization of farm workers. A nonprofit organization, as defined in this section, whose membership is composed of at least 51 percent farm workers.

Notice of Funding Availability (NOFA). A “Notice of Funding Availability” issued by the Agency to inform interested parties of the availability of assistance and other matters pertinent to the program.

Occupancy agreement. A contract establishing the rights and obligations of the cooperative member and the cooperative, including the amount of the monthly occupancy charge and the other terms under which the member will occupy the housing.

Occupancy charge. The amount of money charged a cooperative member to cover their proportional share of the cooperative's operating costs and cash requirements.

Off-farm labor housing. Housing for farm laborers in any location approved by the Agency but not on the farm where the laborer works.

Office of the General Counsel (OGC). The USDA Office of the General Counsel, including the Regional Attorney, Associate Regional Attorney, or Assistant Regional Attorney.

Office of the Inspector General (OIG). The USDA Office of the Inspector General.

On-farm labor housing. Housing for farm laborers located on the farm where they work that is away from service buildings or in the nearby community.

Overage. That portion of a tenant's net tenant contribution that exceeds basic rent up to note rent. Full overage is an amount equal to the difference between the note rent for a unit and the basic rent.

Plan I. A type of interest subsidy available to borrowers prior to October 27, 1980. Budgets and rental rates developed for Plan I loans are based on a 3 percent loan amortization.

Plan II. A type of interest subsidy available to borrowers operating on a limited profit basis. Budgets and rental rates developed for Plan II loans are based on both the loan being amortized at the interest rate shown on the promissory note and at a 1 percent subsidized rate.

Predetermined Amortization Schedule System (PASS). A system where loan payments are applied based on an amortization schedule.

Prepayment. Payment in full of the outstanding balance on an Agency loan prior to the note's originally scheduled maturity date.

Program requirements. All provisions related to MFHMFH contained in the loan document, grant agreement, statute, regulation, handbook, or administrative notice.

Promissory note. A legal document containing conditions (interest rate and timing) for repayment of indebtedness.

Real estate owned (REO) property. The real estate owned by the Agency acquired through voluntary conveyance, foreclosure or other action.

Rehabilitation. Rehabilitation is when the remodeling of a property is of a complex nature involving structural repairs or when two or more of the life cycle cost components are included in the remodeling of a property.

Related facilities. Facilities in a MFHMFH project that are related to the housing and are in addition to rental units, (e.g., community rooms or buildings, cafeterias, dining halls, infirmaries, child care facilities, assembly halls, and essential service facilities such as central heating, sewerage, lighting systems, clothes washing facilities, trash disposal and safe domestic water supply).

Rent. The amount established as a charge for occupancy in a rental unit of Agency-financed MFH. Rents must be established at the same rate for all similar units in the housing project. The following terms are used to describe rents for various program purposes.

(1) Note rent is the rental charge established to cover expenses in the housing project's approved budget and the required loan payment set at the interest rate shown in the promissory note.

(2) Basic rent is the rental charge established to cover expenses in the housing project's approved budget and the required loan payment contained in the promissory note reduced by the interest credit agreement.

(3) HUD contract rent is the rental charge established for housing receiving project-based Section 8 rental subsidies in accordance with 24 CFR part 880 or part 884, as applicable.

(4) Low-income housing tax credit (LIHTC) rent is the rental charge established in accordance with LIHTC requirements.

Rental assistance (RA). The portion of the approved shelter cost paid by the Agency to compensate a borrower for the difference between the approved shelter cost and the tenant contribution when such contribution is less than the basic rent.

Rental assistance units. Dwelling units in a MFH project qualified for rental assistance. There are three types of rental assistance units.

(1) New construction units are units provided in conjunction with initial loans for construction or substantial rehabilitation of the MFHMFH projects.

(2) Replacement units are Agency-funded rental assistance units which replace units with expiring rental assistance agreements or which replace Section 8 units which have expired under the Section 8 contract.

(3) Servicing units are units provided to an operational MFHMFH project as a part of the Agency's general loan servicing or preservation activities.

Repair and replacement. Repair and replacement is the restoration of minor building materials, elements, components, equipment and fixtures. Examples include: Painting, carpeting, appliances, cabinets, and other fixtures.

Resident assistant. A person residing in a rental unit who is essential to the well-being and care of an elderly person or an individual with a disability, but who:

(1) Is not obligated for the tenant's financial support;

(2) Would not be living in the unit except to provide the needed services;

(3) May be a family member, but is not a dependent of the tenant for tax purposes;

(4) Is not subject to the eligibility requirements of a tenant; and

(5) Is not considered a household member in the determination of household income.

Resident or site manager. The individual employed by the borrower and who is responsible for the day-to-day operations of the housing.

Retired domestic farm laborer. An individual who is at least 55 years of age and who has spent the last 5 years prior to retirement as a domestic farm laborer or spent the majority of the last 10 years prior to retirement as a domestic farm laborer.

Return on Investment (ROI). The annual amount of profit an owner operating on a limited or full profit basis may withdraw from a project, as established in the loan agreement. The amount is calculated as a percentage of the owner's investment in the project.

Rural area. Any open country, or any place, town, village, or city which is not (except in the cases of Pajaro, in the State of California, and Guadalupe, in the State of Arizona) part of or associated with an urban area and which (1) has a population not in excess of 2,500 inhabitants, or (2) has a population in excess of 2,500 but not in excess of 10,000 if it is rural in character, or (3) has a population in excess of 10,000 but not in excess of 20,000 and (A) is not contained within a standard metropolitan statistical area, and (B) has a serious lack of mortgage credit for lower and moderate-income families, as determined by the Secretary and the Secretary of

Housing and Urban Development. For purposes of this title, any area classified as 'rural' or a 'rural area' prior to October 1, 1990, and determined not to be 'rural' or a 'rural area' as a result of data received from or after the 1990 or 2000 decennial census shall continue to be so classified until the receipt of data from the decennial census in the year 2010, if such area has a population in excess of 10,000 but not in excess of 25,000, is rural in character, and has a serious lack of mortgage credit for lower and moderate-income families. Notwithstanding any other provision of this section, the city of Plainview, Texas, shall be considered a rural area for purposes of this title, and the city of Altus, Oklahoma, shall be considered a rural area for purposes of this title until the receipt of data from the decennial census in the year 2000.

Rural Cooperative Housing (RCH). A housing program authorized under section 515 of the Housing Act of 1949, in which a consumer cooperative, organized and operating on a nonprofit basis, may own and operate a MFHMFH development.

Rural Housing Service (RHS). The Agency within the Rural Development mission area of the U.S. Department of Agriculture or its successor agency which administers programs authorized by sections 514, 515, 516, and 521 of the Housing Act of 1949, as amended.

Rural Rental Housing (RRH). A housing program authorized by section 515 of the Housing Act of 1949 to provide rental housing in rural areas for persons of very-low, low- and moderate income.

Seasonal housing. Housing operated on a seasonal basis, typically for migrants or migrant agricultural laborers as opposed to year round.

Security deposit. A one-time fee charged a tenant prior to occupancy of a unit to cover possible loss or damage to the housing unit caused by the tenant.

Self-employed. A person who meets the IRS definition of self-employed at 26 CFR 1.401-10.

Service agreement. A written agreement between a borrower and a service provider establishing the specific service to be provided to a MFH project, the cost of the service, and the length of time the service will be provided.

Service plan. A written plan describing how services will be provided to a MFH project and which, at a minimum, must specify the services to be provided, the frequency of the services, who will provide the services, how tenants will be advised of the availability of services, and the staff needed to provide the services.

Service provider. A person who signs a written agreement with a borrower to provide services to a MFH project.

Shelter costs. Basic or note rent plus the utility allowance, when used, or the occupancy charge plus the utility allowance. If the utility costs are included in the rent, the rent will equal shelter costs.

Sources and Uses Comprehensive Evaluation (SAUCE). A computer software program used by the Agency to analyze the total funds provided to a MFH project to ensure that the Agency is not providing excess assistance.

Special note rent (SNR). A rental rate charged at a Plan II project experiencing vacancies that is less than note rent but higher than basic rent.

State consolidated plan. A planning document for an individual state that includes a housing and homeless needs assessment; a housing market analysis; a strategic plan for addressing the state's housing challenges; an Action Plan that is an annual description of the state's Federal and other resources that are expected to be available to address its priority housing needs and how the Federal funds will leverage other resources; certifications relating to fair housing, its antidisplacement and relocation plan, a drug-free workplace, and other statutory and program requirements; and a monitoring plan to ensure that the state is using its Federal funds appropriately and effectively.

Tenant or co-tenant. An individual who signs a lease and occupies or will occupy a rental unit in a MFH project. The term tenant or co-tenant also refers to a member of cooperative housing occupying or planning to occupy a dwelling unit in cooperative housing.

Tenant contribution. The portion of the approved shelter cost paid by the tenant household. The proportion of tenant income and adjusted income paid will vary according to the type of subsidy provided to the tenant household.

Total development cost (TDC). The cost of constructing, purchasing, improving, altering, or repairing MFH and related facilities, buying household furnishings (for sections 514/516 only), and purchasing or improving the necessary land, including architectural, engineering, or legal fees, and charges and other technical and professional fees and charges, but excluding fees, charges, or commissions such as payments to brokers, negotiators, or other persons for the referral of prospective applicants or solicitations of loans. Although a developer's fee is part of the project's development cost, such fees are not eligible for payment from Agency loan or grant funds and are not included in determining the Agency authorized development cost.

Utility allowance. An amount determined by a borrower as the amount to be considered a tenant's portion of utility cost in the calculation of a tenant's total shelter cost when utility costs are not included in the rent.

Very low-income household. A household that has an adjusted income that does not exceed the HUD established very low-income limit (generally 50 percent of median income adjusted for household size in the county where the property is or will be located).Workout agreement. An agreement between a borrower and the Agency listing actions to be taken over a period of time to prevent or correct a compliance violation or to cure a monetary or non-monetary default.

§§3560.12-3560.49 [Reserved]

§3560.50 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart B--Direct Loan and Grant Origination

§3560.51 General.

This subpart contains the Agency's loan origination requirements for multi-family housing (MFH) direct loans for Rural Rental Housing, Rural Cooperative Housing, and Farm Labor Housing. Additional requirements for farm labor housing loans and grants are contained in subpart L of this part for Off-Farm Labor Housing and subpart M of this part for On-Farm Labor Housing.

§3560.52 Program objectives.

The Agency uses appropriated funds to finance the construction, rehabilitation of program properties, or purchase and rehabilitation of MFH and related facilities to serve eligible persons in rural areas. The Agency encourages the use of such financing in conjunction with funding or financing from other sources.

§3560.53 Eligible use of funds.

Funds may be used for the following purposes.

(a) Construct housing. Funds may be used to construct MFH.

(b) Purchase and rehabilitate buildings. Funds may be used to purchase and rehabilitate buildings that have not been previously financed by the Agency.

(1) Rehabilitation must meet the definition of either moderate or substantial rehabilitation as defined in 7 CFR part 1924, subpart A.

(2) The building to be rehabilitated must be structurally sound and the improvements to the building must be necessary to meet the requirements of decent, safe, and sanitary living units.

(3) The total development cost (TDC) for the purchase and rehabilitation of existing buildings must not be more than the estimated TDC for construction of a similar type and unit size property in the same area.

(c) Subsequent loans. Funds may be used to provide subsequent loans in accordance with the provisions of §3560.73.

(d) Purchase and improve sites. Funds may be used to purchase and improve the site on which MFH will be located, provided that the amount of loan funds used to purchase the site does not exceed the appraised market value of the site immediately prior to purchase.

(e) Develop and install necessary systems. Funds may be used to install streets, a water supply, sewage disposal, heating and cooling systems, electric, gas, solar, or other power sources for lighting and other features necessary for the housing. If such facilities are located off-site, loan funds may only be used if the following additional requirements are met:

(1) The loan applicant will hold title to the facility or have a legal right to use the facility in the form of an easement or other instrument acceptable to the Agency for a period of at least 50 percent longer than the term of the loan or grant and the title or right is transferable to any subsequent owner of the housing.

(2) The facilities will either be provided for the exclusive use of the proposed housing project, or Agency funds are limited to the prorated part of the total cost of the facility according to the use and benefit to the MFH project. If entities other than the housing project financed by the Agency use the facilities on a reimbursable fee basis, the loan applicant must agree, in writing, to apply any fees collected in excess of operating expenses to their Agency loan account as an extra loan payment.

(f) Landscaping and site development. Funds may be used to provide landscaping and site development related to a MFH project such as lighting, walks, fences, parking areas, and driveways.

(g) Tenant-related facilities. Funds may be used to develop tenant-related facilities appropriate to the size, economics, and prospective tenants of a MFH project, such as a community room, development of space for education and training purposes for tenants, central laundry facility, outdoor seating, space for passive recreation, tot lots, and a small emergency care infirmary. In congregate housing and group homes, funds may be used for central cooking and dining areas.

(h) Management-related facilities. Funds may be used to develop management-related facilities appropriate to the size and economics of a MFH project such as a maintenance workshop, storage facilities, office, and living quarters for a resident manager and other personnel.

(i) Purchase and install equipment and appliances. Funds may be used to purchase and install equipment and appliances affixed to the property as customary and appropriate for the area in which the housing is located.

(j) Household furnishings (Section 514/516). For farm labor housing sections 514 and 516 only, funds may be used to purchase household furnishings.

(k) Initial operating capital. Loan funds equal to 2 percent of total development cost or appraised value, whichever is less, may be used by a state or political subdivision thereof, Indian tribe, consumer cooperative, or any public or private nonprofit borrower who is not receiving low-income housing tax credits (LIHTC), to make the initial operating capital contribution required by §3560.64. Other borrowers must use their own resources to make the required initial operating capital contribution and may not use loan funds for that purpose.

(l) Builder's profit, overhead and general requirements. Subject to the following limits, funds may be used for builder's profit, overhead and general requirements.

(1) Up to 10 percent of the construction contract may be used for builder's profit.

(2) Up to 4 percent of the construction contract may be used for general overhead.

(3) Up to 7 percent of the construction contract may be used for general requirements.

(m) Legal, technical and professional services. Funds may be used for the costs of legal, technical, and professional services related to the borrower's MFH project, including appraisals, environmental documentation, and construction plans and specifications.

(n) Permit and application fees. Funds may be used for required MFH permits and application fees.

(o) Reimbursement to nonprofit organizations and public bodies. Funds may be used to reimburse a nonprofit organization or public body for up to 2 percent of total development costs for section 515, or up to 4 percent of total development costs for off-farm labor housing, for costs that are reasonable and typical for the area, including:

(1) Development and packaging of a loan application and a MFH proposal; and

(2) Legal, technical, and professional fees incurred in the formation of the loan application and MFH proposal; or

(3) Technical assistance from another nonprofit organization to assist in the organization's formation and in the development and packaging of a loan application and MFH proposal.

(p) Educational programs. Funds may be used for educational programs related to owning and managing a cooperative housing project for the board of directors of a housing cooperative during the first year of the housing operation. Such funds will be available from the initial operating account. The amount of the funds disbursed will be subject to Agency approval and availability of financial resources from the project.

(q) Interest and customary charges. Funds may be used for interest accrued and customary charges necessary to obtain interim financing.

(r) Purchase housing from an interim lender. Funds may be used to purchase MFH from an interim lender that holds fee simple title to Agency-financed housing upon which construction commenced and a letter of commitment had been issued by the Agency but the original applicant for whom funds were obligated will not or cannot continue with construction of the housing. In order for the purchase to take place, there must be no outstanding unpaid obligations in connection with the housing.

(s) Uniform Relocation Assistance and Real Property Acquisition Act of 1970. Funds may be used for necessary costs incurred to comply with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970.

(t) Demonstration programs. With the RHS Administrator's approval, funds may be used to construct demonstration housing involving innovative units and systems which do not meet existing published standards, rules, regulations, or policies but meet the intent of providing affordable, decent, safe, and sanitary rural housing, and are consistent with the requirements of Title V of the Housing Act of 1949.

(u) Conversion of section 502 properties. In accordance with §3560.506, loan funds may be used to finance the conversion of real estate owned units originally financed under Section 502 of the Housing Act of 1949, to MFH authorized by section 515 of the Housing Act of 1949.

§3560.54 Restrictions on the use of funds.

(a) Ineligible uses of funds. Funds may not be used for:

(1) Housing intended to serve temporary and transient residents, with the exception of housing to serve migrant farm workers in accordance with §3560.554;

(2) Special care facilities or institutional-type homes;

(3) Facilities which are not in compliance with the design requirements specified in §3560.60;

(4) Any costs associated with space in a housing project that is leased for commercial use or any commercial facilities except essential service-type facilities when otherwise not conveniently available;

(5) Specialized equipment for training and therapy;

(6) Operating capital for a central dining facility or any items which do not become affixed to the real estate security with the exception of household furnishings for farm labor housing units financed under sections 514 and 516;

(7) Compensation to a loan applicant for value of land contributed in excess of the equity contribution requirements in §3560.63 (c);

(8) Refinancing of an applicant's debt except when the debt involves interim financing or when refinancing is necessary to obtain a release of an existing lien on land owned by a nonprofit organization;

(9) Payment of any fee, charge, or commission to a broker or anyone else as a developer's fee or for referral of a prospective loan applicant or solicitation of a loan;

(10) Payment to any officer, director, trustee, stockholder, member, or agent of an applicant; or

(11) Purchasing land for a site in excess of what is needed, except when:

(i) The applicant cannot acquire an alternate site or cannot acquire the needed land as a separate parcel;

(ii) The applicant agrees to sell the excess land as soon as practical and to apply the proceeds to the loan; and

(iii) Program site density requirements are met in accordance with the site requirements established under §3560.58.

(b) Obligations incurred before loan approval. Funds may not be used for expenses incurred by an applicant prior to approval except when all the following conditions are met:

(1) The debts were incurred for eligible purposes;

(2) Contracts, materials, construction, and any land purchased meet Agency standards and requirements;

(3) Payment of the debts will remove any attached liens and any basis for liens that may attach to the property on account of such debts; and

(4) The appropriate level of environmental review in accordance with 7 CFR part 1940, subpart G has been completed.

§3560.55 Applicant eligibility requirements.

Applicants for off-farm labor housing loans and grants should also refer to §3560.555, and applicants for on-farm labor housing loans should refer to §3560.605.

(a) General. To be eligible for Agency assistance, applicants must meet the following requirements:

(1) Be a U.S. citizen or qualified alien(s); a corporation; a state or local public Agency; an Indian tribe as defined in §3560.11; or a limited liability company (LLC), nonprofit organization, consumer cooperative, trust, partnership, or limited partnership in which the principals are U.S. citizens or qualified aliens;

(2) Be unable to obtain similar credit elsewhere at rates that would allow for rents within the payment ability of eligible residents;

(3) Possess the legal and financial capacity to carry out the obligations required for the loan or grant;

(4) Be able to maintain, manage, and operate the housing for its intended purpose and in accordance with all Agency requirements;

(5) With the exception of applicants who are a nonprofit organization, housing cooperative or public body, be able to provide the borrower contribution from their own resources (this contribution must be in the form of cash, or land, or a combination thereof);

(6) Have or be able to obtain a minimum of 2 percent of the total development costs for use as initial operating capital (for nonprofit organizations, cooperatives, or public bodies, this amount may be financed through Agency funds); and

(7) Not be suspended, debarred, or excluded based on the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs." The list is available to Federal agencies from the U.S. Government Printing Office. Non-federal parties should contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800.

(8) Not delinquent on Federal debt or a Federal judgment debtor, with the exception of those debtors described in §3560.55 (b).

(b) Additional requirement for applicants with prior debt. If an applicant or the managing general partner of a borrower, as well as any affiliated entity having a 10 percent or more ownership interest, has a prior or existing Agency debt, the following additional requirements must be met.

(1) The applicant must be in compliance with any existing loan or grant agreements and with all legal and regulatory requirements or must have an Agency-approved workout agreement and be in compliance with the provisions of the workout agreement. The Agency may require that applicants with monetary or non-monetary deficiencies be in compliance with an Agency-approved workout agreement for a minimum of 6 consecutive months before becoming eligible for further assistance.

(2) The applicant must be in compliance with the Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and all other applicable civil rights laws.

(c) Additional requirements for nonprofit organizations. In addition to the eligibility requirements of paragraphs (a) and (b) of this section, nonprofit organizations must meet the following criteria:

(1) The applicant must have received a tax-exempt ruling from the IRS designating the applicant as a 501(c)(3) or 501(c)(4) organization.

(2) The applicant must have in its charter the provision of affordable housing.

(3) No part of the applicant's earnings may benefit any of its members, founders, or contributors.

(4) The applicant must be legally organized under state and local law.

(5) In the case of off-farm labor housing loans and grants, nonprofit organizations must be “broad-based” nonprofit organizations (refer to §3560.555(a)(1)).

(d) Additional requirements for limited partnerships. In addition to the applicant eligibility requirements of paragraphs (a) and (b) of this section, limited partnership loan applicants must meet the following criteria:

(1) The general partners must be able to meet the borrower contribution requirements if the partnership is not able to do so at the time of loan request.

(2) The general partners must maintain a minimum 5 percent financial interest in the residuals or refinancing proceeds in accordance with the partnership organizational documents.

(3) The partnership must agree that new general partners can be brought into the organization only with the prior written consent of the Agency.

(e) Additional requirements for Limited Liability Companies (LLCs). In addition to the applicant eligibility requirements of paragraphs (a) and (b) of this section, LLC loan applicants must meet the following criteria:

(1) One member who holds at least a 5 percent financial interest in the LLC must be designated the authorized agent to act on the LLC's behalf to bind the LLC and carry out the management functions of the LLC.

(2) No new members may be brought into the organization without prior consent of the Agency.

(3) The members must commit to meet the equity contribution requirements if the LLC is not able to do so at the time of loan request.

§3560.56 Processing section 515 housing proposals.

Processing requirements for farm labor housing proposals are found in subpart L of this part for Off-Farm and subpart M of this part for On-Farm.

(a) Notice of Funding Availability (NOFA) responses.

(1) The Agency will publish an annual NOFA with deadlines and other information related to submission of new construction MFH proposals, including expansion of existing MFH in designated places selected in accordance with §3560.57.

(2) To be eligible for funding consideration, MFH proposals must be submitted in accordance with the NOFA and must provide information requested in the NOFA for the Agency to score and rank the proposals.

(3) MFH proposals needing rental subsidies must include requests for Agency rental assistance or a description of any non-Agency rental subsidy to be used with the proposal and must provide information required by §3560.260 (c).

(4) The Agency will consider housing proposals requesting rental assistance in rank order to the extent rental assistance is available. When there is no rental assistance available, the Agency will consider only those housing proposals in rank order that do not require rental assistance.

(b) Preliminary proposal assessment. The Agency will make a preliminary assessment of the application using the following criteria and will reject those applications which do not meet all of these criteria:

(1) The proposal was received by the submission deadline specified in the NOFA,

(2) The proposal is complete as specified in the NOFA,

(3) The proposal is for an authorized purpose, and

(4) The applicant meets Agency eligibility requirements.

(c) Scoring and ranking project proposals. The Agency will score and rank each housing proposal that meets the criteria of paragraph (b) of this section.

(1) The following criteria will be used to score housing proposals as more completely established in the NOFA:

(i) The presence and extent of leveraged assistance in the proposal for the units that will serve tenants meeting Agency income limits at basic rents comparable to what the rent would be if the Agency provided full financing.

(ii) The proposal will provide rental units in a colonia, tribal land, Rural Economic Area Partnership (REAP) community, Enterprise Zone or Empowerment Community (EZ/EC) or in a place identified in the state Consolidated Plan or a state needs assessment as a high need community for MFH.

(iii) The proposal supports Agency initiatives announced in the NOFA.

(iv) The proposal uses a donated site which meets the following conditions:

(A) The site is donated by a state, unit of local government, public body or a nonprofit organization;

(B) The site is suitable for the housing proposals and meets Agency requirements;

(C) Site development costs do not exceed what they would be to purchase and develop an alternative site;

(D) The overall cost of the MFH is reduced by the donation of the site; and

(E) A return on investment is not paid to the borrower for the value of the donated site nor is the value of the site considered as part of the borrower's contribution.

(2) The Agency will rank housing proposals based on their scoring.

(i) When proposals have an equal score, preference will be given to Indian tribes as defined in §3560.11 and local nonprofit organizations or public bodies whose principal purposes include low-income housing that meet the conditions of §3560.55(c) and the following conditions.

(A) Is exempt from Federal income taxes under section 501(c)(3) or 501(c)(4) of the Internal Revenue code;

(B) Is not wholly or partially owned or controlled by a for-profit or limited-profit type entity;

(C) Whose members, or the entity, do not share an identity of interest with a for-profit or limited-profit type entity;

(D) Is not co-venturing with another entity; and

(E) The entity or its members will not be receiving any direct or indirect benefits pursuant to LIHTC.

(ii) A drawing will be held in the event of a tie score, first for proposals from applicants who meet the conditions of paragraph (c)(2)(i) of this section and next for proposals from applicants for which paragraph (c)(2)(i) of this section is not applicable. Each proposal will be numbered in the order in which it is drawn.

(3) The Agency will request initial loan applications from parties who submitted the housing proposals with the highest ranking, taking into consideration available funds. The Agency will notify non-selected parties with the reasons for their non-selection, and the process that may be used to seek a review of the non-selection decision.

(d) Processing initial loan applications. The Agency will review all initial loan applications submitted in accordance with Agency requirements to further evaluate the eligibility and feasibility of the housing proposals. This determination will include:

(1) A review of the preliminary plans and cost estimates,

(2) A market feasibility review,

(3) An Agency site visit to gather preliminary environmental information and determine that the proposed site meets the site requirements of §3560.58,

(4) A review of the Affirmative Fair Housing Marketing Plan,

(5) An analysis of current credit reports,

(6) A review of Civil Rights Impact Analysis in accordance with 7 CFR part 2006, subpart P, and

(7) Completion of the appropriate level of environmental review in accordance with 7 CFR part 1940, subpart G.

(e) Processing order of initial loan applications. The Agency will process initial loan applications in rank order, taking into account available funds. If any initial loan applications are withdrawn, rejected, or delayed for a period of time that will not permit funding in the current funding cycle, the Agency will process, in rank order, the next initial loan application as funding levels permit.

(f) Other assistance. During each stage of loan application processing, loan applicants must notify the Agency of all other assistance, including other Federal Government assistance proposed or approved for use in connection with the loan application.

(g) Proposal withdrawal or rejection. An applicant may withdraw a housing proposal, an initial loan application, or a final loan application at any time during the Agency review process with a written request. The Agency may reject a housing proposal, an initial loan application, or a final loan application at any time during the Agency review process when an applicant fails to provide information requested by the Agency within the time frame specified by the Agency.

(h) Final applications. Applicants, with initial loan applications that are selected by the Agency for further processing, must submit a final application, with any additional information requested by the Agency, to confirm and document a housing proposal's eligibility and feasibility, including an affirmative fair housing marketing plan. The Agency will notify applicants with initial loan applications that are not selected for further processing of their non-selection, the reasons for their non-selection, and the process that may be used to seek a review of the non-selection decision.

(i) Rural cooperative housing proposals. Rural cooperative housing loan proposals will be solicited through a NOFA and will be assessed and processed in the same manner described in paragraphs (a) through (h) of this section.

§3560.57 Designated places for section 515 housing.

(a) Establish a list of designated places. The Agency will establish a list of designated places from which loan proposals will be accepted. The list is updated each fiscal year and is available when the NOFA is published. The NOFA provides information on obtaining the list. This list will be developed from a list of rural places which the Agency identifies as having the greatest need for multifamily housing based on the following factors:

(1) Qualification as a rural area as defined in §3560.11,

(2) Lack of mortgage credit, and

(3) Demonstrated need for MFH based on:

(i) The incidence of poverty,

(ii) The existence of substandard housing,

(iii) The lack of affordable housing, and

(iv) The following high need areas:

(A) Places identified in the state Consolidated Plan or similar state plan or needs assessment report,

(B) Indian reservations or communities located within the boundaries of tribal allotted or trust land, and

(C) EZ/EC or REAP communities.

(b) Establishing partnership designated place list. The Agency, in states with an active leveraging program and formal partnership agreement with the state agency, may establish a partnership designated place list consisting of places identified by the partnership as high need areas based on criteria consistent with the Agency's and the state's authorizing statutes. The partnership agreement and partnership designated place list must have the concurrence of the Administrator.

(c) Administrator's discretion. The Administrator may add to the list of designated places any place that is determined to have a compelling need for MFH, for example, a place that has had a substantial increase in population not reflected in the most recent census data, or a place that has experienced a loss of affordable housing because of a natural disaster.

(d) Restrictions on loans in certain designated places.

(1) Initial loan applications will not be requested and final loan applications will not be closed for housing proposals in designated places where any of the following conditions exist:

(i) The Agency has selected another MFH proposal in the designated place for processing.

(ii) A previously funded Agency, the U.S. Department of Housing and Urban Development (HUD), low-income housing tax credit or other similar assisted MFH in the designated place has not been completed or has not reached projected occupancy levels.

(iii) Existing assisted MFH in the designated place is experiencing high vacancy levels.

(iv) A special note rent or other loan servicing tool is pending or in effect for other assisted housing in the designated place, or

(v) The need in the market area is for additional rental assistance and not additional rental units.

(2) Exceptions to the provisions in §3560.57(d)(1) may be made:

(i) When a group home is proposed for persons with disabilities in an area where the existing MFH is insufficient or unavailable for their needs; or

(ii) There is a compelling need for additional MFH, for example when the units that have been approved or are under development represent only a small portion of the total units needed in the community.

§3560.58 Site requirements.

(a) Location.

(1) New construction section 515 loans will be made only in designated places selected by the Agency in accordance with the requirements of §3560.57.

(2) Agency-financed MFH must be located in residential areas as part of established rural communities, except as permitted in §3560.58(b), and for farm labor housing units financed under sections 514 and 516, which may be developed in any area where a need for farm labor housing exists.

(3) Communities in which Agency-financed MFH is located must have adequate facilities and services to support the needs of tenants.

(4) Housing complexes will not be located in areas where there are undesirable influences such as high activity railroad tracks; adjacent to or near industrial sites; bordering sites or structures which are not decent, safe, or sanitary; or bordering sites which have potential environmental concerns such as processing plants. Sites which are not an integral part of a residential community and do not have reasonable access, either by location or terrain, to essential community facilities such as water, sewerage removal, schools, shopping, employment opportunities, medical facilities, may not be acceptable. Consistent with Federal law and Departmental Regulation, the Agency must conduct an environmental assessment and a civil rights impact analysis before a site can be accepted. Sites may be determined by the Agency to be unacceptable if any of the adverse conditions described in this paragraph exist.

(b) Structures located in central business areas. The Agency will consider financing construction or the purchase and substantial rehabilitation of an existing structure located in the central business area of a rural community. With prior consent from the Agency, a portion of such a structure may be designated for commercial use on a lease basis. RHS funds may not be used to finance any cost associated with the commercial space.

(c) Site development costs and standards. The cost of site development must be less than or comparable to the cost of site development at other available sites in the community and the site must be developed in accordance with 7 CFR part 1924, subpart C and any applicable standards imposed by a state or local government.

(d) Densities. Allowable site densities will be determined based on the following criteria:

(1) Compatibility and consistency with the community in which the MFH is located;

(2) Impact on the total development costs; and

(3) Size sufficient to accommodate necessary site features.

(e) Flood or mudslide-prone areas.

(1) The Agency will not approve sites subject to 100-year floods when non-floodplain sites exist. The environmental review process will assess the availability of a reasonable site outside the 100-year floodplain.

(2) Sites located within the 100 year floodplain are not eligible for federal financial assistance unless flood insurance is available through the National Flood Insurance Program (NFIP). The Agency will complete Federal Emergency Management Agency (FEMA) Form 81-93, Standard Flood Hazard Determination, to document the site's location in relation to the floodplain and the availability of insurance under NFIP.

§3560.59 Environmental requirements.

Under the National Environmental Policy Act, the Agency is required to assess the potential impact of the proposed action on protected environmental resources. Measures to avoid or at least mitigate adverse impacts to protected resources may require a change in the site or project design. Therefore, a site cannot be approved until the Agency has completed the environmental review in accordance with 7 CFR part 1940, subpart G, or any successor regulation. Likewise, the applicant should be informed that the environmental review must be completed and considered before the Agency can make a commitment of resources to the project.

§3560.60 Design requirements.

(a) Standards. All Agency-financed MFH will be constructed in accordance with 7 CFR part 1924, subpart A and will consist of two or more rental units plus appropriate related facilities. Single family structures may be used for group homes and cooperative housing. Also, manufactured homes may be used to create MFH and single family housing originally financed through section 502 of the Housing Act of 1949 may be converted to MFH. Maintenance requirements are listed in §3560.103(a)(3).

(b) Residential design. All MFH must be residential in character, except as provided for in §3560.58(b), and must meet the needs of eligible residents.

(c) Economical construction, operation and maintenance. Taking into consideration life-cycle costs, all housing must be economical to construct, operate, and maintain and must not be of elaborate design or materials.

(1) Economical construction means construction that results in housing of at least average quality with amenities that are reasonable and customary for the community and necessary to appropriately serve tenants.

(2) Economical operating and maintenance means housing with operational and maintenance costs that allow a basic rent structure less than or consistent with conventional rents for comparable units in the community or in a similar community except that when determined necessary by the Agency to allow for decent, safe and sanitary housing to be provided in market areas where conventional rents are not sufficient to cover necessary operating, maintenance, and reserve costs. Basic rents may be allowed to exceed comparable rents for conventional units, but in no case may the rent exceed 150% of the comparable rent for conventional unit rent level.

(3) In meeting the Agency objective of economical construction, operation and maintenance, housing proposals must:

(i) Contain costs without jeopardizing the quality and marketability of the housing;

(ii) Employ life-cycle cost analyses acceptable to the Agency to determine the types of materials which will reduce overall costs by lowering operation and maintenance costs, even though their initial costs may be higher; and

(iii) Provide assurances that costs will be reduced when the Agency determines that housing costs are not economical. If assurances cannot be provided, funding may be withdrawn.

(4) The housing proposal will give maximum consideration to energy conservation measures and practices.

(d) Accessibility. All housing will meet the following accessibility requirements.

(1) For new construction of MFH, at least 5 percent of the units (but not less than one) must be constructed as fully accessible units to persons with disabilities. The Uniform Federal Accessibility Standards (UFAS) will be followed. Individual copies of these standards are available from the Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW, Suite 1000, Washington, DC 20004-1111, Telephone: (202) 272-0080, TTY: (202) 272-0082, e-mail address: info@access-board.gov. When calculating how many accessible units are required, always round up to the next whole number to ensure the 5 percent requirement is met.

(2) For existing properties that do not have fully accessible units, the 5 percent requirement will apply when making substantial alterations as defined by UFAS. The UFAS defines substantial alteration as “alteration to any building or facility is to be considered substantial if the total cost for a twelve month period amounts to 50 percent or more of the full and fair cash value of the building * * *” UFAS further defines full and fair cash value as “the assessed valuation of a building or facility as recorded in the assessor's office of the municipality and as equalized at one hundred percent (100%) valuation, or the replacement cost, or the fair market value.” The 5 percent rule will also apply to repair or renovation work on a single unit. For instance, if a unit is damaged by fire and extensive repair is necessary, to the extent possible the unit is to be converted to a fully accessible unit.

(3) The variety of bedroom quantities of fully accessible units will be comparable to the variety of bedroom quantities of units which are not fully accessible. Borrowers will not, however, be required to exceed the 5 percent requirement simply to have an accessible unit of each bedroom quantity. In addition, accessible units should be distributed throughout the complex so not to concentrate the units in one location.

(4) All MFH must meet:

(i) The accessibility requirements as contained in section 504 of the Rehabilitation Act of 1973;

(ii) The requirements of the Fair Housing Amendments Act of 1988;

(iii) The requirements of the Americans with Disabilities Act of 1990, as applicable; and

(iv) All other Federal, State, and local requirements. When architectural standards differ, the most stringent standard will be followed.

§3560.61 Loan security.

(a) General. Each loan made by the Agency will be secured in a manner that adequately protects the financial interest of the Federal Government throughout the period of the loan.

(b) Lien position.

(1) The Agency will seek a first or parity lien position on Agency-financed property in all instances. The Agency may accept a junior lien position if the Federal Government's interests are adequately secured.

(2) The Agency will seek a first or parity lien on revenue from rent; Agency, HUD, state or private rental subsidy payments; chattels; assignments; and operating and reserve accounts. The Agency will accept a junior lien position if the Federal Government's interests are adequately secured.

(c) Liability. Personal liability will be required of all individual borrowers. Personal liability will not be required for the members or stockholders of any corporation or trust or any partners in a limited partnership.

(d) Housing and land ownership. Applicants must own the MFH and related land for which the loan is being requested, or become the owner when the loan is closed or have a leasehold interest in the land. If an applicant is not the owner of the housing and the related land, the following conditions must be met prior to or at loan closing.

(1) A recorded mortgage on the improvements is given as collateral.

(2) The amount of the loan against the collateral does not exceed its estimated security value.

(3) The unexpired term of the lease on the date of loan closing is at least 50 percent longer than the term of the loan and rent charged for the lease does not exceed the rate being paid for similar leases in the area.

(4) The applicant's leasehold interest is not subject to summary foreclosure or cancellation.

(5) The lease permits:

(i) The Agency to foreclose the mortgage and to transfer the lease;

(ii) The Agency to bid at a foreclosure sale or to accept voluntary conveyance of the security in lieu of foreclosure;

(iii) The Agency to occupy the property, sublet the property, or sell the leasehold for cash or credit if the leasehold is acquired through foreclosure, if the Agency accepts voluntary conveyance in lieu of foreclosure, or if the borrower abandons the property; and

(iv) The applicant, in the event of default or inability to continue with the lease and the loan, to transfer the leasehold subject to the mortgage to a transferee that will assume the property ownership obligations.

§3560.62 Technical, legal, insurance, and other services.

(a) Legal services. Applicants must have written contracts for any legal services that are to be paid out of Agency loan funds.

(b) Title clearance. Applicants must obtain title clearance in accordance with the provisions of 7 CFR part 1927, subpart B applicable to title clearance, which would include title insurance or title opinion, unless the loan applicant is leasing the property or is an organization or an individual with special title or loan closing problems, in which case title clearance and related legal services will be obtained in accordance with procedures approved by the Agency.

(c) Architectural services. Applicants must obtain a written contract for architectural services in accordance with the provisions of 7 CFR part 1924, subpart A.

(d) Insurance. Applicants must have property and liability coverage at loan closing as well as flood insurance, if needed. Fidelity coverage must be in force as soon as there are assets within the organization and it must be obtained before any loan funds or interim financing funds are made available to the borrower. At a minimum, applicants must meet the property, liability, flood, and fidelity insurance requirements in §3560.105.

(e) Surety bonding. Applicants must comply with the surety bonding provisions of 7 CFR part 1924, subpart A.

§3560.63 Loan limits.

(a) Determining the security value. The security value for an Agency loan is the lesser of the total development cost (exclusive of any developer's fee as provided by paragraph (d)(2) of this section) or the housing project's security value as determined by an appraisal conducted in accordance with subpart P of this part, minus any prior or parity liens on the housing project. For purposes of determining security value:

(1) Total development cost must be calculated excluding costs not considered allowable under §3560.54(a), and excluding costs related to compliance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970.

(2) The appraisal, which will determine the market value, subject to restricted rents, will be obtained by the Agency and conducted in accordance with subpart P of this part.

(b) Limitations on loan amounts. The Agency will not make any loans without adequate security. The following limitations will be set on loan amounts:

(1) For all loan applicants who will receive benefits from the low-income housing tax credit program, the amount of Agency financing for the housing will not exceed 95 percent of the security value available for the Agency loan.

(2) For all loan applicants who will not receive low-income housing tax credit benefits and who are comprised solely of nonprofit organizations, consumer cooperatives, or state or local public agencies, the amount of the loan will be limited to the security value available for the Agency loan, plus the 2 percent initial operating capital and any necessary relocation costs incurred.

(3) For all other loan applicants who will not receive low-income housing tax credit benefits, the loan amount will be limited to no more than 97 percent of the security value available for the Agency loan.

(c) Equity contribution. Loan applicants, with the exception of nonprofit organizations, consumer cooperatives, or state or local public agencies who will not be receiving tax credits, must make an equity contribution from their own resources.

(1) Loan applicants who will receive benefits from the low-income housing tax credit program must make an equity contribution in the amount of 5 percent of the Agency loan. The maximum Agency loan will be determined in accordance with §3560.63(b).

(2) Loan applicants who will not receive benefits from the low-income housing tax credit program and are not nonprofit organizations, consumer cooperatives, or state or local public agencies must make an equity contribution in the amount of 3 percent of the Agency loan. The maximum Agency loan will be determined in accordance with §3560.63(b).

(d) Review of assistance from multiple sources. The Agency will analyze Federal Government and other assistance provided to any MFH project to establish the maximum loan amount and to assure that the assistance is not more than the minimum necessary to make the housing affordable, decent, safe, and sanitary to potential tenants.

(1) Determining minimum assistance. For purposes of determining minimum assistance, the total amount paid for builder's profit, overhead, and general requirements may not exceed 21 percent of the construction contract. Unless specified differently in a Memorandum of Understanding between the Agency and the state agency that allocates low-income housing tax credits, limits will be those specified in §3560.53(l).

(2) Developer's fee. While, in accordance with §3560.54(a)(9), payment of a developer's fee is not an eligible use of Agency loan funds, the Agency will include in total development costs a developer's fee paid from other sources when analyzing the Federal Government assistance to the housing. The Agency may recognize a developer's fee paid from other sources on construction or rehabilitation of up to 15 percent of the total development costs authorized for low-income housing tax credit purposes, or by another Federal Government program. Likewise for transfer proposals that include acquisition costs, the developer's fee on the acquisition cost may be recognized up to 8 percent of the acquisition costs only when authorized under a Federal Government program providing assistance. The developer's fee is not included in determining the Agency's maximum debt limit and loan amount.

(e) Limits on equity loans. For equity loans to avert prepayment, the amount of the Agency equity loan will be limited to no more than the difference between 90 percent of market value of the property when appraised as conventional unsubsidized MFH and all current unpaid balances. For information on appraisal issues, refer to subpart P of this part.

(f) Cost overruns.

(1) All applicants must agree in writing to provide funds at no cost to the housing and without pledging the housing as security to pay any cost for completing planned construction after the maximum debt limit is reached.

(2) After loan approval, the Agency will only approve cost increases for housing proposals involving new construction or major rehabilitation when the additional costs will not cause the limits specified in §3560.53(l) or the maximum debt limit to be exceeded and the cost increases were caused by:

(i) Unforeseen factors that are determined by the Agency to be beyond the borrower's control;

(ii) Design changes required by the Agency, state, or the local government; or

(iii) Financing changes approved by the Agency.

§3560.64 Initial operating capital contribution.

Borrowers are required to make an initial operating capital contribution to the general operating account in the amount of at least 2 percent of the total development cost or appraised value, whichever is less.

(a) Borrowers that are nonprofit organizations, consumer cooperatives, or state or local public agencies and are not receiving low-income housing tax credits, may use loan funds for their initial operating capital contribution. All other borrowers must fund the initial operating capital contribution from their own resources.

(b) Borrowers must provide to the Agency for approval a list of materials and equipment to be funded from the general operating account for initial operating expenses. As specified in §3560.304(b), initial operating capital may be used only to pay for approved budgeted expenses. If total initial operating expenses exceed 2 percent, the additional amount must be paid by the borrower from its own resources, except that borrowers meeting the provisions of §3560.64(a) who do not have sufficient resources for this purpose may request Agency assistance. Withdrawals from the reserve account will not be approved for such expenses.

(c) Borrowers must provide the Agency with documentation of their initial operating capital contribution deposited into the general operating account prior to the start of construction or loan closing, whichever comes first, and such funds thereafter, may only be used for authorized budgeted purposes.

(d) If the conditions specified in §3560.304(c) are met, funds contributed as initial operating capital may be returned to the borrower.

§3560.65 Reserve account.

To meet major capital expenses of a housing project, borrowers must establish and fund a reserve account that meets requirements of §3560.306. At a minimum, the borrower must agree to make monthly contributions to the reserve account at the rate of 1 percent annually of the amount of the total development cost until the reserve account equals 10 percent of the total development cost.

§3560.66 Participation with other funding or financing sources.

(a) General requirements. The Agency encourages the use of funding or financing from other sources in conjunction with Agency loans. When the Agency is not the sole source of financing for MFH, the following conditions must be met.

(1) The Agency will enter into a participation (or intercreditor) agreement with the other participants that clearly defines each party's relationship and responsibilities to the others.

(2) The rental units that will serve tenants eligible for housing under the Agency's income standards must meet Agency standards and the number of units that will serve the Agency's tenants are at least equal to the units financed by the Agency.

(3) All rental units must be operated and managed in compliance with the requirements of the Agency and the other sources. To the extent these requirements overlap, the most stringent requirement must be met. The Agency may negotiate the resolution of overlapping requirements on a case-by-case basis; however, at a minimum, Agency requirements must be met.

(4) If the number of units subject to the LIHTC rent and income restrictions is greater than the number of units projected to receive Agency rental assistance (RA) or similar tenant subsidy, the market feasibility documentation must clearly reflect a need and demand by LIHTC income-eligible households financially able to afford the projected rents without such a subsidy for the units not receiving RA or similar tenant subsidy.

(b) Rental assistance. The Agency may provide rental assistance with MFH loans participating with other sources of funding under the following conditions:

(1) The Agency's loan equals at least 25 percent of the housing's total development cost.

(2) The rental assistance is provided only to those rental units where the basic rents do not exceed what basic rents would have been had the Agency provided full financing.

(3) The provisions of subpart F of this part are met.

(c) Security requirements. The security requirements of 3560.61 must be met for all Agency-financed MFH participating with other sources of funding.

(d) Reserve requirements. Reserve account requirements will be determined on a case-by-case basis, taking into consideration the reserve requirements of the other participating lenders, so that the aggregate fully funded reserve account is consistent with the requirements of §3560.65. Reserve requirements and procedures for reserve account withdrawals must be agreed upon by all lenders and included in the intercreditor or participation agreement.

(e) Design requirements. Housing and related facilities must be planned and constructed in accordance with 7 CFR 1924, subparts A and C. If housing includes non-Agency financed common facilities, the following conditions must be met:

(1) The non-Agency-financed common facility's operating and maintenance costs must be paid through collection of a user fee from residents who use the facility,

(2) The non-Agency-financed common facility must be designed and operated with appropriate safeguards for the health and safety of tenants, and

(3) The facility must be fully available and accessible to all tenants.

§3560.67 Rates and terms for section 515 loans.

Rates and terms for farm labor housing loans are found in subpart L of this part for Off-Farm and subpart M of this part for On-Farm.

(a) Interest. Loans will be closed at the lower of the interest rate in effect at the time of loan approval or the interest rate that is in effect at time of loan closing.

(b) Interest credit. The Agency will provide interest credit to subsidize the interest on the Agency loan to a payment rate of 1 percent for all of the Agency's initial and subsequent loans.

(c) Amortization period and term.

(1) Except for manufactured housing, loans will be amortized over a period not to exceed the lesser of the economic life of the housing being financed or 50 years and paid over a term not to exceed 30 years from the date of loan. The Agency may make a loan to the borrower to finance the final payment of a loan in accordance with §3560.74.

(2) Loans for manufactured housing will be amortized and paid over a term not to exceed 30 years as specified in §3560.70(c).

§3560.68 Permitted return on investment (ROI).

(a) Permitted return. Borrowers operating on a limited profit basis will be permitted a return not to exceed 8 percent of their required initial investment determined at the time of loan approval in accordance with §3560.63(c).

(b) Calculation of permitted return. The permitted return will be based on the borrower's contributions from their own resources, which, when added to the Agency loan amount and all sources of funding or financing, do not exceed the security value of the MFH project as specified in §3560.63(a).

(1) Proceeds received by the borrower from the syndication of low-income housing tax credit and contributed to the MFH project may be considered funds from the borrower's own resources for the portion of the proceeds which exceeds:

(i) The allowable developer's fee determined by the state agency administering the low-income housing tax credit, and

(ii) The borrower's expected contribution to the transaction, as determined by the state agency administering the low-income housing tax credit.

(2) A building site contributed by the borrower will be appraised by the Agency to determine its market value. A return may not be allowed on the amount above the equity contribution required by §3560.63(c) if the market value as determined by the Agency, when added to the loan and grant amounts from all sources, exceeds the security value of the MFH project as specified in §3560.63(a).

(c) Return on additional investment. The initial investment may exceed the equity contribution required by §3560.63(c) and a return allowed on the investment if the additional return does not increase basic rents and rental assistance costs above what basic rents and rental assistance costs would have been with the Agency financing 95 or 97 percent of the total development cost.

(d) Compensation to nonprofit organizations. Although nonprofit organizations are not eligible to take a return on investment, with prior Agency approval, cooperatives and nonprofit organizations may use housing project funds to pay asset management expenses directly attributable to ownership responsibilities, as described in §3560.303(b)(1)(ii).

§3560.69 Supplemental requirements for congregate housing and group homes.

(a) General. Congregate housing and group homes must be planned and developed in accordance with 7 CFR part 1924, subparts A and C.

(b) Design criteria. Congregate housing and group homes must be designed to accommodate all special services that will be provided.

(c) Services. Congregate housing and group home loan applicants, as part of their loan request, must submit a plan to make affordable services available to residents to assist the residents in living independently. The plan must address the availability of this assistance from service providers throughout the term of the loan.

(1) For congregate housing, the resident services plan must address how the following services will be provided or made available:

(i) One cooked meal per day, seven days per week;

(ii) Transportation to and from the property;

(iii) Assistance in housekeeping;

(iv) Personal services;

(v) Recreational and social activities; and

(vi) Access to medical services.

(2) For group homes, the resident services plan must address how access to the following services will be provided or made available:

(i) A common kitchen in which to prepare meals;

(ii) Transportation;

(iii) Nearby recreational and social activities which may be coordinated by the resident assistant, if applicable; and

(iv) Medical services as necessary.

(d) Necessary items. Borrowers must ensure items such as tables, chairs, and cookware necessary to furnish common areas are made available to congregate housing or group homes. The 2 percent initial operating capital may be used to purchase these items.

(e) Association with other organizations. Congregate housing and group homes may coordinate services or training with another organization, such as a workshop for the developmentally disabled. However, the housing facility must be a separate entity and not dependent on the other organization.

(f) Market feasibility documentation. Market feasibility documentation for congregate housing and group homes is subject to the following requirements:

(1) Must address the need for housing with services and include information concerning alternative service providers;

(2) Must contain demographic information pertaining to the population that is to be served by the congregate housing or group home project; and

(3) May consider an expanded market area that includes nondesignated places, but the facility must be located in a designated place.

(g) Rental assistance for group homes. A unit in a group home consists of a space occupied by a specific tenant household, which may be an apartment unit, a bedroom, or a part of a bedroom. Agency rental assistance will be made available to tenants sharing a unit so long as the total rent for the unit does not exceed conventional rents for comparable units in the area or a similar area.

§3560.70 Supplemental requirements for manufactured housing.

(a) Design requirements. Manufactured housing must meet the requirements of 7 CFR part 1924, subpart A applicable to manufactured housing.

(b) Eligible properties. The manufactured housing must include two or more housing units. The applicant will become the first owner purchasing the manufactured homes for purposes other than resale. The following exceptions may be made to this provision:

(1) A housing proposal may include the purchase of the real property with existing manufactured housing which will be redeveloped with the placement of new manufactured homes.

(2) A housing proposal may include the rehabilitation of existing manufactured housing only if the units to be rehabilitated are currently financed by the Agency. The proposal will include the results of the applicant's consultation with the manufacturer to determine if the proposed rehabilitation work will affect the structural integrity of the unit and, if so, the statement will include an explanation as to how.

(c) Terms. The maximum loan amount will be determined in accordance with the requirements of §3560.63. The amortization period and term of loans for manufactured housing will not exceed the lesser of the economic life of the housing being financed or 30 years.

(d) Security. A mortgage or deed of trust will be taken on the entire property purchased or improved with the loan. The encumbered property must be covered under a standard real estate title insurance policy or attorney's title opinion that identifies the housing as real property and insures or indemnifies against any loss if the manufactured home is determined not to be part of the real property. The property must be taxed as real estate by the jurisdiction where the housing is located if such taxation is permitted under applicable law when the loan is closed.

(e) Special warranty requirements. The general contractor or dealer-contractor, as applicable, must provide a warranty in accordance with the provisions of 7 CFR part 1924, subpart A.

(1) The warranty must establish that the manufactured homes, foundations, positioning and anchoring of the units to their permanent foundations, and all contracted improvements, are constructed in conformity with applicable approved plans and specifications.

(2) The warranty must include provisions that the manufactured homes sustained no hidden damage during transportation and, for double-wide units, that the sections were properly joined and sealed.

(3) The general contractor or dealer contractor must warrant that the manufacturer's warranty is in addition to and does not diminish or limit all other warranties, rights, and remedies that the borrower or lender may have.

(4) The seller of the manufactured homes must deliver to the borrower the manufacturer's warranty with an additional copy for RHS. The warranty must identify the units by serial number.

§3560.71 Construction financing.

(a) Construction financing plan. Prior to loan approval, applicants must submit to the Agency for its concurrence a plan for the construction financing and securing of the loan.

(b) Interim financing. Interim financing is required by the Agency for any construction, except as noted in paragraph (c) of this section.

(1) The Agency reserves the right to review and approve the interim financing arrangements proposed by the applicant.

(2) When interim financing is used, the Agency will obligate the funds and provide an interim financing letter to the lender that will confirm the procedures and conditions for the construction financing. The take-out loan will be closed and the interim lender paid off when the conditions of the interim financing letter have been met.

(3) The applicable provisions of 7 CFR part 1924, subpart A will be used to monitor the construction.

(4) An environmental review must be completed in accordance with 7 CFR part 1940, subpart G, prior to issuance of the interim financing letter.

(c) Multiple advances. When interim financing is not available or when it is in the best interest of the Federal Government, the Agency may provide for multiple advances of the funds to cover the cost of construction.

(1) The Agency will review and approve the multiple advances proposed by the borrower.

(2) When multiple advances are used, the Agency will close the loan prior to any advancement of funds and the relevant provisions of 7 CFR part 1924, subpart A will be used to monitor the construction.

(3) The loan check will be handled in accordance with 7 CFR part 1902, subpart A.

§3560.72 Loan closing.

(a) Requirements. Loans will be closed in accordance with 7 CFR part 1927, subpart B and any state supplements. In all cases, the borrower must:

(1) Provide evidence that an Agency-approved accounting system is in place;

(2) Execute a restrictive-use contract acceptable to the Agency that establishes the borrower's obligation to operate the housing for program purposes for the term of the Agency loan;

(i) For all section 514 loans, except as provided in §3560.621, made pursuant to a contract entered into on or after the effective date of this regulation, the following language will be included in the mortgage

and deed of trust: "The borrower and any successors in interest agree to use the housing for the purpose of housing people eligible for occupancy as provided in sections 514 and 516 of title V of the Housing Act of 1949, and Rural Housing Service regulations then in effect. The restrictions are applicable for a term of 20 years from the date on which the last loan was closed. No eligible person occupying the housing will be required to vacate nor any eligible person denied occupancy for housing prior to the close of such period because of a prohibited change in the use of the housing. A tenant or person wishing to occupy the housing may seek enforcement of this provision as well as the Government."

(ii) All other loans are subject to restrictive-use provisions as outlined in subpart N of this part.

(3) Provide evidence that construction financing arrangements are adequate when interim financing is going to be used;

(4) Provide evidence that all the funds from other sources as proposed in the application are available and that there have been no changes in the Sources and Uses Comprehensive Evaluation (SAUCE).

(5) Provide evidence of the title to all security required by the Agency;

(6) Provide a certification that all construction in the case of interim financing has been or, in the case of multiple advances, will be paid;

(7) Provide, in the case of interim financing, a dated and signed statement from the owner's architect certifying to substantial completion of the housing project;

(8) Provide a certification that all construction in the case of interim financing has been or, in the case of multiple advances, will be in accordance with the plans and specifications concurred in by the Agency;

(9) Provide evidence, if applicable, that the conditions of the interim financing letter have been met; and

(10) Attend a pre-occupancy conference with the Agency.

(b) Cost certification. In all cases, the borrower must report actual construction costs. Whenever the State Director determines it appropriate, and in all situations where there is an identity of interest as defined in 7 CFR 1924.4 (i), the borrower, contractor and any subcontractor, material supplier, or equipment lessor having an identity of interest must each provide certification as to the actual cost of the work performed in connection with the construction contract in accordance with 7 CFR part 1924, subpart A. The construction costs must also be audited in accordance with Governmental Auditing Standards, by a Certified Public Accountant (CPA). In some cases, the Agency will contract directly with a CPA for the cost certification. Funds that were included in the loan for cost certification and which are ultimately not needed because Agency contracts for the cost certification will be returned on the loan. Agency personnel will utilize exhibit M of 7 CFR part 1924, subpart A to assist in the evaluation of the cost certification process.

(c) Notification of loan cancellation. Loans may be canceled after approval and before loan closing. The Agency will notify all parties of the cancellation and the reasons for the cancellation in accordance with 7 CFR part 1927, subpart B.

§3560.73 Subsequent loans.

(a) Applicability. The Agency may make a subsequent loan to a borrower to complete, improve, repair, or make modifications to MFH initially financed by the Agency or for equity for preservation purposes. Loan requests to add units to comply with accessibility requirements may be processed as a subsequent loan; however, loan requests to add units to meet market demand will be processed as an initial loan request and must compete under the NOFA.

(b) Application requirements and processing. Upon receipt of a subsequent loan request, the Agency will inform the applicant what information is required based on the nature and purpose of the loan request. Subsequent loan requests do not have to compete for funding against initial loan proposals.

(c) Amortization and payment period. Subsequent loans will be amortized over a period not to exceed the lesser of the economic life of the housing being financed or 50 years and paid over a term not to exceed the lesser of the economic life of the housing or 30 years from the date of the loan.

(d) Equity contribution. Applicants for subsequent loans must make contributions on the loans in the same proportion as outlined in §3560.63(c). Loan applicants will not be given consideration for any increased equity value that the property may have since the initial loan.

(1) Excess initial investment on an initial loan may be credited toward the required investment on a subsequent loan.

(2) An initial operating capital contribution to the general operating account as described in §3560.64 is required for a subsequent loan approved under the conditions set in §3560.63(f) to complete housing construction but is not required for a subsequent loan to repair or improve existing housing.

(e) Environmental requirements. Subsequent loans are subject to the completion of an environmental review in accordance with 7 CFR part 1940, subpart G.

(f) Design requirements. All improvements, repairs, and modifications will be in accordance with 7 CFR part 1924, subparts A and C.

(g) Architectural services. The applicant must obtain architectural services when any of the following conditions exist:

(1) Enclosed space is being added,

(2) When required by state law, and

(3) When the Agency determines that the work being proposed requires architectural services.

(h) Restrictive-use requirements. Subsequent loans are subject to restrictive-use provisions as outlined in §3560.662(a) and borrowers must execute a restrictive-use contract in accordance with §3560.72(a)(2).

(i) Designation changes from rural to nonrural. If the designation of an area changes from rural to nonrural after the initial loan is made, a subsequent loan may be made only to make necessary improvements and repairs to the property or for equity when needed to avert prepayment.

(j) Agency's discretion. The Administrator may approve a subsequent loan in a place that is not on the list of designated places as a servicing action, for example, to replace units destroyed by a natural disaster.

§3560.74 Loan for final payments.

(a) Use. The Agency may finance final payments for borrowers holding existing loans for which the Agency approved an amortization period that exceeded the term of the loan.

(b) Requirements. The Agency may finance final payments if documentation regarding the market area shows that a need for low-income rental housing still exists for that area and one of the following conditions has been met.

(1) It is more cost efficient and serves the tenant base more effectively to maintain existing MFH than to build another property in the same location; or

(2) The MFH has been maintained to such an extent that it can be expected to continue providing affordable, decent, safe and sanitary housing for 20 years beyond the date of the loan to finance a final payment; and

(3) Funds are available.

(c) Term. The term of Agency loans to finance final payments will not exceed 20 years from the date of the initial loan final payment.

§§3560.75-3560.99 [Reserved]

§3560.100 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart C--Borrower Management and Operations Responsibilities

§3560.101 General.

This subpart sets forth borrower obligations regarding management and operations of multi-family housing (MFH) projects financed by the Agency. As noted in §3560.6, the borrower requirements listed in this subpart must be complied with by the borrower. The borrower may designate in writing a person to act as the borrower's authorized agent.

§3560.102 Housing project management.

(a) General. Borrowers hold final responsibility for housing project management and must ensure that operations comply with the terms of all loan or grant documents, Agency requirements and applicable local, state and Federal laws and ordinances.

Project operations shall be conducted to meet the actual needs and necessary expenses of the property or for any other purpose authorized under Agency regulations. Any party not meeting these responsibilities may be subject to penalties. It is expected that only typical and reasonable expenses be incurred for the services rendered. Consequently, methods to inflate, duplicate, obscure, or failure to disclose the true nature and cost of work performed for the services rendered will cause the Agency to deny budget requests for the services or issue a demand for recovery and reimbursement for unauthorized actions.

(b) Management plan. Borrowers must develop and maintain a management plan for each housing project covered by their loan or grant. The management plan must establish the systems and procedures necessary to ensure that housing project operations comply with Agency requirements.

(1) At a minimum, management plans must address the following items:

(i) Maintenance systems, including procedures for routine maintenance, capital item repair and replacement, and effective energy conservation practices;

(ii) Personnel policies, job descriptions, staffing plans, training procedures for on-site staff. The Borrower will include specific dutiesand responsibilities of each property manager, site manager and caretaker;

(iii) Front-line management functions to be performed by off-site staff;

(iv) Plans and procedures for providing supplemental services including laundry, vending, and security;

(v) Plans for accounting, record keeping and meeting Agency reporting requirements;

(vi) Procurement procedures;

(vii) Rent and occupancy charge collection procedures, and procedures for requesting and implementing changes in rents, utility allowances, or occupancy charges;

(viii) Plans and procedures for marketing rental units and maintaining compliance with the Affirmative Fair Housing Marketing Plan in accordance with §3560.104;

(ix) Unit leases and leasing policies and procedures, including procedures for maintaining and purging waiting lists, determining applicant eligibility, certifying and recertifying income, tenant selection, and occupancy policies such as security deposit amounts, occupancy rules, termination of leases or occupancy agreements and eviction;

(x) Plans for allowing tenant participation in property operations and for fostering tenant relationships with management;

(xi) Procedures for applicant and tenant appeals; and

(xii) Describe how management will make known to tenants and applicants that management will provide reasonable accommodations under the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, and regulations implemented there under at the borrower's expense unless to do so would cause an undue financial or administrative burden, how such requests are to be made, and who within management will have the authority to approve or disapprove a request for an accommodation.

(2) Loan or grant applicants must submit a management plan before the Agency will give final approval to the loan or grant application. The plan must address the required items identified in paragraph (b)(1) of this section in sufficient detail to enable the Agency to monitor housing project performance.

(c) Management plan effective period. A management plan remains in effect as long as it accurately reflects housing project operations and the housing project is in compliance with the Agency requirements.

(1) Borrowers must submit an updated management plan to the Agency if operations change or are no longer consistent with the management plan on file with the Agency.

(2) When there are no changes in operations, borrowers must submit a certification to the Agency every 3 years stating that operations are consistent with the management plan and the plan is adequate to assure compliance with the loan and grant documents and Agency requirements or applicable local, state and Federal laws.

(3) If the Agency determines that operations are in compliance with Agency requirements, loan or grant agreements, or applicable local, state, and Federal laws, but are not consistent with the management plan, the Agency will require the borrower to:

(i) Revise the management plan to accurately reflect housing operations;

(ii) Take actions to ensure the management plan is followed; or

(iii) Advise the Agency in writing of the action taken.

(4) When a housing project is being transferred from one borrower to another, the transferee must submit a management plan that addresses the required items identified in paragraph (b)(1) of this section in sufficient detail to enable the Agency to give final approval of the transfer.

(d) Housing projects with compliance violations. Upon receiving notice of compliance violations in accordance with §3560.354, borrowers must submit to the Agency:

(1) Revisions to the management plan establishing the changes in housing operations that will be made to restore compliance;

(2) If the borrower determines the compliance violations were due to a failure to follow the management plan, the borrower must certify to the Agency that the management plan is adequate to assure compliance with the applicable requirements of this part and submit a written description of the actions they will take to ensure the management plan is followed; or

(3) If the Agency discovers continued discrepancies between a management plan and housing project operations or compliance violations, the Agency may require the borrower to install a different management agent acceptable to the Agency as described in paragraph (e) of this section.

(e) Acceptable management agents. Borrowers must obtain Agency approval of the agent proposed to manage a housing project prior to entering into any formal agreement with the agent and prior to allowing the agent to assume responsibility for housing project operations. Borrowers that plan to self-manage a housing project also must receive Agency approval before assuming responsibility for housing operations.

(1) Borrowers must submit a written request for Agency approval of the proposed management agent at least 45 days prior to the date the agent is to assume responsibility for operations. This request must include a profile of the proposed management agent that provides sufficient information to allow the Agency to evaluate whether the agent is acceptable.

(2) The Agency will deny approval of any proposed management agent that cannot provide evidence of at least two years of experience and satisfactory performance in directing and overseeing the management of similar federally-assisted MFH.

(3) The Agency may issue approval of a management agent that does not meet the requirements of §3560.102(e)(2) if the management agent can provide evidence that indicates the ability to successfully manage a MFH project in accordance with Agency requirements.

(4) If a borrower enters into an agreement with a management agent or begins to self-manage prior to receiving Agency approval, the Agency will place the borrower in non-monetary default status and will require the borrower to immediately terminate the contract with the management agent.

(f) Self-management. Borrowers may self-manage a housing project but must receive Agency approval before assuming responsibility for housing operations. Borrowers that plan to self-manage must meet all requirements of §3560.102, except for paragraph (h) of this section.

(g) Identity-of-interest disclosure. Borrowers and management agents must disclose to the Agency all identity-of-interest relationships which they have with firms and must receive Agency approval to use such firms prior to entering into any contractual relationships with such entities that involve Agency funds.

(1) This disclosure must include any identity-of-interest relationships between:

(i) The borrower and the management agent;

(ii) The borrower or management agent and the providers of supplies and services to the housing project; and

(iii) The borrower or the management agent and employees of any of the above.

(2) Failure to disclose such relationships may subject the borrower, the management agent, and the other firms or employees found to have an identity of interest relationship to suspension, debarment, or other remedies available to the Agency.

(3) After disclosure of an identity-of-interest relationship:

(i) The borrower, management agent, and supplier of goods and services must provide documentation proving that use of identity-of-interest firms is in the best interest of the housing project;

(ii) Any supplier of goods and services must certify in writing to the Agency that the individual or organization has a viable, on-going trade or business qualified and licensed, if appropriate, to do the work for which a contract is being proposed;

(iii) The borrower, management agent, and supplier of goods and services must agree, in writing, that all records related to the housing project will be made available to the Agency, Office of the Inspector General (OIG), General Accountability Office (GAO), or a representative of the Agency, upon request; and

(iv) The Agency will deny the use of an identity-of-interest firm when the Agency determines such use is not in the best interest of the Federal Government or the tenants.

(h) Management agreement. Borrowers contracting with a management agent must execute a management agreement that establishes:

(1) The management agent's responsibility to comply with Agency requirements and local, state, and Federal laws;

(2) That the management fee is payable out of the housing project's general operating account consistent with the requirements of paragraph (i) of this section; and

(3) The Agency's authority to terminate the agreement for failure to operate the housing project in accordance with Agency requirements or local, state, or Federal laws.

(i) Management fees. Management fees will be an allowable expense to be paid from the housing project's general operating account only if the fee is approved by the Agency as a reasonable cost to the housing project and documented on the management certification. Management fees must be developed in accordance with the following:

(1) The management fee may compensate the management entity only for the specifically identified bundle of services to be provided to the housing project. Costs and services to be paid as part of the bundle of services include:

(i) Supervision by the management agent and its staff (time, knowledge, and expertise) of overall operations and capital improvements of the site.

(ii) Hiring, supervision, and termination of on-site staff.

(iii) General maintenance of project books and records (general ledger, accounts payable and receivable, payroll, etc.). Preparation and distribution of payroll for all on-site employees, including the costs of preparing and submitting all appropriate tax reports and deposits, unemployment and workers' compensation reports, and other IRS- or state-required reports.

(iv) Training provided to on-site staff at the project site.

(v) Preparation and submission of proposed annual budgets and negotiation of approval with the Agency, other governmental agencies and the borrowers.

(vi) Preparation and distribution of the Agency or other governmental agency forms and routine financial reports to borrowers.

(vii) Preparation and distribution of required year-end reports to the Agency or other governmental agency and borrowers.

(viii) Preparation of requests for reserve withdrawals, rent increases, or other required adjustments.

(ix) Arranging for preparation by outside contractors of energy audits and utility allowance analysis. Implement appropriate changes.

(x) Preparation and implementation of Affirmative Fair Housing Marketing Plans as well as general marketing plans and efforts.

(xi) Review of tenant certifications and submission of monthly rental assistance requests, and overage. Submission of payments where required.

(xii) Preparation, approval, and distribution of operating disbursements; oversight of project receipts; and reconciliation of deposits.

(xiii) Overhead of management agent, including:

(A) Establish, maintain, and control an accounting system sufficient to carry out accounting supervision responsibilities.

(B) Maintain agent office arrangements, staff, equipment, furniture, and services necessary to communicate effectively with the properties, the Agency or other governmental agency and with the borrowers.

(C) Postage expenses related to the normal responsibility for mailings to the properties, the Agency or other governmental agency, the tenants, the vendors, and the owners.

(D) Expense of telephone and facsimile communication to the properties, tenants, the Agency or other governmental agency, and the borrowers.

(E) Direct costs of insurance (fidelity bonds covering central office staff, computer and data coverage, general liability, etc.) directly related to protection of the funds and records of the borrower.

(F) Central office staff training and ongoing certifications.

(G) Maintenance of all required profession and business licenses and permits. (This does not include project site office permits or licenses.)

(H) Insurance coverage for agent's office and operations (Property, Auto, Liability, E&O, Casualty, Workers Compensation, etc.)

(I) Travel of agent staff to the properties for on-site inspection, training, or supervision activities.

(J) Agent bookkeeping for their own business.

(xiv) Attendance at meetings (including travel) with tenants, owners, and the Agency or other governmental agency.

(xv) Development, preparation, and revision of management plans or agreements.

(xvi) Coordination of U.S. Department of Housing and Urban Development (HUD) certifications or vouchers with tenants, including all reporting to all pertinent agencies and borrowers.

(xvii) Directing the investment of project funds into required accounts.

(xviii) Maintenance of bank accounts and monthly reconciliations.

(xix) Preparation, request for, and disbursement of borrower's initial operating capital (for new projects) as well as administration of annual owner's return on investment.

(xx) Account maintenance, settlement, and disbursement of security deposits.

(xxi) Working with third party auditors for initial set-up of audits and annually thereafter for audit preparation and review. Assistance with supplemental letters and preparation of Agency financial reports or other governmental agency reports.

(xxii) Storage of records and adherence to records retention requirements.

(xxiii) Assist on-site staff with tenant relations and problems. Provide assistance to on-site staff in severe actions (eviction, death, insurance loss, etc.).

(xxiv) Oversight of general and preventive maintenance procedures and policies.

(xxv) Development and oversight of asset replacement plans.

(xxvi) Oversight of preparation of section 504 reviews, development of plans, and implementation of improvements necessary to comply with plans and section 504 requirements.

(xxvii) Reporting to general and limited partners and State agencies for Low Income Housing Tax Credit (LIHTC)-compliance purposes.

(2) Management fees may consist of a base per occupied unit fee and add-on fees for specific housing project characteristics. Management entities may be eligible to receive the full base per occupied unit fee for any month or part of a month during which the unit is occupied.

(i) Periodically, the Agency will develop a range of base per occupied unit fees that will be paid in each state. The Agency will develop the fees based on a review of housing industry data. The final base for occupied unit fees for each state will be made available to all borrowers.

(ii) Periodically, the Agency will develop the amount and qualifications to receive add-on fees. The final set of qualifications will be made available to all borrowers.

(3) Allowable Administrative Expenses.

(i) Identifying the Type of Administrative Expense. Management Plans and Agreements must describe if administrative expenses are to be paid from the management fee or paid for as a project cost.

(A) A management plan is required for all projects. The management plan should describe administrative expenses paid from management agent fees or project operations. The management plan should provide job descriptions for the site manager, the management agent and other personnel. It is important that these documents accurately reflect the duties being performed by the various personnel. The management plan must meet the standards set out in this rule.

(B) A task list should be used to identify which services are included in the management fee, which services are included in project operations, and which are pro-rated along with the methodology used to pro-rating of expenses between management agent fees and project
operations. Some property responsibilities are completed at the property and some offsite. Agent responsibilities may be performed at the property, the management office, or at some other location.

(C) Disputes may arise as to who performs certain services. The management plan and job descriptions should normally provide sufficient clarity to avoid or resolve any such disputes; however, sometimes clarifications and supporting materials may be required to resolve disputes. The decision must be made based on the most complete evaluation of the facts presented.

(ii) Allowable Administrative Expenses. Payroll related administrative expenses are allowable expenses. Postage expense to mail out rental applications, third-party (asset income and adjustments to income) verifications, application processing correspondence (acceptance or denial letters), mailing project invoice payments, required correspondence, and report submittals to various regulatory authorities for the managed property are allowable project expenses no matter what location or point of origin the mail is generated. Photocopying or printing expense related to actual production of project brochures, marketing pieces, forms, reports, notices, and newsletters are allowable project expenses no matter what location or point of origin the work is performed including outsourcing the work to a professional printer. Correspondence or reports required for record retention or project compliance are allowable project expenses. The cost or expense of equipment and any related equipment service contract is a management agent direct expense, unless the machine becomes the property of the project after purchase.

(iii) Determining if Expenses are Reasonable. Generally, expenses charged to project operations, whether for management agent services or other expenses, must be reasonable, typical, necessary and show a clear benefit to the residents of the property. Services and expenses charged to the property must show value added and be for authorized purposes. If such value is not apparent, the service or expense should be examined.

(A) Administrative expenses for project operations exceeding 23 percent, or those typical for the area, of gross potential basic rents and revenues (i.e., referred to as gross potential rents in industry publications) highlight a need for closer review for unnecessary expenditures. Budget approval is required and project resources may not always permit an otherwise allowable expense to be incurred if it is not fiscally prudent in the market.

(B) Excessive administrative expenses can result in inadequate funds to meet other essential project needs, including expenditures for repair and maintenance needed to keep the project in sound physical condition. Actions that are improper or not fiscally prudent may warrant budget disapproval and/or a demand for recovery action.

(4) Unallowable Administrative Expenses.

(i) Certain expenses are not allowable such as legal fees, association dues, bonuses or monetary performance awards, parties, computer hardware and some software, and telephone purchases.

(ii) It is inappropriate to charge for legal services to represent any interest other than the borrower's interest (i.e., representing a general partner or limited partner to defend their individual owner interest is not allowable).

Where there is no finding of a borrower's fault, commercially reasonable legal expenses and costs for defending or settling lawsuits (without admission of liability) are allowable.

(iii) Charging for payment of penalties, including opposition legal fees resulting from an award finding improper actions on the part of the owner or management agent is generally an inappropriate project expense. The party responsible generally pays such expenses for violating the standards or by their insurance carriers.

(iv) Association dues to be paid by the project should only be related to training for site managers or management agents. To the extent that association dues can document training for site managers or management agents related to project activities by actual cost or pro-ration, a reasonable expense may be billed to the project.

(v) It is inappropriate for the project to pay for bonuses or monetary performance awards to site managers or management agents that are not clearly provided for by the site manager salary contract.

(vi) Billing the project for parties that are large or unreasonable, such as renting expensive party halls or hotel rooms and payment for alcoholic beverages or gifts to management agent staff are also inappropriate.

(vii) It is inappropriate to bill the project for computer hardware, some software, and internal connections that are beyond the scope and size reasonably needed for the services supplied (i.e., purchasing equipment or software for use by a site manager that is clearly beyond that needed to support project operations). Note that computer learning center activities benefiting tenants are not covered in this prohibition.

(viii) It is inappropriate to bill the project for practices that are inefficient such as routine use of collect calls from a site manager to a management agent office.

(j) Management certification.

(1) As a condition of approval of the management agent and the management fee, the borrower and the management agents must execute an Agency-approved certification establishing an allowable management fee to be paid out of the housing project's general operating account and certifying that:

(i) The borrower and management agent agree to operate the housing project in accordance with the management plan;

(ii) The borrower and the management agent will comply with Agency requirements, loan or grant agreements, applicable local, state and Federal laws and ordinances, and contract obligations, will certify that no payments have been made to anyone in return for awarding the management contract to the management agent, and will agree that such payments will not be made in the future;

(iii) The borrower and the management agent will comply with Agency notices or other policy directives that relate to the management of the housing project;

(iv) The management agreement between the borrower and management agent complies with the requirements of this section;

(v) The borrower and the management agent will comply with Agency requirements regarding management fees as specified in paragraph (i) of this section, and allocation of management costs between the management fee and the housing project financial accounts specified in §3560.302(c)(3);

(vi) The borrower and the management agent will not purchase goods and services from entities that have an identity-of-interest (IOI) with the borrower or the management agent until the IOI relationship has been disclosed to the Agency according to paragraph (g) of this section, not denied by the Agency under paragraph (d)(3) of this section, and it has been determined that the costs are as low as or lower than arms-length, open-market purchases; and

(vii) The borrower and the management agent agree that all records related to the housing project are the property of the housing project and that the Agency, OIG, or GAO may inspect the housing records and the records of the borrower, management agent, and suppliers of goods and services having an IOI with the borrower or with a management agent acting as an agent of the borrower upon demand.

(2) A certification will be executed each time a management agent is proposed and a management agreement is executed or renewed. Any amendment to a management certification must be approved by the Agency and the borrower.

(k) Procurement. The borrower and the agents of the borrower must obtain contracts, materials, supplies, utilities, and services at a reasonable cost and seek the most advantageous terms to the housing project. Any discounts, rebates, fees, proceeds, or commissions obtainable with respect to purchases, service contracts, or other transactions must be credited to the housing project.

(l) Electronic Submission of Data to Agency. For properties with eight or more housing units, the Agency may specify that borrowers submit information required by this part electronically.

§3560.103 Maintaining housing projects.

(a) Physical maintenance.

(1) The purposes of physical maintenance are the following:

(i) Provide decent, safe, and sanitary housing; and

(ii) Maintain the security of the property.

(2) Borrowers are responsible for the long-term, cost-effective preservation of the housing project.

(3) At all times, borrowers must maintain housing projects in compliance with local, state and federal laws and regulations and according to the following Agency requirements for affordable, decent, safe, and sanitary housing. Agency design requirements are discussed in §3560.60. The Agency acknowledges that property maintenance is an ongoing process and will not penalize borrowers for less than 100 percent compliance as long as it is evident that the borrower is striving to achieve the standards listed in this paragraph. In addition, the Agency understands that although its multifamily housing portfolio is relatively homogeneous, no one standard is appropriate for all properties.

(i) Utilities. The housing project must have an adequate and safe water supply, a functional and safe waste disposal system, and must be free of hazardous waste material.

(ii) Drainage and erosion control. The housing project must have drainage that effectively protects the housing project from water damage from standing water and erosion. Units, basements, and crawl spaces must be free of water seepage.

(iii) Landscaping and grounds. The housing project must be landscaped attractively. Lawns, plants and shrubs must be maintained and must allow air to windows, vents, and sills. Recreation areas must be maintained in a safe and clean manner and trash collection areas must be adequately sized, screened, and maintained.

(iv) Drives, parking services and walks. The housing project must have drives, parking lots, and walks that are free of holes and deterioration. Walks with changes in height between slabs of approximately \1/2\ inch or greater will be considered unacceptable.

(v) Exterior signage. All signs at the housing project, including those related to the housing project name, buildings, parking spaces, unit numbers and other informational directions must be visible and well-kept. Sign requirements must conform to §3560.104(d).

(vi) Fences and retaining walls. The housing project must have fence lines that are free of trash, weeds, vines, and other vegetation. Fences must be free of holes and damaged or loose sections. The bases of all retaining walls must be erosion free and drainage weep holes must be cleaned out to prevent excessive pressure behind the retaining wall.

(vii) Debris and graffiti. The housing project, including common areas, must be free of trash, litter, and debris. Public walkways, walls of buildings and common areas must be free of raffiti.

(viii) Lighting. The housing project must have functional exterior lighting and functional interior lighting in common areas which permits safe access and security.

(ix) Foundation. The housing project must have a foundation that is free of evidence of structural failure, such as uneven settlement indicated by horizontal cracks or severe bowing of the foundation wall. Structural members must not have evidence of rot or insect or rodent infestation.

(x) Exterior walls and siding. The housing project must have walls that are free from deterioration which allows elements to infiltrate the structure, eaves, gables, and window trim that are free from deterioration, exterior wall coverings that are intact, securely attached, and in good condition. Brick veneers must be free of missing mortar or bricks.

(xi) Roofs, flashing, and gutters. The housing project must have gutters and downspouts, where appropriate for climatic conditions, that are securely attached, clean, and finished or painted properly with splash blocks or extenders that direct water flow away from the building. The housing project must have a roof that is free of leaks, defective covering, curled or missing shingles and which is not sagging or buckling. Fascia and soffits must be intact.

(xii) Windows, doors, and exterior structures. The housing project must have screens that are free of tears, breaks and rips and windows that are unbroken. Window thermopane seals must be unbroken and caulking on the exterior of windows and doors must be continuous and free of cracks. Doors must be weather tight, free of holes, and provide security with functional locks. Porches, balconies, and exterior stairs must be free of broken, missing, or rotting components.

(xiii) Common area accessibility. The housing project must have accessible, designated handicapped parking spaces with handicapped space signs properly posted. Common areas must be accessible through walks, ramps, porches, and thresholds. The laundry room must have accessible appliances and mailboxes must be at an accessible level. Elevators or mechanical lifts must be functional and kept in good repair.

(xiv) Common area signage. The following must be posted in a conspicuous place in a common area: “Justice for All” poster, HUD equal housing opportunity poster including the Spanish version if there are Hispanic Limited English Proficiency tenants or applicants, current affirmative fair housing marketing plan, the tenant grievance and appeal procedure, housing project occupancy rules, office hours and phone number, and emergency hours and phone number.

(xv) Flooring. If a housing project has carpeting, the carpet must be clean, without excessive wear, and seams that are secure and stretched properly. If the housing project has resilient flooring, the flooring must be clean, unstained, free of tears and breaks, and seams that are secure.

(xvi) Walls, floors, and ceilings. The housing project must have walls, floors, and ceilings that are free of holes, evidence of current water leaks, and free of material that appears in danger of falling. The housing project must have wallboard joints that are secure and free of cracks.

(xvii) Doors and windows. The housing project must have doors that are free of holes, secure, unbroken and easily operable hardware, deadbolt locks which are in place and secure, and, if doors are metal, free of rust. The housing project must have windows which are easily operated, free of bent blinds or torn curtains, and window interiors must be free of evidence of moisture damage.

(xviii) Electrical, air conditioning and heating. The housing project must have heating and cooling units that are free of bare wires and which are functioning properly, including thermostats. The housing project must not have uncovered outlets or other evident safety hazards, switches which work improperly, or light fixtures which are broken and inoperable.

(xix) Water heaters. The housing project must have water heaters which are operating properly, free of leaks, supply adequate hot water, and are fitted with temperature and pressure relief valves.

(xx) Smoke alarms. The housing project must have smoke alarms which are properly located according to local code and which operate properly.

(xxi) Emergency call system. If a housing project has an emergency call system, the switches must be located in the bathroom and bedroom, furnished with a pull cord, with the down position set to “ON”, and must operate properly.

(xxii) Insect or vermin infestation. The housing project must have all units free of visible signs of insects or rodents and must be free of signs of insect or rodent damage.

(xxiii) Range and range hood. The housing project must have range units in which all elements are operable, electrical connections are secure and insulated, doors and drawers which are secure, control knobs and handles which are in place and secure, and housing which is sound and the finish is free of chips, damage, or signs of rust. The range hood fan and light must be operable.

(xxiv) Refrigerator. The housing project must have refrigerators in which the cooler and freezer are operating properly, the shelves and door containers are secure and free of rust, door gaskets are in good condition and functioning properly, and the housing is sound and the finish is free of chips, damage, or signs of rust.

(xxv) Sinks. The housing project must have sinks in which the fittings work properly and are free of leaks, plumbing connections under the cabinet which are free of leaks, the finish is free of chips, damage, or signs of rust, the strainer is in good condition and in place, and which are secured to a wall, counter, or vanity top.

(xxvi) Cabinets. The housing project must have cabinets and vanities which are secure to walls or floor and have faces, doors, and drawer fronts that are in good condition and free of breaks and peeling. Shelving must be in place, fastened securely, and free of warps. The housing project must have counter tops which are secure and free of burn marks or chips, bottoms under sinks which are free of evidence of warping, breaks, or being water soaked. Kitchen counter, vanity tops, and back splashes must be properly caulked.

(xxvii) Water closets. The housing project must have the base of the water closets at the floor properly caulked. The tanks must be free of cracks or leaks and have a lid which fits and is in good condition. The seats must be secure and in good condition, and the flushing mechanisms must be in good condition and operating properly. The stools must be free of cracks and breaks and be securely fastened to the floor.

(xviii) Bathtub and shower stalls. The housing project must have tubs or shower stalls which are free of cracks, breaks, and leaks, and a strainer in good condition and in place. The housing project must have walls and floors of the bathtubs which are properly caulked, tops and sides of shower stalls must be properly caulked, and the finish is free of chips, damage, or signs of rust.

(4) The Agency expects that upon discovery of a condition not in compliance with the standards listed in this section that the borrower will remedy the situation in a timeframe required by the Agency. The Borrower must provide documentation and justification for any failure to meet such timeframe. Properties with deficiencies in the process of being addressed will not be deemed to be out of compliance unless there are so many deficiencies that it would result in a declaration of substantial noncompliance and call into questions the viability of the property and the effectiveness of the borrower's maintenance program. Failure to make such corrections or repairs constitutes a non-monetary default under §3560.452(e).

(b) Maintenance systems. Borrowers must establish the following maintenance systems and must describe these systems in their management plan.

(1) A system for routine maintenance, including:

(i) Regular maintenance tasks that can be prescheduled or planned; and

(ii) Tasks performed on a regular basis to maintain compliance with the standards established in paragraph (a)(3) of this section.

(2) A system for responsive maintenance including:

(i) A process for responding to requests for maintenance from tenants;

(ii) A process for responding to unexpected malfunctions of equipment or damages to building systems such as a furnace breakdown or a water leak; and

(iii) A ‘work order’ process for managing and tracking responses to maintenance requests and the performance of maintenance tasks.

(3) A system for preventive maintenance including:

(i) Maintenance of mechanical systems, building exteriors, elevators, and heating and cooling systems which require specially trained personnel; and

(ii) Maintenance that supports energy-efficient operation of the housing project.

(4) A system for correcting deficiencies identified by periodic inspections, which must include:

(i) A move-in inspection;

(ii) A move-out inspection; and

(iii) An annual inspection of occupied units.

(c) Capital budgeting and planning.

(1) Borrowers must develop a capital budget as part of their annual housing project budget required under §3560.303. The capital budget must include anticipated expenditures on the long-term capital needs of the housing project to assure adequate maintenance and replacement of capital items.

(2) If the borrower requests an increase in the project's reserve for replacement account, the borrower must have a capital needs assessment prepared and submitted to the Agency to reflect anticipated needs of the housing project for replacement of capital equipment and systems. The cost for preparation of a capital needs assessment will be approved by the Agency as an eligible housing project expense provided the capital needs assessment is reasonable in cost and meets Agency requirements.

(3) [Reserved].

(4) As a part of the annual budget process, borrowers may request an increase in the amount to be contributed and held in the housing project reserve account to fund the needs identified in an Agency-approved capital needs assessment.

(5) At any time, borrowers may request and the Agency may approve amendments to loan or grant documents to increase the amount of funds to be contributed and held in a reserve account to cover the cost of capital improvements based on the needs identified in an Agency approved capital needs assessment. Borrowers must assure improvements are performed as specified in the capital needs assessment.

§3560.104 Fair housing.

(a) General. Borrowers must comply with the requirements of the Fair Housing Amendments Act of 1988, and this section to meet their fair housing responsibilities.

(b)Affirmative Fair Housing Marketing Plan.

(1) Borrowers with housing projects that have four or more rental units must prepare and maintain an Affirmative Fair Housing Marketing Plan (AFHMP) as defined in 24 CFR part 200, subpart M.

(2) Loan or grant applicants must submit an AFHMP for Agency approval prior to loan closing or grant approval. Plans must be updated by the borrower whenever components of the plan change.

(3) Borrowers must post the approved AFHMP for public inspection at the housing project site, rental office, or at any other location where tenant applications for the project are received.

(4) When developing the plan, the following items must be considered by the borrower:

(i) Direction of marketing activities. The plan should be designed to attract applications for occupancy from all potentially eligible groups of people in the housing marketing area, regardless of race, color, religion, sex, age, familial status, national origin, or disability. The plan must show which efforts will be made to reach very low-income or low-income groups who would least likely be expected to apply without special outreach efforts.

(ii) Marketing program. The applicant or borrower should determine which methods of marketing such as radio, newspaper, TV, signs, etc., are best suited to reach those very low-income or low-income groups who are in the market area but who are least likely to apply for occupancy. Marketing must not rely on "word of mouth" advertising.

(A) Advertising.

(1) Frequency. The borrower should advertise availability of housing units in advance of their availability to allow time to receive and process applications. Advertising by newsprint or electronic media must occur at least annually to promote project visibility, even if there is an adequate waiting list.

(2) Posters, brochures, etc. Any radio, TV or newspaper advertisement, pamphlets, or brochures used must identify that the complex is operated on an equal housing opportunity basis. This must be done through the use of the equal housing opportunity statement, slogan, or logo type. Copies of the proposed material must be sent when requesting approval of the plan.

(B) Community contacts. Community leaders and special interest groups such as community, public interest, religious organizations, and organizations for the disabled must be contacted. Owners and managers of projects with fully accessible apartments must adopt suitable means to ensure that information regarding the availability of accessible units reaches eligible persons with disabilities. In addition, owners and managers of elderly housing must ensure that information regarding eligibility reaches people who are less than 62 years old but who are eligible because they are disabled. Appropriate contacts are with physical rehabilitation centers, hospitals, workshops for the disabled, commissions on aging, and veterans' organizations.

(C) Rental staff. All staff persons responsible for renting the units must have had training provided on Federal, state, and local fair housing laws and regulations and in the requirements of fair housing marketing and in those actions necessary to carry out the marketing plan. Copies of instructions to the staff regarding fair

housing and a summary of the training they have received must be attached to the plan when requesting approval.

(iii) Marketing records. Records must be maintained by the borrower reflecting efforts to fulfill the plan. These records will be reviewed by the Agency during civil rights compliance reviews. Plans will be updated as needed.

(c) Accommodations and communication. The borrower must take appropriate steps to ensure effective communication with applicants, tenants, and members of the public with disabilities. At a minimum, the following steps must be taken:

(1) Furnish appropriate auxiliary aids (electronic, mechanical, or personal assistance) where necessary, to afford an individual with disabilities an equal opportunity to participate in and enjoy the benefits of Agency financed housing.

(i) In determining what auxiliary aids are necessary, the borrower must give primary consideration to the requests of individuals with disabilities.

(ii) The borrower is not required to provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where a borrower communicates with applicants and tenants by telephone, telecommunication devices for deaf persons or equally effective communication systems must be available for use.

(3) The borrower must implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information concerning the existence and location of accessible services, activities, and facilities in the housing project and community.

(4) The borrower is required to provide reasonable accommodations at the project's expense unless doing so would result in undue financial or administrative burden on the project. Examples of reasonable accommodations may include such items as the installation of grab bars, ramps, and roll-in showers. Reasonable accommodations may also include the modification of rules or policies such as permitting a disabled tenant to have a two-bedroom unit to accommodate a resident assistant or to permit a disabled tenant to have a companion animal. The decision whether the requested accommodation is reasonable or unreasonable or whether to provide the accommodation would cause an undue financial or administrative burden lies with the borrower and would be for the borrower to defend should a complaint subsequently be filed. Borrowers may wish to consult with their legal counsel prior to denying a request. If the borrower takes the position that providing an accommodation would cause an undue financial or administrative burden, the borrower must permit the tenant to make reasonable modifications at the tenant's expense. Requests for reasonable accommodations must be handled in accordance with the management plan.

(d) Housing sign requirements.

(1) A permanent sign identifying the housing project is required for all housing projects approved on or after September 13, 1977. Permanent signs are recommended for all housing projects approved prior to September 13, 1977. The sign must meet the following requirements:

(i) Must be located at the primary site entrance and be readable and recognizable from the roadside;

(ii) Must be located near the site manager's office when the housing project has multiple sites and portable signs must be placed where vacancies exist at other site locations of a “scattered site” housing project;

(iii) May be of any shape;

(iv) Must be not less than 16 square feet of area for housing projects with 8 or more rental units (smaller housing projects may have smaller signs);

(v) Must be made of durable material including its supports;

(vi) Must include the housing project name;

(vii) Must show rental contact information including but not limited to the office location of the housing project and a telephone number where applicant inquiries may be made;

(viii) Must show either the equal housing opportunity logotype (the house and equal sign, with the words equal housing opportunity underneath the house); the equal housing opportunity slogan “equal housing opportunity”; or the equal housing opportunity statement, “We are pledged to the letter and spirit of U.S. policy for the achievement of equal housing opportunity throughout the nation. We encourage and support an affirmative advertising and marketing program in which there are no barriers to obtaining housing because of race, color, religion, sex, handicap, familial status, or national origin.” If the logotype is used, the size of the logo must be no less than 5 percent of the total size of the project sign.

(ix) May display the Agency or Department logotype; and

(x) Must comply with state and local codes.

(2) Accessible parking spaces must be reserved for individuals with disabilities by a sign showing the international symbol of accessibility. The sign must be mounted on a post at a height that is readily visible from an occupied vehicle. In snow areas, the sign must be visible above piled snow. If there is an office, the designated parking space must be van accessible.

(3) When the continuous unobstructed ingress or egress disabled accessibility route to a primary building entrance is other than the usual or obvious route, the alternate route for disabled accessibility must be clearly marked with international accessibility symbols and directional signs to aid a disabled person's ingress or egress to the building, through an accessible entrance, and to the accessible common use and public and living areas.

§3560.105 Insurance and taxes.

(a) General. Borrowers must purchase and maintain property insurance on all buildings included as security for an Agency loan. Also, borrowers must furnish fidelity coverage, liability insurance, and any other insurance coverage required by the Agency in accordance with this paragraph to protect the security of the asset. Failure to maintain adequate insurance coverage or pay taxes may lead to a non-monetary default under §3560.452(c).

(b) General insurance requirements. All insurance policies must meet the requirements established by the loan documents and this section.

(1) At loan closing, prior to loan approval, applicants must provide documentary evidence that insurance requirements have been met. The borrower must maintain insurance in accordance with requirements of their loan or grant documents and this section until the loan is repaid

(2) Insurance companies must meet the requirements of paragraph (e) of this section.

(3) Insurance coverage amount, terms, and conditions must meet the requirements of paragraph (f) of this section.

(4) The Agency must be named as loss co-payee on all property insurance policies where it holds first lien position. The Agency must be named as an additional insured if its lien position is other than first.

(c) Borrower failure or inability to meet insurance requirements. The Agency will take the following actions in cases where a borrower is unwilling or unable to meet the Agency's insurance requirements:

(1) The Agency will obtain insurance for Agency financed property if the borrower fails to do so. If borrowers refuse to pay the insurance premium, the Agency will pay the insurance premium and charge the premium payment amount to the borrower's Agency account and will place the borrower in default as described in §3560.452(c).

(2) If borrowers habitually fail to pay premiums in a timely manner, the Agency will require borrowers to escrow amounts appropriate to pay insurance premiums.

(3) If insurance that meets the Agency's specified requirements is not available (e.g. flood or hurricane insurance), the Agency may accept the insurance policy that most nearly conforms to established requirements.

(4) If the best insurance policy a borrower can obtain at the time the borrower receives the loan or grant contains a loss deductible clause greater than that allowed by paragraph (f)(8) of this section, the insurance policy and an explanation of the reasons why more adequate insurance is not available must be submitted to the Agency prior to loan or grant approval.

(d) Credits, refunds, or rebates. Borrowers must credit any refund or rebate from an insurance company to the project's general operating account or reserve account.

(e) Insurance company requirements. All insurers, insurance agents, and brokers must meet the following requirements:

(1) Be licensed or authorized to do business in the state or jurisdiction where the housing project is located; and

(2) Be deemed reputable and financially sound as determined by the Agency.

(f) Property insurance. The following conditions apply to property insurance purchased for Agency-financed housing projects.

(1) At a minimum, borrowers must obtain the following types of property insurance:

(i) Hazard insurance. A policy which generally covers loss or damage by fire, smoke, lightning, hail, explosion, riot, civil commotion, aircraft, and vehicles. These policies may also be known as “Fire and Extended Coverage,” “Homeowners,” “All Physical Loss,” or “Broad Form” policies.

(ii) Flood insurance. This coverage is required for properties located in Special Flood Hazard Areas (SFHA) as defined in 44 CFR part 65, as determined by the Federal Emergency Management Agency (FEMA).

(iii) Builder's risk insurance. A policy that insures dwellings under construction or rehabilitation.

(iv) Elevators, boiler, and machinery coverage. This coverage is required for properties that operate elevators, steam boilers, turbines, engines, or other pressure vessels.

(2) Other types of insurance that the Agency may require:

(i) Windstorm Coverage.

(ii) Earthquake Coverage.

(iii) Sinkhole Insurance or Mine Subsidence Insurance.

(3) For property insurance, the minimum coverage amount must equal the “Total Estimated Reproduction Cost of New Improvements,” as reflected in the housing project's most recent appraisal. At a minimum, property insurance coverage must be adequate to cover the lesser of the depreciated replacement value of essential buildings or the unpaid balance of all secured debt, unless such coverage is financially unfeasible for the housing project.

(i) If the cost of the minimum level of property insurance coverage exceeds what the housing project can reasonably afford, the borrower, with Agency concurrence, must obtain the maximum amount of property insurance coverage that the housing project can afford.

(ii) If the coverage amount is less than the depreciated replacement value of all essential buildings, borrowers must obtain coverage on one or more of the most essential buildings, as determined by the Agency.

(iii) When required, the coverage amount for flood insurance must equal the outstanding loan balance or the maximum coverage allowed by FEMA's “National Flood Insurance Program.”

(4) Except for flood insurance, property insurance is not required if the housing project:

(i) Has a depreciated replacement value of $2,500 or less; or

(ii) Is in a condition which the Agency determines makes insurance coverage not economical.

(5) Policies for several buildings or properties located on noncontiguous sites are acceptable if the insurer provides proof that each secured building or property related to the housing project is as fully protected as if a separate policy were issued.

(6) Borrowers must notify the Agency and their insurance company agents of any loss or damage to insured property and collect the amount of the loss.

(7) When the Agency is in the first lien position and an insurance settlement represents a satisfactory adjustment of a loss, the insurance settlement will be deposited in the housing project's general operating account unless the settlement exceeds $5,000. If the settlement exceeds $5,000, the funds will be placed in the reserve account for the housing project.

(i) Insurance settlement funds which remain after all repairs, replacements, and other authorized disbursements have been made retain their status as housing project funds.

(ii) If the indebtedness secured by the insured property has been paid in full or the insurance settlement is in payment for loss of property on which the Agency has no claim; a loss draft which includes the Agency as co-payee may be endorsed by the Agency without recourse and delivered to the borrower.

(8) When the Agency is not in the first lien position and the insurance settlement represents satisfactory adjustment of the loss, the Agency will release the settlement funds to the primary mortgagee upon agreement of all parties to the provisions contained in agreements between the Agency and the primary lienholder.

(9) Allowable deductible amounts are as follows:

(i) Hazard/Property Insurance.

(A) $1,000 on any housing project with an insurable value under $200,000; or

(B) One-half of one percent (0.0050) of the insurable value, up to $10,000 on housing projects with insurance values over $200,000.

(ii) Flood Insurance. The Agency allows a maximum deductible of $5,000 per building.

(iii) Windstorm Coverage. When windstorm coverage is excluded from the "All Risk" policy, the deductible must not exceed five percent of the total insured value.

(iv) Earthquake Coverage. In the event that the borrower obtains earthquake coverage, the Agency is to be named as a loss payee. The deductible should be no more than 10 percent of the coverage amount.

(v) Sinkhole Insurance or Mine Subsidence Insurance. The deductible for sinkhole insurance or mine subsidence insurance should be similar to what would be required for earthquake insurance.

(10) Deductible amounts (excluding flood, windstorm, earthquake and sinkhole insurance or mine subsidence insurance) must be accounted for in the replacement reserve account. Borrowers who wish to increase the deductible amount must deposit an additional amount to the reserve account equal to the difference between the Agency's maximum deductible and the requested new deductible. The Borrower will be required to maintain this additional amount so long as the higher deductible is in force.

(g) Liability insurance. The borrower must carry comprehensive general liability insurance with coverage amounts that meet or exceed Agency requirements. This coverage must insure all common areas, commercial space, and public ways in the security premises. Coverage may also include borrower exposure to certain risks such as errors and omissions, environmental damages, or protection against discrimination claims. The insurer's limit of liability per occurrence for personal injury, bodily injury, or property damage under the terms of coverage must be at least $1 million.

(h) Fidelity coverage. Borrowers must provide fidelity coverage on any personnel entrusted with the receipt, custody, and disbursement of any housing monies, securities, or readily salable property other than money or securities. Borrowers must have fidelity coverage in force as soon as there are assets within the organization and it must be obtained before any loan funds or interim financing funds are made available to the borrower. In addition, the following conditions apply to fidelity insurance:

(1) Fidelity insurance coverage must be documented on a bond form acceptable to the Agency.

(2) Fidelity coverage policies must declare in the insuring agreements that the insurance company will provide protection to the insured against the loss of money, securities, and property other than money and securities, through any criminal or dishonest act or acts committed by any employee, whether acting alone or in collusion with others, not to exceed the amount of indemnity stated in the declaration of coverage.

(i) The fidelity insurance policy, at a minimum, must include an insuring agreement that covers employee dishonesty.

(ii) Fidelity coverage amounts and deductible:

Fidelity coverage	Deductible level
Under $50,000	$1,000
In the area of $100,000	2,500
In the area of $250,000	5,000
In the area of $500,000	10,000
In the area of $1,000,000	15,000

(3) Blanket crime insurance coverage or fidelity bonds are acceptable types of fidelity coverage.

(4) At a minimum, borrowers must provide an endorsement, listing all of the borrower's Agency financed properties and their locations covered under the policy or bond as evidence of required fidelity insurance. The policy or bond may also include properties or operations other than Agency financed properties on separate endorsement listings.

(5) Individual or organizational borrowers must have fidelity coverage when they have employees with access to the MFH complex assets. Borrowers who use a management agent with exclusive access to housing assets must require the agent to have fidelity coverage on all principals and employees with access to the housing assets. If active management reverts to the borrower, the borrower must obtain fidelity coverage, as a first course of business.

(6) Fidelity coverage is not required under the following circumstances:

(i) The borrower is an individual or a general partnership and the individual or general partner will be responsible for the financial activities of the housing project.

(ii) In the case of a land trust where the beneficiary is responsible for management, the beneficiary will be treated as an individual.

(iii) A limited partnership (or its general partners) unless one or more of its general partners perform financial acts within the scope of the usual duties of an “employee.”

(7) The premium for fidelity coverage of employees and general partners at a housing project is an eligible operating account expense.

(i) The premium of a management agent's fidelity coverage for the agent's principals and employees will be the management agent's business expense (i.e., it is included within the management fee).

(ii) When a housing project employee is covered under the “umbrella” of the management agent's fidelity coverage, the premium may be prorated among the housing projects covered..

(8) Borrowers must review fidelity coverage annually and adjust it as necessary to comply with the requirements of this section.

(i) Taxes. The borrower is responsible for paying all taxes and assessments on a housing project before they become delinquent.

(1) An exception to the above may be made if the borrower has formally contested the amount of the property assessment and escrowed the amount of taxes in question in a manner approved by the Agency.

(2) Failure to pay taxes and assessments when due will be considered a default. If a borrower fails to pay outstanding taxes and assessments, the Agency will pay the outstanding balance and charge the tax or assessment amount, assessed penalties, and any additional incurred costs to the borrower's Agency account.

(3) The Agency will require borrowers who have demonstrated an inability to pay taxes in a timely manner to escrow amounts sufficient to pay taxes.

§§3560.106-3560.149 [Reserved].

§3560.150 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart D--Multi-Family Housing Occupancy

§3560.151 General.

(a) Applicability. This subpart contains borrower and tenant requirements and Agency responsibilities related to occupancy of Agency-financed multi-family housing (MFH) projects. Occupancy eligibility requirements apply to the following:

(1) Family housing projects, including farm labor housing;

(2) Elderly housing projects; and

(3) Congregate housing or group homes for persons with special needs.

(b) Civil rights requirements. All occupancy policies must meet applicable civil rights requirements, as stated in §3560.2.

§3560.152 Tenant eligibility.

(a) General requirements. Except as specified in paragraph (b) of this section, a tenant eligible for occupancy in Agency-financed housing must either:

(1) Be a United States citizen or qualified alien, and

(2) Qualify as a very low-, low-, or moderate-income household; or

(3) Be eligible under the requirements established to qualify for housing benefits provided by sources other than the Agency, such as U.S. Department of Housing and Urban Development (HUD) Section 8 assistance or Low Income Housing Tax Credit (LIHTC), when a tenant receives such housing benefits.

(b) Exception. Households with incomes above the moderate-income level may occupy housing projects with an Agency loan approved prior to 1968 with a loan agreement that does not restrict occupancy by income.

(c) Requirements for elderly housing, elderly units in mixed housing, congregate housing, and group homes. In addition to the requirements of paragraph (a) of this section, the following occupancy requirements apply to elderly housing, elderly units in mixed housing, and congregate housing or group homes:

(1) For elderly housing, elderly units in mixed housing, and congregate housing the following provisions apply:

(i) Households must meet the definition of an elderly household in §3560.11 to be eligible for occupancy in elderly or congregate housing.

(ii) If non-elderly persons are members of a household where the tenant or co-tenant is an elderly person, the non-elderly persons are eligible for occupancy in the tenant's or co-tenant's rental unit.

(iii) Applicants who will agree to participate in the services provided by a congregate housing project may be given occupancy priority.

(2) For group homes, the following provisions apply:

(i) Occupancy may be limited to a specific group of tenants, such as elderly persons or persons with developmental disabilities, or mental impairments, if such an occupancy limitation is contained in the borrower's management plan.

(ii) Tenants must be able to demonstrate a need for the special services provided by the group home.

(iii) Tenants cannot be required to participate in an ongoing training or rehabilitation program.

(iv) Tenants must be selected from the market area prior to considering applicants from other areas.

(d) Ineligible tenant waiver. The Agency may authorize the borrower in writing, upon receiving the borrower's written request with the necessary documentation, to rent vacant units to ineligible persons for temporary periods to protect the financial interest of the Government. Likewise, this provision may extend to a cooperative. This authority will be for the entire project for periods not to exceed one year. Within the period of the lease, the tenant may not be required to move to allow an eligible applicant to obtain occupancy, should one become available. The Agency must make the following determinations:

(1) There are no eligible persons on a waiting list.

(2) The borrower provided documentation that a diligent but unsuccessful effort to rent any vacant units to an eligible tenant household has been made. Such documentation may consist of advertisements in appropriate publications, posting notices in several public places, including places where persons seeking rental housing would likely make contacts, holding open houses, making appropriate contacts with public housing agencies and organizations, Chambers of Commerce, and real estate agencies.

(3) The borrower agrees to continue with aggressive efforts to locate eligible tenants and retain documentation of all marketing.

(4) The borrower is temporarily unable to achieve or maintain a level of occupancy sufficient to prevent financial default and foreclosure. The Agency's approval of the waiver would then be for a limited duration.

(5) The lease agreement will not be more than 12 months and at its expiration will convert to a month-to-month lease. The monthly lease will require that the unit be vacated upon 30 days notice when an eligible applicant is available.

(6) Tenants residing in Rural Rental Housing (RRH) units who are ineligible because their adjusted annual income exceeds the maximum for the RRH project will be charged the Rural Housing Service (RHS) approved note rent for the size of unit occupied in a Plan II RRH project. In projects operated under Plan I, ineligible tenants will be charged a rental surcharge of 25 percent of the approved note rent.

(e) Tenant certification and verification. Tenants and borrowers must execute an Agency-approved tenant certification form establishing the tenant's eligibility prior to occupancy. In addition, tenant households must be recertified and must execute a tenant certification form at least annually or whenever a change in household income of $100 or more per month occurs. Borrowers must recertify for changes of $50 per month, if the tenant requests that such a change be made.

(1) Tenant requirements.

(i) Tenants must provide borrowers with the necessary income and other household information required by the Agency to determine eligibility.

(ii) Tenants must authorize borrowers to verify information provided to establish their eligibility or determination of tenant contribution.

(iii) Tenants must report all changes in household status that may affect their eligibility to borrowers.

(iv) Tenants who fail to comply with tenant certification and recertification requirements will be considered ineligible for occupancy and will be subject to unauthorized assistance claims, if applicable, as specified in subpart O of this part.

(2) Borrower requirements.

(i) Borrowers must verify household income and other information necessary to establish tenant eligibility for the requested rental unit type, in a format approved by the Agency, prior to a tenant's initial occupancy and prior to annual or other recertifications.

(ii) Borrowers must review all reported changes in household status and assess the impact of these changes on the tenant's eligibility or tenant contribution.

(iii) Borrowers must submit initial or updated tenant certification forms to the Agency within 10 days of the effective date of an initial certification or any changes in a tenant's status. The effective date of an initial or updated tenant certification form will always be a first day of the month.

(iv) Since tenant certifications are used to document interest credit and rental assistance eligibility and are a basic responsibility of the borrower under the loan documents, borrowers who fail to submit annual or updated tenant certification forms within the time period specified in paragraph (e)(2)(iii) of this section will be charged overage, as specified in §3560.203(c). Unauthorized assistance, if any, will be handled in accordance with subpart O of this part.

(v) Borrowers must submit tenant certification forms to the Agency using a format approved by the Agency.

(vi) Borrowers must retain executed tenant certification forms and any supporting documentation in the tenant file for at least 3 years or until the next Agency monitoring visit or compliance review, whichever is longer.

(3) The Agency maintains the right to independently verify tenant eligibility information.

§3560.153 Calculation of household income and assets.

(a) Annual income will be calculated in accordance with 24 CFR 5.609.

(b) Adjusted income will be calculated in accordance with 24 CFR 5.611.

§3560.154 Tenant selection.

(a) Application for occupancy. Borrowers must use tenant application forms that collect sufficient information to properly determine household eligibility and to enable the Agency to monitor compliance with the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, and title VI of the Civil Rights Act of 1964 during compliance reviews. At a minimum, borrowers must use application forms that collect the following information:

(1) Name of the applicant and present address;

(2) Number of household members and their birthdates;

(3) Annual income information calculated in accordance with §3560.153(a);

(4) Adjustments to income calculated in accordance with §3560.153(b);

(5) Net assets calculated in accordance with §3560.153(c);

(6) Indication of a need for a unit accessible to individuals with disabilities and any disability adjustments to income;

(7) Certification by the applicant that the unit will serve as the household's primary residence, and a certification that the applicant is a U.S. citizen or a qualified alien as defined in §3560.11;

(8) Signature of the applicant and date;

(9) Race, ethnicity, and sex designation. The following disclosure notice shall be used:

"The information regarding race, ethnicity, and sex designation solicited on this application is requested in order to assure the Federal Government, acting through the Rural Housing Service, that the Federal laws prohibiting discrimination against tenant applications on the basis of race, color, national origin, religion, sex, familial status, age, and disability are complied with. You are not required to furnish this information, but are encouraged to do so. This information will not be used in evaluating your application or to discriminate against you in any way. However, if you choose not to furnish it, the owner is required to note the race, ethnicity, and sex of individual applicants on the basis of visual observation or surname," and

(10) Social security number.

(b) Additional information. Applicants are to be provided a list of any additional information that must be submitted with the application for the application to be considered complete (an application will be considered complete without verification of the applicant information). The list of information will be restricted to the same items for all Agency-assisted properties of a particular type, such as a family or elderly complex.

(c) Application submission. Borrowers must establish when applications may be submitted. Information on the place and times for tenant application submission must be documented in the housing project's management plan and Affirmative Fair Housing Marketing Plan.

(d) Selection of eligible applicants.

(1) Applicants may be determined ineligible for occupancy based on selection criteria other than Agency requirements only if such criteria are contained in the borrower's management plan. Borrower established selection criteria may not contain arbitrary or discriminatory rejection criteria, but may consider an applicant's past rental and credit history and relations with other tenants.

(2) Borrowers with projects receiving low-income housing tax credits (LIHTCs), may leave a housing unit vacant if they are required to rent the available unit to an LIHTC-eligible applicant, and none of the applicants on the waiting list meet the applicable LIHTC eligibility requirements.

(e) Recordkeeping. Borrowers must retain all tenant application forms for at least 3 years. The Agency may require borrowers to submit application information for Agency review.

(f) Waiting lists.

(1) When an applicant has submitted an application form the borrower must place the applicant on the waiting list. All applications, whether complete, eligible, or ineligible, will be placed on the list. The waiting list will document the final disposition of all applications (rejected, withdrawn, or placed in a unit).

(2) The date and time a complete application was submitted will be recorded on the waiting list and will establish priority for selection from the list. If an applicant submits an incomplete application (see paragraph (a) of this section), they must be notified in writing within 10 days of the items that are needed for the application to be considered complete and that priority will not be established until the additional items are received.

(3) The race and the ethnicity of each applicant shall be recorded on the waiting list. This information shall be collected for statistical purposes only and must not be used when making eligibility determinations or in any other discriminatory manner. The information shall be recorded using the race and ethnicity codes that are utilized on the Agency tenant certification form available in the servicing office.

(4) Within 10 days of receipt of a complete application, the Borrower must notify the applicant in writing that he has been selected for immediate occupancy, placed on a waiting list, or rejected.

(5) Selections from the completed applications on the waiting list shall be made in the following priority order:

(i) Very low-income applicants;

(ii) Low-income applicants; and

(iii) Moderate-income applicants.

(g) Priorities and preferences for admission.

(1) Eligible applicants that meet the following conditions must be given priority for occupancy over all other tenants regardless of income. Such applicants, however, will be ranked among themselves by income level, giving priority first to very low-income households, then to low-income households, and finally to moderate-income households.

(i) Persons who require the special design features of a unit accessible to individuals with disabilities will have priority only for units with these features.

(ii) In congregate housing facilities, persons who agree to use the services provided by the facility will have priority over other applicants.

(2) Eligible applicants that meet any of the following conditions must be given priority over other applicants in their same income category.

(i) The applicant has a Letter of Priority Entitlement (LOPE) issued in accordance with §3560.660(c).

(ii) The applicant was displaced from Agency-financed housing but was not issued a LOPE.

(iii) The applicant was displaced in a Federally declared disaster area.

(3) Borrowers receiving Section 8 project-based assistance may establish preferences in accordance with U.S. Department of Housing and Urban Development (HUD) regulations. The use of such preferences must be documented in the project's management plan.

(h) Notices of ineligibility or rejection. Borrowers must provide written notification to applicants who are determined to be ineligible or who are rejected for occupancy. Notices of ineligibility or rejection must give specific reasons for the ineligibility determination or rejection and, in accordance with §3560.160, the notice must advise the applicant of "the right to respond to the notice within ten calendar days after receipt" and of "the right to a hearing in accordance with §3560.160 which is available upon request." When an applicant is rejected based on the information from a credit bureau report, the source of the credit bureau report must be revealed to the applicant in accordance with the Fair Credit Reporting Act.

(i) Purging waiting list. Procedures used by borrowers to purge waiting list must be documented in the project's management plan and must be based on the length of the waiting list or the extent of time an applicant will be expected to wait for housing. At a minimum, borrowers must document removal of any names from the waiting list with the time and date of the removal. If an electronic waiting list is used, borrowers must periodically print out electronic waiting lists or preserve backup copies showing how the waiting list appeared before and after the removal of each name.

(j) Criminal activity. Borrowers may deny admission for criminal activity or alcohol abuse by household members in accordance with the provisions of 24 CFR 5.854, 5.855, 5.856, and 5.857.

§3560.155 Assignment of rental units and occupancy policies.

(a) General. Available rental units are assigned in accordance with the requirements of this section and the priorities and preferences outlined in §3560.154.

(b) Rental units accessible to individuals with disabilities. If a rental unit accessible to individuals with disabilities is available and there are no applicants that require the features of the unit, borrowers may rent the unit to a non-disabled tenant subject to the inclusion of a lease provision that requires the tenant to vacate the unit within 30 days of notification from management that an eligible individual with disabilities requires the unit and provided the accessible unit has been marketed as an accessible unit, outreach has been made to organizations representing the disabled, and marketing of the unit as an accessible unit continues after it has been rented to a tenant who is not in need of the special design features.

(c) Transfer of existing tenants within a housing project. When a rental unit becomes available for occupancy and an eligible tenant in the housing project is either over housed or under housed as provided for in paragraph (e) of this section, the borrower must use the available unit for the over housed or under housed tenant, if suitable, prior to selecting an eligible applicant from the waiting list.

(d) Applicant placement. When a specific rental unit type becomes available for occupancy, borrowers must select eligible applicants suitable for the available unit according to the priorities established in §3560.154.

(e) Occupancy policies. Borrowers must establish occupancy policies for each housing project. Households living in a rental unit with more bedrooms than persons in the household will be considered over housed and must be relocated in accordance with paragraph (c) of this section. Households under housed as defined by the project's occupancy standards must be relocated in accordance with paragraph (c) of this section. Borrowers with no one-bedroom units in a housing project may make an exception to this requirement in their occupancy policies. In addition, a borrower's occupancy policies must establish:

(1) Reasonable standards for determining when a tenant household is considered under housed. The standards will describe the maximum number of persons that may occupy units of a given size based on occupancy guidelines provided by the Agency or another governmental source;

(2) The order in which eligible applicants and existing tenants will be housed or re-housed; and

(3) How fair housing requirements will be met, including how reasonable accommodations will be made for applicants and tenants with disabilities.

(f) Agency concurrence. The Agency must concur with a borrower's occupancy rules prior to initial occupancy of the housing project. All modifications to occupancy rules must be posted for tenant comment in accordance with §3560.160 and receive Agency concurrence prior to implementation.

§3560.156 Lease requirements.

(a) Agency approval. Borrowers must use a lease approved by the Agency. The lease must be consistent with Agency requirements and the requirements of all programs participating in the housing project. Prior to submitting the lease to the Agency for approval, borrowers must have their attorney certify that the lease complies with state and local laws, Agency requirements, and the requirements of all programs participating in the housing project. If there are conflicting requirements the borrower shall notify the Agency of the conflict and request guidance. Borrowers must execute their Agency approved lease with each tenant household prior to tenant occupancy of a rental unit.

(b) Lease requirements.

(1) All leases must be in writing.

(2) Initial leases must be for a 1-year period.

(3) If the tenant is not subject to occupancy termination according to §3560.158 and §3560.159, a renewal lease or lease extension must be for a 1-year period.

(4) In areas with a concentration of non-English speaking populations, leases (including the occupancy rules) must be available in both English and the non-English language.

(5) Leases must give the address of the management agent to which tenants may direct complaints.

(6) Leases must include a statement of the terms and conditions for modifying the lease.

(c) Required items and provisions.

(1) Leases for tenants who hold a Letter of Priority Entitlement (LOPE) issued according to §3560.655(d) and are temporarily occupying a unit for which they are not eligible must include a clause establishing the tenant's responsibility to move when a suitable unit becomes available in the housing project.

(2) Leases must contain a clause permitting escalation in the tenant contribution when there is an Agency-approved change in basic or note rate rents prior to the expiration of the lease. The escalation clause also must specify that the tenant contribution may be changed prior to expiration of the lease if the change is due to changes in tenant status, as documented on the tenant certification form, or the tenant's failure to properly recertify.

(3) Leases must specify that no change in the tenant contribution will occur due to monetary or non-monetary default or when rental assistance or interest credit, is suspended, canceled, or terminated due to the borrower's fault. For information on tenant contributions when a borrower prepays the Agency loan, refer to subpart N of this part.

(4) Leases must contain a requirement that tenants make restitution when unauthorized assistance is received due to applicant or tenant fraud or misrepresentation and a statement advising tenants that submission of false information could result in legal action.

(5) Leases must include a statement that the housing project is financed by the Agency and that the Agency has the right to further verify information provided by the applicant.

(6) Leases must state that the housing project is subject to:

(i) Title VI of the Civil Rights Act of 1964;

(ii) Title VIII of the Fair Housing Act;

(iii) Section 504 of the Rehabilitation Act of 1973; and

(iv) The Age Discrimination Act of 1975.

(7) Leases must establish the tenant's responsibility according to the housing project's occupancy rules to move to the next available appropriately sized rental unit if the household becomes over housed or under housed in the unit they occupy.

(8) Leases must include provisions that establish when a guest will be considered a member of the household and be required to be added to the tenant certification.

(9) Leases must include a provision stating that tenancy continues until the tenant's possessions are removed from the housing either voluntarily or by legal means, subject to state and local law.

(10) Leases must include a requirement that tenants who are no longer eligible for occupancy under the housing project's occupancy rules or do not meet the criteria set forth in §3560.155(c) and (e) must vacate the property within 30 days of being notified by the borrower that they are no longer eligible for occupancy or at the expiration of their lease, or whichever is greater, unless the conditions cited in §3560.158(c) exist;

(11) Leases for rental units receiving rental assistance must include clauses that specify that the tenant's monthly tenant contribution and a description of the circumstances under which the tenant's contribution may change.

(12) Leases must include a requirement that tenants notify borrowers when changes occur in their income or assets, their qualifications for adjustments to income, their citizenship status, or the number of persons living in the unit.

(13) A requirement that tenants agree to fulfill the tenant income verification and certification requirements established under §3560.152.

(14) Leases for tenants living in Plan II interest credit rental units must include provisions establishing the net monthly tenant contribution.

(15) Leases, including renewals, must include the following language:

“It is understood that the use, or possession, manufacture, sale, or distribution of an illegal controlled substance (as defined by local, State, or federal law) while in or on any part of this apartment complex or cooperative is an illegal act. It is further understood that such action is a material lease violation. Such violations (hereafter called a “drug violation”) may be evidenced upon the admission to or conviction of the use, possession, manufacture, sale, or distribution of a controlled substance (as defined by local, state, or Federal law) in any local, state, or Federal court.

The landlord may require any lessee or other adult member of the tenant household occupying the unit (or other adult or non-adult person outside the tenant household who is using the unit) who commits a drug violation to vacate the leased unit permanently, within timeframes set by the landlord, and not thereafter to enter upon the landlord's premises or the lessee's unit without the landlord's prior consent as a condition for continued occupancy by the remaining members of the tenant's household. The landlord may deny consent for entry unless the person agrees to not commit a drug violation in the future and is either actively participating in a counseling or recovery program, complying with court orders related to a drug violation, or has successfully completed a counseling or recovery program.

The landlord may require any lessee to show evidence that any non-adult member of the tenant household occupying the unit, who committed a drug violation, agrees not to commit a drug violation in the future, and to show evidence that the person is either actively seeking or receiving assistance through a counseling or recovery program, complying with court orders related to a drug violation, or has successfully completed a counseling or recovery program within timeframes specified by the landlord as a condition for continued occupancy in the unit. Should a further drug violation be committed by any non-adult person occupying the unit the landlord may require the person to be severed from tenancy as a condition for continued occupancy by the lessee.

If a person vacating the unit, as a result of the above policies, is one of the lessees, the person shall be severed from the tenancy and the lease shall continue among any other remaining lessees and the landlord. The landlord may also, at the option of the landlord, permit another adult member of the household to be a lessee.

Should any of the above provisions governing a drug violation be found to violate any of the laws of the land the remaining enforceable provisions shall remain in effect. The provisions set out above do not supplant any rights of tenants afforded by law."

(16) Leases for rental units accessible to individuals with disabilities occupied by those not needing the accessibility features must establish the tenant's responsibility to move to another unit when an appropriate unit becomes available or when the unit is needed by an eligible individual with disabilities. Additionally, the lease clause must require the borrower to provide tenants written notification of the date by which they must move to another unit in the project.

(17) If loan prepayment occurs and the housing project is subject to restrictive use provisions, leases and renewals must be amended to include a clause specifying the tenant protections required under subpart N of this part.

(18) All leases must contain the following information and provisions:

(i) The name of the tenant, any co-tenants, and all members of the household residing in the rental unit;

(ii) The identification of the rental unit;

(iii) The amount and due date of monthly tenant contributions, any late payment penalties, and security deposit amounts;

(iv) The utilities, services, and equipment to be provided for the tenant;

(v) The tenant's utility payment responsibility;

(vi) The certification process for determining tenant occupancy eligibility and contribution;

(vii) The limitations of the tenant's right to use or occupancy of the dwelling;

(viii) The tenant's responsibilities regarding maintenance and consequences if the tenant fails to fulfill these responsibilities;

(ix) The agreement of the borrower to accept the tenant contribution toward rent charges prior to payment of other charges that the tenant owes and a statement that borrowers may seek legal remedy for collecting other charges accrued by the tenant;

(x) The maintenance responsibilities of the borrower in buildings and common areas, according to state and local codes, Agency regulations, and Federal fair housing requirements;

(xi) The responsibility of the borrowers at move-in and move-out to provide the tenant with a written statement of rental unit's condition and provisions for tenant participation in inspection;

(xii) The provision for periodic inspections by the borrower and other circumstances under which the borrower may enter the premises while a tenant is renting;

(xiii) The tenant's responsibility to notify the borrower of an extended absence;

(xiv) A provision that tenants may not assign the lease or sublet the property;

(xv) A provision regarding transfer of the lease if the housing project is sold to an Agency-approved buyer;

(xvi) The procedures that must be followed by the borrower and the tenant in giving notices required under terms of the lease including lease violation notices;

(xvii) The good-cause circumstances under which the borrower may terminate the lease and the length of notice required;

(xviii) The disposition of the lease if the housing project becomes uninhabitable due to fire or other disaster, including rights of the borrower to repair building or terminate the lease;

(xix) The procedures for resolution of tenant grievances consistent with the requirements of §3560.160;

(xx) The terms under which a tenant may, for good cause, terminate their lease, with 30 days notice, prior to lease expiration; and

(xxi) The signature and date clause indicating that the lease has been executed by the borrower and the tenant.

(d) Prohibited provisions. Borrowers are prohibited from including any of the following clauses in the lease:

(1) Clauses prohibiting families with children under 18;

(2) Clauses requiring prior consent by tenant to any lawsuit that borrowers may bring against the tenant in connection with the lease;

(3) Clauses authorizing borrowers to hold any of a tenant's property until the tenant fulfills an obligation;

(4) Clauses in which tenants agree not to hold borrowers liable for anything they may do or fail to do;

(5) Clauses in which tenants agree that borrowers may institute suit without any notice to the tenant that the suit has been filed;

(6) Clauses in which tenants agree that borrowers may evict the tenant or sell their possessions whenever borrowers determine that a breach or default has occurred;

(7) Clauses authorizing the borrower's attorneys to appear in court on behalf of the tenant, and to waive the tenant's right to a trial by jury;

(8) Clauses authorizing the borrower's attorneys to waive the tenant's right to appeal or to file suit; and

(9) Clauses requiring the tenant to agree to pay legal fees and court costs whenever the borrower takes action against the tenant, even if the court finds in favor of the tenant.

(e) Housing projects and units receiving HUD assistance.

(1) In housing projects receiving Section 8 project-based assistance, borrowers may use the HUD model lease. The provisions of the HUD model lease will prevail, unless they conflict with Agency lease requirements in accordance with this section. If there is conflict between HUD requirements and Agency requirements, the provision that will be enforced will be the one that is most favorable to the tenant.

(2) For units occupied by Section 8 certificate and voucher holders, borrowers may use:

(i) A standard HUD-approved lease;

(ii) A HUD-approved lease that includes a number of modifications from the standard HUD-approved lease; or

(iii) An Agency-approved lease may be used if acceptable by HUD or the local housing authority.

(f) State and local requirements. Borrowers must use a lease that is consistent with state and local requirements.

(1) If any lease provision is in violation of state or local law, the lease may be modified to the extent needed to comply with the law, but any changes must be consistent with the provisions established in paragraph (c) of this section.

(2) Leases must include a procedure for handling tenant's abandoned property, as provided by state or local law.

§3560.157 Occupancy rules.

(a) General. The purpose of a borrower's occupancy rules is to outline the basis for the tenant and management relationship. Prior to Agency approval of occupancy rules, borrowers must provide written certification from their attorney that the housing project's occupancy rules are consistent with applicable Federal, state, and local laws, as well as Agency requirements, and the requirements of all programs participating in the housing project. Borrowers must obtain Agency approval of the occupancy rules prior to initial occupancy and obtain Agency approval prior to the implementation date of any subsequent modifications to the rules.

(b) Requirements. The occupancy rules must be in writing and posted for easy tenant access. A copy of these rules must be attached to the tenant's lease upon initial occupancy. At a minimum, the occupancy rules must address:

(1) The tenant's rights and responsibilities under the lease or occupancy agreement;

(2) The rent payment or occupancy charge policies;

(3) The policies regarding periodic inspection of units;

(4) The system for responding to tenant complaints;

(5) The maintenance request and work order procedures;

(6) The housing services and facilities available to tenants or members;

(7) The office locations, hours, and emergency telephone numbers;

(8) The restrictions on storage and prohibitions on non-functional vehicles in the housing project area;

(9) Other requirements related to a subsidy provided to a tenant from non-Agency sources;

(10) When a guest becomes a member of the tenant household; and

(11) The procedures tenants must follow to request reasonable accommodations.

(c) Modification of occupancy rules. The Agency must concur with any modification to the occupancy rules prior to implementation. Proper notice must be given to each tenant at least 30 days in advance of implementation of such rules in accordance with §3560.160.

(d) Federal, state and local requirements. The occupancy rules must be consistent with Federal, state, and local law.

(e) Pets/Assistance Animals. All housing projects should establish reasonable written pet rules. No rules may be promulgated that would prevent occupancy by a household member who requires a service or assistance animal. In elderly housing, borrowers must not prohibit tenants from keeping domestic animals in their rental units as pets.

(f) Tenant organizations. Borrowers must not infringe on the rights of tenants to organize an association of tenants. Borrowers (or a designated management representative) should be available and willing to work with a tenant organization.

(g) Community rooms. Borrowers may not place unreasonable restrictions on tenants that desire to use a community room.

§3560.158 Changes in tenant eligibility.

(a) General requirements. Tenants must continue to meet the requirements of §3560.152 to remain eligible for occupancy.

(b) Tenants no longer eligible. Tenants who are no longer eligible for occupancy under the housing project's occupancy rules or do not meet the criteria set forth in §3560.155(c) and (e) must vacate the property within 30 days of being notified by the borrower that they are no longer eligible for occupancy or at the expiration of their lease, whichever is greater, unless the conditions specified in paragraph (c) of this section exist.

(c) Temporary continuation of tenancy. If conditions described in §3560.454(b) or the following conditions exist, borrowers may permit tenants who are no longer eligible for occupancy to continue to reside at the housing project with prior approval of the Agency.

(1) The waiting list for the specific rental unit type has no eligible applicants; or

(2) The required time period for vacating the rental unit would create a hardship on the tenant household.

(d) Surviving and remaining household members.

(1) Members of a household may continue to reside in a housing project after the departure or death of the tenant or co-tenant, provided that:

(i) They are eligible with respect to adjusted income;

(ii) They occupied a rental unit in the housing project at the time of the departure or death of the tenant or co-tenant;

(iii) They execute a tenant certification form establishing their own tenancy; and

(iv) They have the legal ability to sign a lease for the rental unit, except where a legal guardian may sign when the tenant or member is otherwise eligible.

(2) Surviving or remaining members of the household may remain in the housing project, taking into consideration the conditions of paragraph (d)(1) of this section, but must move to a suitably sized rental unit within 30 days of its availability.

(3) After the death of a tenant or co-tenant in elderly housing, the surviving members of the household, regardless of age but taking into consideration the conditions of paragraph (d)(1) of this section, may remain in the rental unit in which they were residing at the time of the tenant's or co-tenant's death, even if the household is over housed according to the housing project's occupancy rules as follows:

(i) Continued occupancy of the rental unit will not be allowed when in either situation of paragraph (d)(1) or (d)(3) of this section, the rental unit has accessibility features for individuals with disabilities, the household no longer has a need for such accessibility features, and the housing project has a tenant application from an individual with a need for the accessibility features;

(ii) If the housing project does not have a tenant application from an individual with a need for the accessibility features, the household may remain in the rental unit with such features until the housing project receives an application from an individual with a need for accessibility features. The household in the unit with accessibility features will be required to move within 30 days of the housing project's receipt of a tenant application requiring accessibility features if another suitably sized unit without accessibility features is available in the project. If a suitably sized unit is not available in the project within 30 days, the tenant may remain in the unit with accessibility features until the first available unit in the project becomes available and then must move within 30 days.

§3560.159 Termination of occupancy.

(a) Tenants in violation of lease. Borrowers, in accordance with lease agreements, may terminate or refuse to renew a tenant's lease only for material non-compliance with the lease provisions, material non-compliance with the occupancy rules, or other good causes. Prior to terminating a lease, the borrower must give the tenant written notice of the violation and give the tenant an opportunity to correct the violation. Subsequently, termination may only occur when the incidences related to the termination are documented and there is documentation that the tenant was given notice prior to the initiation of the termination action that their activities would result in occupancy termination.

(1) Material non-compliance with lease provisions or occupancy rules, for purposes of occupancy termination by a borrower, includes actions such as:

(i) Violations of lease provisions or occupancy rules that are substantial and/or repeated;

(ii) Non-payment or repeated late payment of rent or other financial obligations due under the lease or occupancy rules; or

(iii) Admission to or conviction for use, attempted use, possession, manufacture, selling, or distribution of an illegal controlled substance when such activity occurred on the housing project's premises by the tenant, a member of the tenant's household, a guest of the tenant, or any other person under the tenant's control at the time of the activity.

(2) Good causes, for purposes of occupancy terminations by a borrower, include actions such as:

(i) Actions by the tenant or a member of the tenant's household which disrupt the livability of the housing by threatening the health and safety of other persons or the right of other persons to enjoyment of the premises and related facilities;

(ii) Actions by the tenant or a member of the tenant's household which result in substantial physical damage causing an adverse financial effect on the housing or the property of other persons; or

(iii) Actions prohibited by state and local laws.

(b) Lease expiration or tenant eligibility. A tenant's occupancy in an Agency-financed housing project may not be terminated by a borrower when the lease agreement expires unless the tenant's actions meet the conditions described in paragraph (a) of this section, or the tenant is no longer eligible for occupancy in the housing. Borrowers must handle terminations of occupancy due to a change in tenant eligibility status in accordance with §3560.158. At a minimum, the occupancy termination notice must include the following information:

(1) A specific date by which lease termination will occur;

(2) A statement of the basis for lease termination with specific reference to the provisions of the lease or occupancy rules that, in the borrower's judgment, have been violated by the tenant in a manner constituting material non-compliance or good cause; and

(3) A statement explaining the conditions under which the borrower may initiate judicial action to enforce the lease termination notice.

(c) Other terminations. If occupancy is terminated due to conditions which are beyond the control of the tenant, such as a condition related to required repair or rehabilitation of the building, or a natural disaster, the tenants who are affected by such a circumstance are entitled to benefits under the Uniform Relocation Act and may request a Letter of Priority Entitlement (LOPE) from the Agency. If tenants need additional time to secure replacement housing, the Agency may, at the tenant's request, extend the LOPE entitlement period.

(d) Criminal activity. Borrowers may terminate tenancy for criminal activity or alcohol abuse by household members in accordance with the provisions of 24 CFR 5.858, 5.859, 5.860, and 5.861.

§3560.160 Tenant grievances.

(a) General.

(1) The requirements established in this section are designed to ensure that there is a fair and equitable process for addressing tenant or prospective tenant concerns and to ensure fair treatment of tenants in the event that an action or inaction by a borrower, including anyone designated to act for a borrower, adversely affects the tenants of a housing project.

(2) Any tenant/member or prospective tenant/member seeking occupancy in or use of Agency facilities who believes he or she is being discriminated against because of age, race, color, religion, sex, familial status, disability, or national origin may file a complaint in person with, or by mail to the U.S. Department of Agriculture's Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW., Washington DC 20250-9410 or to the Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development (HUD), Washington, DC 20410. Complaints received by Agency

employees must be directed to the National Office Civil Rights Staff through the State Civil Rights Manager/Coordinator.

(b) Applicability.

(1) The requirements of this section apply to a borrower action regarding housing project operations, or the failure to act, that adversely affects tenants or prospective tenants.

(2) This section does not apply to the following situations:

(i) Rent changes authorized by the Agency in accordance with the requirements of §3560.203(a);

(ii) Complaints involving discrimination which must be handled in accordance with §3560.2(b) and paragraph (a)(2) of this section;

(iii) Housing projects where an association of all tenants has been duly formed and the association and the borrower have agreed to an alternative method of settling grievances;

(iv) Changes required by the Agency in occupancy rules or other operational or management practices in which proper notice and opportunity have been given according to law and the provisions of the lease;

(v) Lease violations by the tenant that would result in the termination of tenancy and eviction;

(vi) Disputes between tenants not involving the borrower; and

(vii) Displacement or other adverse actions against tenant as a result of loan prepayment handled according to subpart N of this part.

(c) Borrower responsibilities. Borrowers must permanently post tenant grievance procedures that meet the requirements of this section in a conspicuous place at the housing project. Borrowers also must maintain copies of the tenant grievance procedure at the housing project's management office for inspection by the tenants and the Agency upon request. Each tenant must receive an Agency summary of tenant's rights when a lease agreement is signed. If a housing project is located in an area with a concentration of non-English speaking individuals, the borrower must provide grievance procedures in both English and the non-English language. The notice must include the telephone number and address of USDA's Office of Civil Rights and the appropriate Regional Fair Housing and Enforcement Agency.

(d) Reasons for grievance. Tenants or prospective tenants may file a grievance in writing with the borrower in response to a borrower action, or failure to act, in accordance with the lease or Agency regulations that results in a denial, significant reduction, or termination of benefits or when a tenant or prospective tenant contests a borrower's notice of proposed adverse action as provided in paragraph (e) of this section. Acceptable reasons for filing a grievance may include:

(1) Failure to maintain the premises in such a manner that provides decent, safe, sanitary, and affordable housing in accordance with §3560.103 and applicable state and local laws;

(2) Borrower violation of lease provisions or occupancy rules;

(3) Modification of the lease;

(4) Occupancy rule changes;

(5) Rent changes not authorized by the Agency according to §3560.205; or

(6) Denial of approval for occupancy.

(e) Notice of adverse action. In the case of a proposed action that may have adverse consequences for tenants or prospective tenants such as denial of admission to occupancy and changes in the occupancy rules or lease, the borrower must notify the tenant or prospective tenant in writing. In the case of a Borrower's proposed adverse action including denial of admission to occupancy, the Borrower shall notify the applicant/tenant in writing. The notice must be delivered by certified mail return receipt requested or a hand-delivered letter with a signed and dated acknowledgement of receipt from the applicant/tenant. The notice must give specific reasons for the proposed action. The notice must also advise the tenant or prospective tenant of "the right to respond to the notice within ten calendar days after date of the notice" and of "the right to a hearing in accordance with §3560.160 (f), which is available upon request." The notice must contain the information specified in paragraph (a)(2) of this section. For housing projects in areas with a concentration of non-English speaking individuals, the notice must be in English and the non-English language.

(f) Grievances and responses to notice of adverse action. The following procedures must be followed by tenants, prospective tenants, or borrowers involved in a grievance or a response to an adverse action.

(1) The tenant or prospective tenant must communicate to the borrower in writing any grievance or response to a notice within 10 calendar days after occurrence of the adverse action or receipt of a notice of intent to take an adverse action.

(2) Borrowers must offer to meet with tenants to discuss the grievance within 10 calendar days of receiving the grievance. The Agency encourages borrowers and tenants or prospective tenants to make an effort to reach a mutually satisfactory resolution to the grievance at the meeting.

(3) If the grievance is not resolved during an informal meeting to the tenant or prospective tenant's satisfaction, the borrower must prepare a summary of the problem and submit the summary to the tenant or prospective tenant and the Agency within 10 calendar days The summary should include: The borrower's position; the applicant/tenant's position; and the result of the meeting. The tenant also may submit a summary of the problem to the Agency.

(g) Hearing process. The following procedures apply to a hearing process.

(1) Request for hearing. If the tenant or prospective tenant desires a hearing, a written request for a hearing must be submitted to the borrower within 10 calendar days after the receipt of the summary of any informal meeting.

(2) Selection of hearing officer or hearing panel. In order to properly evaluate grievances and appeals, the borrower and tenant must select a hearing officer or hearing panel. If the borrower and the tenant cannot agree on a hearing officer, then they must each appoint a member to a hearing panel and the members selected must appoint a third member. If within 30 days from the date of the request for a hearing, the tenant and borrower have not agreed upon the selection of a hearing officer or hearing panel, the borrower must notify the Agency by mail of the situation. The Agency will appoint a person to serve as the sole hearing officer. The Agency may not appoint a hearing officer who was earlier considered by either the borrower or the tenant, in the interest of ensuring the integrity of the process.

(3) Standing hearing panel. In lieu of the procedure contained in paragraph (g)(2) of this section for each grievance or appeal presented, a borrower may ask the Agency to approve a standing hearing panel for the housing project.

(4) Examination of records. The borrower must allow the tenant the opportunity, at a reasonable time before a hearing and at the expense of the tenant, to examine or copy all documents, records, and policies of the borrower that the borrower intends to use at a hearing unless otherwise prohibited by law or confidentiality agreements.

(5) Scheduling of hearing. If a standing hearing panel has been approved, a hearing will be scheduled within 15 calendar days after receipt of the tenant's or prospective tenant's request for a hearing. If a hearing officer or hearing panel must be selected, a hearing will be scheduled within 15 calendar days after the selection or appointment of a hearing panel or a hearing officer. All hearings will be held at a time and place mutually convenient to both parties. If the parties cannot agree on a meeting place or time, the hearing officer or hearing panel will designate the place and time.

(6) Escrow deposits. If a grievance involves a rent increase not authorized by the Agency, or a situation where a borrower fails to maintain the property in a decent, safe, and sanitary manner, rental payments may be deposited by the tenant into an escrow account, provided the tenant's rental payments are otherwise current.

(i) The escrow account deposits must continue until the complaint is resolved through informal discussion or by the hearing officer or panel.

(ii) The escrow account must be in a Federally-insured institution or with a bonded independent agent.

(iii) Failure to make timely rent payments into the escrow account will result in a termination of the tenant grievance and appeals procedure and all sums will immediately become due and payable under the lease.

(iv) Receipts of escrow account deposits must be available for examination by the borrower.

(7) Failure to request a hearing. If the tenant or prospective tenant does not request a hearing within the time provided by paragraph (f)(1) of this section, the borrower's disposition of the grievance or appeal will become final.

(h) Requirements governing the hearing. The following requirements will govern the hearing process.

(1) Subject to paragraph (f)(2) of this section, the hearing will proceed before a hearing officer or hearing panel at which evidence may be received without regard to whether that evidence could be used in judicial proceedings.

(2) The hearing must be structured so as to provide basic due process safeguards for both the borrower and the tenants or prospective tenants, which must protect:

(i) The right of both parties to be represented by counsel or other person chosen as their representative;

(ii) The right of the tenant or prospective tenant to a private hearing unless a public hearing is requested;

(iii) The right of the tenant or prospective tenant to present oral or written evidence and arguments in support of their grievance or appeal and to cross-examine and refute the evidence of all witnesses on whose testimony or information the borrower relies; and

(iv) The right of the borrower to present oral and written evidence and arguments in support of the decision, to refute evidence relied upon by the tenant or prospective tenant, and to confront and cross-examine all witnesses in whose testimony or information the tenant or prospective tenant relies.

(3) At the hearing, the tenant or prospective tenant must present evidence that they are entitled to the relief sought, and the borrower must present evidence showing the basis for action or failure to act against that which the grievance or appeal is directed.

(4) The hearing officer or hearing panel must require that the borrower, the tenant or prospective tenant, counsel, and other participants or spectators conduct themselves in an orderly manner. Failure to comply may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate.

(5) If either party or their representative fails to appear at a scheduled hearing, the hearing officer or hearing panel may make a determination to postpone the hearing for no more than five days or may make a determination that the absent party has waived their right to a hearing under this subpart. If the determination is made that the absent party has waived their rights, the hearing officer or hearing panel will make a decision on the grievance. Both the tenant or prospective tenant and the borrower must be notified in writing of the determination of the hearing officer or hearing panel.

(i) Decision. Hearing decisions must be issued in accordance with the following requirements.

(1) The hearing officer or hearing panel has the authority to affirm or reverse a borrower's decision.

(2) The hearing officer or hearing panel must prepare a written decision, together with the reasons thereof based solely and exclusively upon the facts presented at the hearing within 10 calendar days after the hearing. The notice must state that the decision is not effective for 10 calendar days to allow time for an Agency review as specified in paragraphs (i)(3) and (i)(4) of this section.

(3) The hearing officer or hearing panel must send a copy of the decision to the tenant, or prospective tenant, borrower, and the Agency.

(4) The decision of the hearing officer or hearing panel shall be binding upon the parties to the hearing unless the parties to the hearing are notified within 10 calendar days by the Agency that the decision is not in compliance with Agency regulations.

(5) Upon receipt of written notification from the hearing officer or hearing panel, the borrower and tenant must take the necessary action, or refrain from any actions, specified in the decision.

§§3560.161-3560.199 [Reserved]

§3560.200 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart E--Rents

§3560.201 General.

This subpart sets forth the requirements for establishing and collecting rents charged to occupants of multi-family housing (MFH) projects financed by the Agency.

§3560.202 Establishing rents and utility allowances.

(a) General. Rents and utility allowances for rental units in Agency-financed housing projects are set by the borrower and must be based on the operating, management and maintenance expenses and other costs related to the housing project including loan payment amounts due to the Agency.

(b) Agency approval. All rents and utility allowances set by borrowers are subject to Agency approval.

(c) Rents. As applicable, borrowers must establish the following rents:

(1) Note rent;

(2) Basic rent;

(3) U.S. Department of Housing and Urban Development (HUD) contract rents; and

(4) Low-income housing tax credit (LIHTC) rents.

(d) Utility allowances. In projects where tenants pay the utilities, borrowers must establish utility allowances for each size and type of rental unit in the housing project based on estimated utility costs. Borrowers must review utility allowances annually, adjust for accuracy, and submit any utility allowance changes to the Agency for approval. If no changes are needed, the borrower must notify the Agency that no changes were made. Documentation to justify utility allowances must be maintained in the housing project files.

(e) Funds contributed to reduce rents. If borrowers use funds contributed from sources other than the Agency (e.g., state or local grants, private contributions) to reduce general operating and management expenses, housing project rents must be reduced to reflect the funding being used to offset housing project expenses. When funds contributed from sources other than the Agency are used for housing project expenses, the borrower must certify to the Agency, in writing, that the funds provided will not need to be repaid with Agency funds. Funds from borrower contributions or rehabilitation loans will not be counted towards reducing rents.

(f) Rents for resident manager, caretaker, or owner-occupied unit.

(1) If approved as a part of a management plan, a borrower may occupy a rental unit in a housing project when they are acting as a management agent or resident manager as specified in §3560.102(e).

(2) If the rental unit being occupied by a borrower or resident manager is designated as a revenue-producing unit, borrowers must calculate the rental charge to the borrower or resident manager in the same manner as tenant contributions.

(3) If the rental unit being occupied by a borrower or resident manager is designated as a non-revenue producing unit, borrowers must treat the cost of providing the unit the same as other non-revenue producing portions of the housing project.

(g) LIHTC. Borrowers who receive LIHTCs may establish rents in accordance with LIHTC requirements. However, borrowers are obligated to ensure that sufficient annual funds are available to cover expenses in the housing project's approved budget, including the required payments on the borrower's Agency loan. Borrowers must not use housing project funds to make up any difference between rents required under Agency program requirements and the maximum allowed rents under the LIHTC program.

§3560.203 Tenant contributions.

(a) Tenant contributions. A tenant's contribution to rent charged for a rental unit in an Agency financed housing project is based on the tenant's income, as calculated on the Agency's tenant certification forms, and the availability of Agency or non-Agency rental subsidies.

(1) Tenant contributions. Borrowers must set tenant contributions to rent at the highest of the following standards but never more than the note rent:

(i) Thirty percent of monthly adjusted income;

(ii) Ten percent of gross monthly income;

(iii) An amount equal to the portion of an assistance payment specifically designated to meet the household's shelter costs if the household is receiving assistance payments from a public agency; or

(iv) The basic rent, unless RHS rental assistance is provided to the household.

(2) Tenant contribution surcharge. Tenants in a Plan I housing project with incomes above the eligibility standards set in §3560.152(a)(1) must pay a 25 percent surcharge in addition to note rent.

(b) Adjustment of tenant contribution. Borrowers must adjust the tenant contribution whenever there is a change in tenant household status or income sufficient to generate a revised tenant certification in accordance with §3560.152(e) or an Agency approved rent or utility allowance change that affects the tenant contribution amount.

(c) Overage. If a tenant's tenant contribution is higher than basic rent, borrowers must remit to the Agency the rent collected in excess of the basic rent and up to the note rent.

§3560.204 Security deposits and membership fees.

(a) General. Borrowers may collect security deposits when it is reasonable and customary for the area in which the housing is located. Borrowers must hold security deposits in a separate bank or bookkeeping account in accordance with §3560.302(c)(3).

(b) Allowable amounts. Borrowers may charge security deposits that are typical for the area in which the housing is located, as long as the security deposit charged a tenant does not exceed that tenant's net contribution for one month's rent or basic rent, whichever is greater.

(1) As noted in §3560.102(b)(1)(viii) and §3560.156(c)(18)(iii), borrowers must specify in the housing project's management plan how the amount to be charged as a security deposit will be established and must specify the amount to be charged to individual tenants in the lease to be signed by the tenant.

(2) Borrowers may charge security deposits to households receiving HUD assistance in accordance with HUD requirements.

(3) Members of a cooperative shall be required to pay a membership fee no greater than one month's occupancy charge.

(4) Additional security deposits for pets may be charged as long as the additional deposit is not greater than basic rent for 1 month. No additional security deposit for assistance animals is allowed where an assistance animal is necessary for the normal functioning of a household member with a disability.

(5) Borrowers must not charge additional security deposits based on disabilities of tenants or other personal characteristics.

(c) Payment plans. Borrowers must offer, for persons who are eligible for rental assistance or Section 8 assistance, the option of paying the security deposit on an installment payment plan. Should installments not be met, the total charge may become due and payable in full.

(d) Charges for damage or loss. Borrowers may charge tenants for damage or loss caused or allowed by the tenant equal to the cost of the damage or loss.

(1) Borrowers must consider expenses due for addressing normal wear and tear as normal operating expenses and must not charge tenants a fee or withhold security deposits to pay for such costs.

(2) Borrowers may withhold security deposits and may charge tenants for damage or loss costs above security deposit amounts.

(e) State and local security deposit requirements. Borrowers must follow all state and local laws and other requirements governing the handling and disposition of security deposits.

(1) Resolution of any security deposit disputes must be handled in accordance with state and local law.

(2) Any interest earned on security deposits will accrue in accordance with state law.

(f) Unclaimed security deposits. Any funds in the housing project's security deposit account unclaimed by a tenant must be deposited into the housing project's general operating account.

§3560.205 Rent and utility allowance changes.

(a) General. Borrowers must fully document that changes to rents and utility allowances are necessary to cover housing or utility costs allowed under the approved budget for the housing. Any changes must apply to all similar units in the housing project.

(b) Agency approval. Borrowers must submit a fully documented request to the Agency to effect any rent or utility allowance change.

(1) Borrowers must obtain written consent or approval from the Agency as specified in paragraph (e) of this section before implementing any changes in the rents or utility allowances.

(2) If a borrower implements an unauthorized rent or utility allowance charge, the Agency will require the borrower to roll back rents to the last authorized rent charge, and the borrower must reimburse tenants for any unauthorized rents collected.

(c) Timing of request for changes. Borrowers must submit rent and utility allowance change requests in conjunction with the annual budget submission as required under §3560.303(d). The effective dates of any approved changes will coincide with the start of the housing project's fiscal year or the start of the season for seasonally occupied farm labor housing. However, the Agency will accept borrower requests for rent or utility

allowance changes anytime during the year if a change is necessary to preserve the financial integrity of the housing complex and the financial distress is due to circumstances beyond the borrower's control.

(d) Tenant notification. Borrowers must notify tenants and solicit their comments to proposed rent or utility allowance change requests that are submitted to the Agency at the same time that the initial request is made to the Agency.

(1) Tenants will be given 20 calendar days to provide their comments to the Agency.

(2) Borrowers must deliver the proposed rent or utility allowance change request notice to each tenant and post at least one copy of the notice at the housing project site in a visible location frequented by tenants.

(e) Approval. If the Agency approves a rent or utility allowance increase request on which the comments were solicited, the borrower will deliver a notice announcing the rent or utility allowance change to the tenants to be effective 30 calendar days from the date of the notification.

(f) Denial of change request. The Agency may deny a rent or utility allowance increase request in the following circumstances.

(1) The Agency determines that the borrower did not provide sufficient information to justify operating costs.

(2) The borrower is out of compliance with Agency requirements including any corrective action requirements agreed to in a workout agreement developed according to subpart J of this part.

(3) Sufficient funds are being collected under existing rents to meet approved expenses.

(g) Notice of denial. If the rent change will not be approved as requested, the Agency will notify the borrower of the denial in accordance with §3560.303(d).

§3560.206 Conversion to Plan II (Interest Credit).

The Agency encourages any borrower not on Plan II to convert to Plan II to provide more favorable rent costs to very-low, low, and moderate-income households.

§3560.207 Annual adjustment factors for Section 8 units.

(a) General. For rental units receiving project-based Section 8 assistance, the Agency will review rents annually without regard to HUD's automatic annual adjustment.

(b) Establishing rents in housing with HUD rent assistance. Borrowers will set note and basic rents for housing receiving HUD project based Section 8 assistance, as specified in §3560.202(c)(3).

(1) Borrowers must notify the Agency of any HUD rent changes.

(2) If allowed by the interest credit agreement, the borrower will remit the amount collected in excess of the basic rent up to the note rent to the Agency as overage.

(3) When HUD contract rents exceed note rents, borrowers must deposit HUD funds equal to the difference between the Agency approved note rent and the HUD approved rent into the reserve account for the housing project.

(c) Excess HUD rents. When permitted by the Agency interest credit agreement, the Agency may reduce or cancel the interest credit on the housing, if excess HUD rents deposited in the reserve account result in the reserve account being funded beyond the fully funded level approved by the Agency.

§3560.208 Rents during eviction or failure to recertify.

(a) Rents during eviction. If a tenant is appealing an eviction and the borrower refuses to accept rent payment during the appeal of the eviction, the tenant must escrow required rent payments to safeguard their occupancy, unless State or local laws specify otherwise.

(b) Rents when tenants fail to recertify. If a borrower can document that a tenant received a notice specifying a tenant recertification date and the tenant fails to comply by the specified date or fails to cooperate with verification or other procedures related to the tenant's recertification so that the tenant recertification cannot be completed by the recertification date, the borrower, within 10 days of the recertification date, shall give the tenant and the Agency written notification that:

(1) Termination proceedings are being initiated, in accordance with §3560.159; and

(2) The tenant will be charged note rent until the tenant's lease is terminated.

(c) Unauthorized assistance due to tenant recertification failure. Any unauthorized assistance received because of the tenant's failure to be recertified will be collected in accordance with the provisions of subpart O of this part.

(d) Rents when borrowers fail to recertify tenants. If a borrower cannot document that a tenant received a recertification notice, and a tenant is not recertified within 12 months of the most recently executed tenant certification, tenants shall continue to make net tenant contributions to rent based on their most recent tenant certification and the borrower must remit to the Agency full overage as if the tenant was paying the note rent until the tenant is recertified.

(e) Unauthorized assistance due to borrower recertification failure. Any unauthorized assistance received as a result of the borrower's failure to recertify a tenant will be collected from the borrower in accordance with the provisions of subpart O of this part and may not be paid from housing project funds or funds collected from the tenant.

§3560.209 Rent collection.

(a) General. Borrowers must collect rents on a monthly basis and maintain a system for collecting and tracking rents.

(b) Fees for late rent payments. Borrowers may adopt a late fee schedule for overdue rental payments. Late fee schedules must be submitted to the Agency for approval as part of the housing project's management plan, be in accordance with State and local law, and consistent with the following requirements:

(1) A grace period of 10 days from the rental payment due date must be allowed for all tenants.

(2) The late fee must not exceed the higher of $10 or an amount equal to 5 percent of the tenant's gross tenant contribution.

(3) Tenants receiving housing benefits from sources other than the Agency may be subject to the late rent fee requirements of the other funding sources.

(c) Improperly advanced rents. Improperly advanced interest credit or rental assistance is considered unauthorized assistance and is subject to recapture in accordance with subpart O of this part.

§3560.210 Special note rents (SNRs).

When a Plan II housing project is experiencing severe vacancies due to market conditions, the Agency may allow the borrower to charge an SNR, which is less than note rent but higher than basic rent, to attract or retain tenants whose income level would require them to pay special note rent. The requirements for requesting and receiving an SNR are established under §3560.454.

§§3560.211-3560.249 [Reserved]

§3560.250 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart F--Rental Subsidies

§3560.251 General.

This subpart contains policies for borrower administration and tenant use of rental subsidies in Agency financed multi-family housing (MFH) projects.

§3560.252 Authorized rental subsidies.

(a) General. The purpose of rental subsidies is to reduce amounts paid by tenants for rent. Rental subsidies equal the difference between the approved shelter costs and tenant contributions as calculated in accordance with §3560.203(a)(1).

(b) Forms of rental subsidies. Rental subsidies may be in the form of:

(1) Agency rental assistance;

(2) HUD section 8 assistance, including project-based and vouchers;

(3) Private rental subsidies; or

(4) State or local government rental subsidies.

(c) Multiple rent subsidies.

(1) Multiple types of rent subsidies may be used in the same MFH project.

(2) Tenants with subsidies from sources other than the Agency may be eligible for Agency rental assistance if the following conditions are met.

(i) The tenant qualifies for Agency rental assistance.

(ii) The rental subsidy the tenant is receiving is not a HUD voucher.

(iii) The rental subsidy being received by the tenant is less than the full amount of Agency rental assistance for which the tenant would qualify. In such cases, the Agency may provide the difference between the subsidy received by the tenant and the amount of Agency rental assistance for which the tenant qualifies.

(d) Agency rental assistance (RA). Agency RA is obligated to MFH projects on a rental unit basis. The obligation is composed of a number of rental units and associated dollar amounts of RA specified in a RA agreement with a borrower. The following types of Agency RA may be obligated to a housing project.

(1) Renewal units. RA may be assigned to a housing project to replace existing rental unit obligations because funds associated with the units have been fully disbursed.

(2) New construction units. RA may be provided in conjunction with initial Agency loans for construction or substantial rehabilitation of MFH projects.

(3) Servicing units. Additional RA may be provided to operational MFH projects as a part of the Agency's general loan servicing or preservation activities.

§3560.253 [Reserved]

§3560.254 Eligibility for rental assistance.

(a) Eligible housing. Housing projects eligible for Agency RA include the following types of projects.

(1) Housing projects that operate under an Interest Credit Plan II RA agreement.

(2) Housing projects financed with an Agency off-farm labor housing loan or grant. On-farm labor housing is not eligible for rental assistance.

(3) Housing projects financed with a direct or insured Rural Rental Housing loan approved prior to August 1, 1968, and operated under an interest credit agreement that identifies the housing project as a Plan RA project.

(4) Housing projects financed from Agency and other sources if the conditions of §3560.66 are met.

(b) Eligible units. Borrowers may not request RA for rental units that the Agency determines are not habitable in accordance with §3560.103.

(c) Eligible households. Households eligible for rental assistance are those:

(1) With very low-or low-incomes who are eligible to live in MFH;

(2) Whose net tenant contribution to rent determined in accordance with §3560.203(a)(2) is less than the basic rent for the unit;

(3) Whose head of the household is a U.S. citizen or a legal alien as defined in §3560.11;

(4) Who meet the occupancy rules established by the borrower in accordance with §3560.155(e); and

(5) Who have a signed, unexpired tenant certification form on file with the borrower.

§3560.255 Requesting rental assistance.

(a) Submitting requests. Borrowers seeking an allocation of rental assistance for MFH must request the rental assistance from the Agency as follows.

(1) Renewal rental assistance. To the extent sufficient funds are available, the Agency will automatically renew expiring rental assistance agreements at the existing number of units.

(2) New construction units. Loan applicants proposing to use Agency rental assistance must include their request for rental assistance in their loan proposal in accordance with §3560.56.

(3) Servicing units. Borrowers requesting rental assistance must have tenants or eligible tenant applicants on a waiting list who are RA eligible.

(b) Denial of requests.

(1) If a rental assistance request is denied due to the loan applicant's or borrower's ineligibility, the Agency will send the loan applicant or borrower written notification of the decision with an explanation of the denial.

(2) If a rental assistance request to renew expiring rental assistance agreements is denied because funding is not available, the Agency will notify the borrower and the borrower must notify the tenants of rent increases in accordance with their lease and state and local law. Tenants losing rental assistance due to a lack of Agency funding may quit the lease and vacate the housing without penalty in accordance with the terms of their lease.

(3) Loan applicants or borrowers determined to be eligible for RA as a result of an appeal or funding review will receive RA, if RA funding is available, beginning with the month following the date of the appeal or funding review decision or beginning in the first month that RA funding becomes available.

§3560.256 Rental assistance payments.

(a) Borrower submission requirements. The borrower must submit monthly requests for RA payments to the Agency based on occupancy as of the first day of the month previous to the month in which the request is being made.

(b) Basis of RA requests. Borrower requests for RA payments must be based on the difference between the basic rent plus utility allowances for each rental unit eligible for RA and the net tenant contribution of the tenant.

(c) Payments to borrower. Prior to making RA payments to a borrower, the Agency will deduct from the approved RA payment amount any unpaid loan payments, late fees, and other amounts which the borrower owes to the Agency.

(d) Utility payments to tenants. The borrower must pay tenants the difference between the utility allowance and the tenant's net contribution to rent when a tenant receiving RA is billed directly for utilities and the utility allowance exceeds the net tenant contribution to rent. Such utility payments to tenants must be made on a monthly basis.

(e) Administrative errors. Borrowers are responsible for correcting borrower errors made in regard to RA requests for payments. In accordance with subpart O of this part, borrowers will be required to repay the Agency for any unauthorized RA received or any unauthorized use of RA except in certain cases of tenant error or fraud.

§3560.257 Assigning rental assistance.

(a) Priorities for rental assistance.

(1) Borrowers must use the following priorities when assigning available rental assistance.

(i) First priority is to eligible very low-income tenants paying the highest percentage of their adjusted annual income for Agency approved shelter costs.

(ii) Second priority, if the housing project has vacant rental units, is to eligible very low-income applicants on the waiting list.

(iii) Third priority is to eligible low-income tenants paying the highest percentage of their adjusted annual income for Agency approved shelter costs.

(iv) Fourth priority, if the housing project has vacant rental units, is to eligible low-income applicants on the waiting list.

(v) Fifth priority is to households which are residing in a rental unit for which they do not qualify on the basis of an occupancy waiver or other special approval situations.

(2) In order to provide rental assistance to the third, fourth, and fifth priority categories, a borrower must fully document either that there are no very low-income households on the housing project's waiting list or that occupancy by low-income households is limited as follows:

(i) For housing occupied on or after November 30, 1983, no more than 5 percent of the units in the housing are occupied by low-income households; or

(ii) For housing occupied before November 30, 1983, no more than 25 percent of the units in the housing are occupied by low-income households.

(b) Continued eligibility. Tenants receiving rental assistance may continue to do so as long as they remain eligible for occupancy and for rental assistance under §3560.254(c), and as long as rental assistance units are available.

(c) Assignment of rental assistance. Except as provided in §3560.454(c) and using the priorities given in paragraph (a) of this section, borrowers must assign available rental assistance units as soon as rental assistance units become available.

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

(2) When an eligible applicant moves into a rental assistance unit on a day other than the first day of a month, they will pay a prorated rent based on the number of days they occupy the rental assistance unit and the amount of rental assistance they will be receiving.

(d) Incorrectly assigned rental assistance. Incorrectly assigned rental assistance is viewed as unauthorized assistance and handled in accordance with subpart O of this part.

§3560.258 Terms of agreement.

(a) Term of agreement. Rental assistance agreements will be consistent with available funding. Rental assistance agreements expire when the funds obligated for rental assistance units are fully disbursed in accordance with the conditions of the agreement.

(b) Replacing expiring obligations. To the extent funds are available for replacement units, the Agency will renew rental assistance agreements.

§3560.259 Transferring rental assistance.

(a) Agency authority. The Agency may transfer rental assistance in the following instances:

(1) To accompany the transfer of a housing project to a different borrower;

(2) After a voluntary conveyance or a foreclosure sale;

(3) After a liquidation or prepayment;

(4) To the extent permitted by law, when any rental assistance units have not been used for a 6-month period; or

(5) When the loan cannot be closed.

(b) Agency review before transferring rental assistance. The Agency must perform a review to determine if all eligible tenants in the project are receiving rental assistance before the Agency transfers it to another project.

(c) Transferring rental assistance for displaced tenants. The Agency may transfer rental assistance from one housing project to another eligible housing project for a tenant who is moving due to displacement as a result of prepayment, liquidation, or a natural disaster. The tenant must begin using the rental assistance within 4 months of the transfer or the RA will become available for use by the next rental assistance eligible tenant in the housing project.

§3560.260 Rental subsidies from non-Agency sources.

(a) General. The Agency may authorize the use of rental subsidies from sources other than the Agency in Agency financed housing projects. The Agency will make no commitment to providing Agency rental assistance at the expiration of the rental subsidies from other sources.

(b) HUD vouchers. For tenants with HUD vouchers, the borrower must set the rental unit rent at the basic rent or the rent standard set by the public housing authority, whichever is less. The public housing authority distributing the HUD vouchers may set the utility allowance.

(c) Loan proposals using non-Agency rental subsidy. Loan applicants or borrowers proposing to use rental subsidy from sources other than the Agency must provide:

(1) Documentation demonstrating that a market exists for households eligible for the subsidy and the households are at income levels that would benefit from the amount of rental subsidy that will be provided;

(2) A plan describing actions to be taken when the rental subsidy expires to minimize the impact on tenants losing the rental assistance and to avoid displacement; and

(3) A copy of the project-based rental assistance agreement to be signed by the borrower and the provider of the rental assistance.

(d) Rental subsidy agreement. The borrower and the provider of rental subsidies from sources other than the Agency must execute a rental subsidy agreement and submit a copy of the agreement to the Agency. At a minimum, the rental subsidy agreement between the borrower and the source of the rental subsidy must include the following provisions:

(1) A description of how the subsidy will be paid. The rental subsidy payments may be paid directly to the tenants, to the borrower on behalf of the tenants, or deposited to a separate account established for the subsidy. The tenants must be advised of the amount and source of the subsidy through the lease or a supplement to the lease.

(2) The life of a project-based rental subsidy agreement with a non-Agency source must be similar to existing or current Agency rental assistance funding levels and sufficient funds must be set aside to assure availability of the rental subsidy for this term. The method of supplying the funds must be clearly established.

§3560.261 Improperly advanced rental assistance.

Improperly advanced RHS rental assistance resulting from tenant or borrower error or fraud constitutes unauthorized assistance and the provisions of subpart O of this part apply.

§§3560.262-3560.299 [Reserved]

§3560.300 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

§3560.301 General.

This subpart contains requirements for the financial management of Agency-financed multi-family housing (MFH) projects, including accounts, budgets, reports, and engagements. Financial management systems and procedures must cover all housing operations and provide adequate documentation to ensure that program objectives are met.

§3560.302 Accounting, bookkeeping, budgeting, and financial management systems.

(a) General. Borrowers must establish the accounting, bookkeeping, budgeting and financial management procedures necessary to conduct housing project operations in a financially safe and sound manner. Borrowers must maintain records in a manner suitable for an engagement and must be able to report accurate operational results to the Agency from these accounts and records.

(b) Acceptable methods of accounting.

(1) Borrowers may use a cash, accrual, or modified accrual method of accounting, bookkeeping, and budget preparations as long as the method is consistent with the statements required by the engagement in accordance with the standards identified in §3560.308.

(2) Borrowers must describe their accounting, bookkeeping, budget preparation, and financial reporting procedures, including Agency-approved engagements, in their management plan.

(3) Borrowers must notify the Agency of any changes in their accounting, bookkeeping, budget preparation, and financial management reporting systems through a revision of their management plan.

(c) Account requirements.

(1) As used in this paragraph, the term account is used interchangeably to mean a bookkeeping account (ledger) or a bank account.

(2) At a minimum, borrowers must maintain the accounts required by their loan agreement or resolution.

(3) The following list identifies the financial accounts that are required for each housing project. Additional accounts may be required by third-party lenders. Accounts are to be funded in the following priority order, except that paragraphs (c)(3)(iv), (v), and (vi) of this section are funded directly by tenant security deposits or patron capital receipts respectively:

(i) General operating account;

(ii) Real estate tax and insurance account (if not part of the general operating account);

(iii) Reserve account;

(iv) Tenant security deposit account;

(v) Membership fee account for cooperative housing; and

(vi) For cooperative housing only, a patron capital account.

(4) Amounts escrowed for taxes and insurance may be kept in the general operating account as long as the accounting system reflects the amount escrowed.

(5) Regardless of the number or types of accounts established, the borrower must meet the following requirements:

(i) All housing project funds must be held only in financial institution accounts insured by an agency of the Federal Government, backed by collateral provided by the bank, or held in securities meeting the conditions in this subpart.

(ii) Funds maintained in an institution may not exceed the limit established for Federal deposit insurance. If funds exceed the amount covered by Federal deposit insurance, borrowers must obtain a collateral pledge from the institution to cover all funds or must move funds to an institution that will insure the funds.

(iii) All funds and proceeds in any account must be used only for authorized purposes as described in Agency's regulations, loan or grant documents. Use of funds for non-program purposes constitutes non-monetary default as described in §3560.452(c).

(iv) All funds received and held in any account, except the tenant security deposit, membership fee, and patron capital accounts, must be held in trust by the borrower for the loan obligation until used and serve as security for the Agency loan or grant.

(v) Borrowers must be able to account for housing project funds with accounting methods or practices that maintain the proprietary identity of the funds for each project. A borrower may operate one account for multiple projects as long as the funds for each project themselves are accounted for separately.

(vi) Each borrower must have access to at least one demand deposit or checking account.

(vii) Housing project funds may not be pledged as collateral for debts without Agency approval. If such a need arises for an eligible program purpose, the borrower must obtain prior Agency approval.

(6) Tenant security deposit accounts or membership fee accounts and patron capital accounts must be maintained in a separate account in trust for the tenants or members and handled in a manner consistent with state and local laws.

(d) Documentation of separate accountability. Housing project funds may be combined in one or more bank accounts for two or more housing projects as long as the borrower's accounting system segregates and tracks funds for each project separately.

(1) When borrowers request Agency approval of an accounting system that combines funds from two or more housing projects, they must demonstrate to the Agency that the accounting systems are structured to segregate and maintain separate accountability for each housing project. Such demonstration must include a statement issued by a Certified Public Accountant (CPA) stating that the accounting system is structured to meet this principle of separate accountability.

(2) The accounting system and management plan must document the method for prorating revenue and expenses that are not clearly identifiable as being associated with a particular housing project.

(3) Funds for housing projects managed by the same management company must not be co-mingled.

(e) Records.

(1) Borrowers must retain all housing project financial records, books, and supporting material for at least three years after the issuance of the engagement and financial reports. Upon request, these materials will immediately be made available to the Agency, its representatives, the USDA Office of the Inspector General (OIG), or the General Accountability Office (GAO).

(2) Borrower accounts and records will be kept or made available in a location with reasonable access for inspection, review, and copying by the Agency, other authorized representatives of the USDA, OIG, or GAO.

(3) Automated records may be used if they meet the conditions of paragraph (f) of this section.

(f) Forms generated by automated systems.

(1) The forms and formats approved for use by borrowers may be prepared on automated systems when they meet the requirements of this paragraph.

(2) Forms may be automated if they meet the following requirements:

(i) The identical wording and nomenclature of an official form must be included in the automated version of the form, including the Office of Management and Budget (OMB) approval number.

(ii) The logic or mathematical calculation of an official form must be the same in an automated version of the form.

(iii) The name or logo of the source of the automated form must be visible on each output of the automated form.

(iv) Output size must be 8\1/2\ x 11 inches.

(v) Nominal spacing adjustment and colored paper are allowed.

(g) Farm Labor Housing. Borrowers with on-farm labor housing units will be considered in compliance with this section by virtue of completing the record keeping and reporting requirements outlined in subpart M of this part.

§3560.303 Housing project budgets.

(a) General requirements.

(1) Using an Agency-approved format, borrowers must submit to the Agency for approval a proposed annual housing project budget prior to the start of the housing project's fiscal year. The capital budget section of the annual project budget must include anticipated expenditures on the project's long-term capital needs as specified in §3560.103(c).

(2) Budget projections regarding income, expenses, vacancies, and contingencies must be realistic given the housing project's history, current circumstances, and market conditions.

(3) Borrowers must document that the operating expenses included in the budget accurately reflect reasonable and necessary costs to operate the housing project in a manner consistent with the objectives of the loan and in accordance with the applicable Agency requirements.

(4) Borrower must submit supporting documentation to justify housing project utility allowances.

(5) Upon Agency request, borrowers must submit any additional documentation necessary to establish that applicable Agency requirements have been met.

(b) Allowable and unallowable project expenses. Expenses charged to project operations, whether for management agent services or other expenses, must be reasonable, typical, necessary and show a clear benefit to the residents of the property. Services and expenses charged to the property must show value added and be for authorized purposes.

(1) Allowable expenses. Allowable expenses include those expenses that are directly attributable to housing project operations and are necessary to carry out successful operations.

(i) Housing project expenses must not duplicate expenses included in the management fee as defined in §3560.102(i).

(ii) Actual costs for direct personnel costs of permanent and part-time staff assigned directly to the project site. This includes managers, maintenance staff, and temporary help including their:

(A) Gross salary;

(B) Employer FICA contribution;

(C) Federal unemployment tax;

(D) State unemployment tax;

(E) Workers compensation insurance;

(F) Health insurance premiums;

(G) Cost of fidelity or comparable insurance;

(H) Leasing, performance incentive or annual bonuses;

(I) Direct costs of travel to off-site locations by on-site staff for property business or training; and/or

(J) Retirement benefits.

(iii) Legal fees directly related to the operation and management of the property including tenant lease enforcement actions, property tax appeals and suits, and the preparation of all legal documents.

(iv) All outside account and auditing fees, if required by the Agency, directly related to the preparation of the annual audit, partnership tax returns and 401-K's, as well as other outside reports and year-end reports to the Agency, or other governmental agency.

(v) All repair and maintenance costs for the project including:

(A) Maintenance staffing costs and related expenses.

(B) Maintenance supplies.

(C) Contract repairs to the projects (e.g., heating and air conditioning, painting, roofing).

(D) Make ready expenses including painting and repairs, flooring replacement and appliance replacement as well as drapery or mini-blind replacement. (Turnover maintenance).

(E) Preventive maintenance expenses including occupied unit repairs and maintenance as well as common area systems repairs and maintenance.

(F) Snow removal.

(G) Elevator repairs and maintenance contracts.

(H) Section 504 and other Fair Housing compliance modifications and maintenance.

(I) Landscaping maintenance, replacements, and seasonal plantings.

(J) Pest control services.

(K) Other related maintenance expenses.

(vi) All operational costs related to the project including:

(A) The costs of obtaining and receiving credit reports, police reports, and other checks related to tenant selection criteria for prospective residents.

(B) The cost of duplicating forms for those properties not owning a copier. This will include the costs of producing or purchasing forms and mailing or delivering those forms to the project site.

(C) All bank charges related to the property including purchases of supplies (e.g., checks, deposit slips, returned check fees, service fees).

(D) Costs of site-based telephone including initial installation, basic services, directory listings, and long-distances charges.

(E) All advertising costs related specifically to the operations of that project. This can include advertising for applicants or employees in newspapers, newsletters, radio, cable TV, and telephone books.

(F) Postage and delivery costs from the site including expenses to the Agency or other governmental agencies, tenants, verifying third parties, central management offices, etc.

(G) Partnership or corporate business expenses including state taxes and other mandated state or local fees as well as other relevant expenses required for operation of the property by a third-party governmental unit. Costs of continuation financing statements and site license and permit costs.

(H) Expenses related to site utilities including actual costs and surcharges as well as deposits and expense of utility bonds in lieu of bonds.

(I) Site office furniture and equipment including site based computer and copiers. Service agreements and warranties for copiers, telephone systems and computers are also included (if approved by the Agency).

(J) Real estate taxes (personal tangible property and real property taxes) and expenses related to controlling or reducing taxes.

(K) All costs of insurance including property liability and casualty as well as fidelity or crime and dishonesty coverage for on-site employees and the owners.

(L) Costs of collecting rents on-site including bookkeeping supplies and recordkeeping items.

(M) Costs of preparing and maintaining tenant files and processing tenant certifications including all office supplies, copies and other associated expenses.

(N) Public relations expense relative to maintaining positive relationships between the local community and the tenants with the management staff and the borrowers. Chamber of Commerce dues, contributions to local charity events, and sponsorship of tenant activities, are examples.

(O) Tax Credit Compliance Monitoring Fees imposed by HFAs.

(P) All insurance deductibles as well as adjuster expenses.

(Q) Professional service contracts (audits and compilations, tax returns, energy audits, utility allowances, architectural, construction, rehabilitation and inspection contracts, etc.)

(R) On-site training pre-approved by the Agency provided by outside training vendors.

(S) Site manager salary for additional hours associated with congregate housing.

(vii) With prior Agency approval, cooperatives and nonprofit organizations may use housing project funds to pay asset management expenses directly attributable to ownership responsibilities. Such expenses may include:

(A) Errors and omissions insurance policy for the Board of Directors.

(B) Board of Director review and approval of proposed Agency's annual operating budgets, including proposed repair and replacement outlays and accruals.

(C) Board of Director review and approval of capital expenditures, financial statements, and consideration of any management comments noted.

(D) Long-term asset management reviews.

(2) Unallowable expenses. Housing project funds may not be used for any of the following:

(i) Equity skimming as defined in 42 U.S.C. 543 (a).

(ii) Purposes unrelated to the housing project.

(iii) Reimbursement of inaccurate or false claims.

(iv) Settlement agreements, court ordered decrees, legal fees, or other costs that result from the filing of civil rights complaints or legal action alleging the borrower, or a representative of the borrower, has committed a civil rights violation.

(v) Fines, penalties, and legal fees where the borrower or a borrower's representative has been found guilty of violating laws, including, but not limited to, civil rights, and building codes.

(vi) Association dues to be paid by the project should be related to training for site managers or management agents. To the extent that association dues can document training for site managers or management agents related to project activities by actual cost or pro-ration, a reasonable expense may be billed to the project.

(vii) Pay for bonuses or monetary performance awards to site managers or management agents that are not clearly provided for by the site manager salary contract.

(viii) Billing for parties that are large or unreasonable, such as renting expensive party halls or hotel rooms and payment for alcoholic beverages or gifts to management agent staff.

(ix) Billing for practices that are inefficient such as routine use of collect calls from a site manager to a management agent office.

(c) Priorities. The priority order of planned and actual budget expenditures will be:

(1) Senior position lienholder, if any;

(2) Operating and maintenance expenses, including taxes and insurance;

(3) Agency debt payments;

(4) Reserve account requirements;

(5) Other authorized expenditures; and

(6) Return on owner investment.

(d) Agency review and approval.

(1) The Agency will only approve housing project budgets that meet the requirements of paragraphs (a), (b) and (c) of this section.

(2) If no rent change is requested, borrowers must submit budget documents for Agency approval 60 calendar days prior to the start of the housing project's fiscal year. The Agency will notify borrowers if the budget submission does not meet the requirements of paragraphs (a), (b), and (c) of this section. The borrower will have 10 days to submit the additional material.

(3) If a rent change is requested, the borrower must submit budget documents to the Agency and notify tenants of the requested rent change at least 90 calendar days prior to the start of the housing project's fiscal year.

(i) The Agency will notify borrowers if the budget submission does not meet the requirements of paragraphs (a), (b), and (c) of this section, or if the rent and utility allowance request has been denied in accordance with §3560.205(f). The borrower will have 10 days to submit the additional material to address any issues raised by the Agency.

(ii) The rent change is not approved until the Agency issues a written approval. If there is no response from the Agency within the 30-day period, the rent change is considered automatic. The following budgets are not eligible for automatic approval:

(A) Budgets with rent increases above $25 per unit; and

(B) Budgets that are submitted late or that miss other deadlines set by the Agency.

(4) If the Agency denies the budget approval, the Agency will notify the borrower in writing.

(5) If budget approval is denied, the borrower shall continue to operate the housing project on the basis of the most recently approved budget.

§3560.304 Initial operating capital.

(a) Purpose. To provide a source of capital for start-up costs, such as the purchase of equipment, and paying operating, maintenance, and debt service expenses. Borrowers are required to make an initial operating capital contribution to the general operating account as described in §3560.64.

(b) Authorized uses of initial operating capital. Initial operating capital may be used only to pay for approved budgeted expenses.

(c) Withdrawal of initial operating capital. Initial operating capital funds may be withdrawn by a borrower if:

(1) The initial operating capital was provided from the borrower's own funds;

(2) The borrower requests the withdrawal after the second year of housing project operations and prior to the 7th year of operations;

(3) The housing project has had a 90 percent occupancy rate for a period of 12 months prior to the withdrawal request;

(4) The withdrawal will not affect the financial viability of the housing project;

(5) Contributions to the reserve account are at authorized levels;

(6) The withdrawal request will not result in rent increases; and

(7) There are no outstanding deficiencies in management's physical maintenance of the housing project.

§3560.305 Return on investment.

(a) Borrower's return on investment. Borrowers may receive a return on their investment (ROI) in accordance with the terms of their loan agreement and the following:

(1) If there is a positive net cash flow in housing project operations, the ROI may be taken by the borrower after the housing project's fiscal year, provided that the balance of the reserve account is equal to or greater than required deposits minus authorized withdrawals. If the annual financial reports indicate that an ROI should not have been taken, borrowers will be required to return any unauthorized ROI.

(2) If there is negative cash flow in housing project operations, the Agency may authorize the borrower to take the ROI only after the Agency has reviewed the housing project's annual financial reports and determines:

(i) Surplus cash exists in either the general operating account as defined in §3560.306(d)(1) or the reserve account, if the balance is greater than the required deposits minus authorized withdrawals.

(ii) The housing project has sufficient funds to address identified capital or operational needs.

(b) Unpaid return on investment. An earned, but unpaid ROI for the previous year only may be requested by the borrower and authorized by the Agency under the provisions of §3560.305(a)(2) provided the current year's ROI has been paid first and a rent increase is not required to generate funds to pay the unpaid ROI.

§3560.306 Reserve account.

(a) Purpose. To meet the major capital expense needs of a housing project, borrowers must establish and maintain a reserve account.

(b) Financial management of the reserve account. Borrower management of the reserve account is subject to the requirements of 7 CFR part 1902, subpart A regarding supervised bank accounts.

(c) Funding of the reserve account. Borrowers must make payments to the reserve account in the amount established in loan documents, beginning with the first loan payment or a date specified in loan documents.

(d) Transfer of surplus general operating account funds.

(1) The general operating account will be deemed to contain surplus funds when the balance at the end of the housing project's fiscal year, after all payables, exceeds 20 percent of the operating and maintenance expenses. If the borrower is escrowing taxes and insurance premiums, include the amount thatshould be escrowed by year end and subtract such tax and insurance premiums from operating and maintenance expenses used to calculate 20 percent of the operating and maintenance expenses.

(2) If a housing project's general operating account has surplus funds at the end of the housing project's fiscal year, the Agency will require the borrower to use the surplus funds to address capital needs, make a deposit in the housing project's reserve account, reduce the debt service on the borrower's loan, or reduce rents in the following year. At the end of the borrower's fiscal year, if the borrower is required to transfer surplus funds from the general operating account to the reserve account, the transfer does not change the future required contributions to the reserve account.

(e) Account requirements. Borrowers must establish and maintain the reserve account according to §3560.65, §3560.302(c)(5), and the following requirements:

(1) Reserve accounts must be deposited in interest-bearing accounts or securities; and

(2) Reserve accounts must be supervised accounts that require Agency countersignatures on all withdrawals.

(f) Funds invested in securities. In addition to the requirements specified in paragraph (e) of this section, the following requirements apply when reserve funds are invested in securities:

(1) The reserve account must be held either at a Federally insured domestic institution such as a bank, savings and loan association, credit union, or at a domestic institution authorized to sell securities.

(2) The borrower must record the price actually paid for the securities. When designated as a reserve deposit, the price paid must equal the required contribution to reserves.

(3) Borrowers must be knowledgeable about industry practices and consider the impact of typical fees and charges for purchases and sales and maintenance of an account when making investment decisions. Such fees may be paid for out of reserves, only with the consent of the Agency. Housing project funds may not be used to pay for a financial advisor.

(g) Use of the reserve account.

(1) Borrowers must request Agency approval of reserve account withdrawals prior to the withdrawal. Borrowers must inform the Agency of planned uses of reserve accounts in their annual capital budget if known at budget planning time. Any item on the approved capital budget does not require additional pre-approval by the Agency.

(2) The Agency will indicate any conditions governing withdrawals from a reserve account at the time it approves the withdrawal.

(3) In emergency situations, the Agency may specify special procedures to provide an expedited approval process for the use of the reserve account.

(4) The Agency may approve the use of reserve funds for operating costs when circumstances that are determined by the Agency to be beyond the borrower's control have resulted in a shortfall in the housing project's general operating account.

(h) Allowable uses. Allowable uses of reserve funds include the following:

(1) Major capital improvements and replacements.

(2) Housing project operating expenses provided the requirement of paragraph (g)(4) of this section has been met, including:

(i) Payments due on the loan, or

(ii) Payment of a return on investment at the end of the borrower's fiscal year if such payment comes from surplus operating funds in the reserve account.

(3) With Agency approval, borrowers operating on a for-profit or a limited profit basis may make an annual withdrawal from the reserve account, equal to no more than 25 percent of the interest earned on a reserve account during the prior year.

(4) For other purposes, which in the judgment of the Agency will promote the loan purposes, strengthen the security or facilitate, improve, or maintain the housing and the orderly collection of the loan without jeopardizing the loan or impairing the adequacy of the security.

(i) Records. Borrowers must maintain records documenting all expenses that were paid by withdrawals from the reserve account.

(j) Changes to reserve requirements.

(1) As projects age, the required reserve account level may be adjusted to meet anticipated “life-cycle” needs, including equipment and facility replacement costs, by amending the loan agreement/resolution.

(2) The Agency may approve a change in the reserve account funding level based on the findings of an approved capital needs assessment. The approval to increase reserve account funding levels will take into consideration the housing project's approved budget and the housing project's ability to support increased reserve account deposits without causing basic rents to exceed conventional rents for comparable units in the area.

(k) Excess reserves. Amounts in the reserve account which exceed the total required by the loan or grant agreement must be used, at the direction of the Agency, for any of the following:

(1) Pay for expenses specified in a long-term capital plan;

(2) Make payments and reamortize the Agency loan;

(3) Reduce rents by a transfer to the general operating account;

(4) Fund preservation incentives authorized in subpart N of this part; or

(5) Cover other expenditures determined to be related to the purpose of the housing project and in the best interest of the Federal Government.

(l) Procurement. The requirements of §3560.102(g), (j), and (k), and all other Agency requirements relating to procurement, bidding, identity-of-interest, cost-reasonableness, and construction management apply to any work or services paid out of reserve funds. Structural repairs and other significant work on major building systems such as heating or air conditioning must be done in accordance with the requirements of 7 CFR part 1924, subpart A.

§3560.307 Reports.

(a) Required reports. Borrowers must submit required reports using Agency-approved formats.

(b) Quarterly and monthly reports. The Agency may require quarterly or monthly reports to monitor financial progress when closer supervision is warranted.

§3560.308 Annual financial reports.

(a) General. Borrowers must submit annual financial reports that meet the requirements of this section. The annual financial reports to be submitted are the Multi-Family Housing (MFH) Project Budget with actual expenditures and the MFH Balance Sheet. Annual financial reports are due to the Agency within 90 days of the end of the borrower's fiscal year.

(1) Borrowers with 16 or more units in their housing project must base their annual financial reports on an engagement report completed according to agreed upon procedures established by the Agency as specified in paragraph (b) of this section. Borrowers must include the engagement report with their annual financial reports submitted to the Agency.

(2) Borrowers with less than 16 units in their housing project must submit annual financial reports using a limited scope engagement based on Agency approved procedures and certify that the housing meets the performance standards established in paragraph (c) of this section. Borrowers may use a CPA to prepare this report. For properties that prepare a limited scope engagement, the Agency may undertake random audits, once every two or three years.

(3) If a third party requires it, the borrower may have a CPA prepare an audit in accordance with generally accepted government auditing standards (GAGAS). Costs incurred to obtain this audit are an allowable project expense.

(b) Engagement requirements. Borrowers required to submit annual financial reports based on an engagement performed by a CPA must meet the following requirements:

(1) Borrowers must use an Agency approved engagement letter. Borrowers must submit the results of an engagement that examines specific records using agreed upon procedures established by the Agency and that describes the borrower's performance in meeting the standards described in paragraph (c) of this section.

(2) The engagement will be initiated by the borrower using the Agency's engagement letter, which will specify the engagement program and establish the reporting requirements for the engagement.

(3) The engagement must be conducted by a CPA in accordance with American Institute of Certified Public Accountant (AICPA) Standards and Agency requirements.

(4) All engagement reports must be prepared for use by the Agency.

(c) Performance standards. Borrowers must ensure that:

(1) Required accounts are properly maintained and tracked separately;

(2) Payments from operating accounts are disclosed and accurately represented on financial reports;

(3) The reserve amount is at the authorized level and there are no encumbrances;

(4) Tenant security deposit accounts are fully-funded and are maintained in separate accounts and meet state and local requirements;

(5) Amount of payment of owner return was consistent with the terms of the applicable loan agreement;

(6) The borrower has maintained proper insurance in accordance with the requirements of §3560.105(b); and

(7) All financial records are adequate and suitable for examination.

(d) Other financial reports.

(1) Nonprofit and public borrower entities must submit audits in accordance with 7 CFR part 3052 that must also include the requirements set forth in the limited scope engagement.

(2) The Agency may require additional opinions of financial condition and compliance, such as audits, to assure the security of the asset, determine whether the housing project is being operated at a reasonable cost, or to detect fraud, waste, or abuse.

(3) Any audits independently obtained by the borrower also must be submitted to the Agency.

§3560.309 Advancement (loan) of funds to a RRH project by the owner, member of the organization, or agent of the owner.

(a) Prior written approval by the Servicing Office is required. Such advances may be authorized when justified by unusual short-term conditions. When conditions are not short-term in nature, a servicing plan may be developed and advances may be approved in accordance with the provisions set out in §3560.453 of this part. Justification will be based on the following:

(1) A review of the documented circumstances and the project operating budget before any funds are advanced (loaned). The financial position of the project must not be jeopardized.

(2) Funds are not immediately available from any of the following sources:

(i) Reserve funds;

(ii) Initial operating capital; and

(iii) An imminent rent increase.

(b) The funds will be applied to ordinary project operating and maintenance expenses.

(c) Interest may be charged or paid on the loan from project income; however, interest must be reasonable. The proposal may be denied if Rural Development financing can be provided to resolve the problem in a more cost-effective manner.

(d) No lien in connection with the loan will be filed against the property securing the Rural Development loan or against project income. The advance may show as an unsecured project liability on financial statements prepared for year-end reports until such time as it is authorized to be repaid.

(e) The payback of the advance (loan) may be permitted by the Servicing Official provided the terms and conditions were mutually agreed to by the borrower and Rural Development at the time of the advance and the financial position of the project will not be jeopardized. Payback should only be permitted on the advance when the Rural Development debt is current and the reserve requirements are being maintained at the authorized levels.

§§3560.310-3560.349 [Reserved]

§3560.350 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart H--Agency Monitoring

§3560.351 General.

This subpart contains policies for Agency monitoring of operations and management at multi-family housing (MFH) projects.

§3560.352 Agency monitoring scope, purpose, and borrower responsibilities.

(a) Scope of Agency monitoring activities. The Agency will review reports, records, and other materials related to the housing project, including borrower financial reports, housing project records, and other communications. The Agency also will review material related to a housing project submitted by a tenant or other source. To assess conditions such as a housing project's physical condition, record keeping procedures, and operations and management activities, including borrower compliance with Federal, state, and local laws and Agency requirements, the Agency will conduct periodic on-site monitoring reviews of a housing project.

(b) Purpose of Agency monitoring activities. Agency monitoring activities are designed to assess borrower and tenant compliance with Agency requirements, and to:

(1) Ensure housing projects are managed in accordance with the goals and objectives of the Agency's MFH programs and are maintained in accordance with Agency requirements for affordable, decent, safe, and sanitary housing;

(2) Preserve the value of the Agency-financed housing projects;

(3) Detect waste, fraud, and abuse in housing project operations or management and to ensure the cost of operations and management are necessary and reasonable;

(4) Verify 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, Americans with Disabilities Act of 1990, other applicable Federal laws, and Agency requirements related to occupancy and tenant eligibility.

(c) Borrower responsibilities. The borrower is responsible for cooperating fully and promptly with Agency monitoring activities. Agency monitoring activities do not diminish borrower operation and management responsibilities and do not relieve borrowers from any Agency requirements including, but not limited to, borrower requirements to comply with:

(1) The terms of all agreements with the Agency, including the loan or grant agreement, assurance agreement, loan resolution, promissory note, mortgage, interest credit agreement, rental assistance agreement, mitigation measures contained in the environmental review document, and workout agreement;

(2) The requirements contained in this part;

(3) The requirements of 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, Americans with Disabilities Act of 1990; and

(4) Applicable Federal, state, and local laws.

§3560.353 Scheduling of on-site monitoring reviews.

Generally, the Agency will provide the borrower prior notice of an on-site monitoring review and will conduct the on-site monitoring review in the presence of the borrower. However, the Agency may visit a housing project, without prior notice, to observe physical conditions, operations and management activities, or other borrower or tenant activities. In addition, the Agency may conduct on-site reviews without the presence of the borrower, the management agent, or other designated representative of the borrower.

§3560.354 Borrower response to monitoring review notifications.

The Agency will notify borrowers, in writing, whenever Agency monitoring activities result in deficiency findings or compliance violations. The monitoring review notification will describe the deficiencies findings or compliance violations and will specify a time period by which corrective action must be taken by the borrower. The notification will offer borrowers an opportunity to discuss the reported deficiency findings or compliance violations with the Agency and will explain enforcement actions that the Agency may take if corrective action is not taken within the time period specified in the monitoring review notification. When civil rights non-compliance is found, the State Civil Rights Coordinator or Manager (SCRC/M) will be notified. If voluntary compliance cannot be obtained, appropriate enforcement or remedial action will be taken.

§§3560.355-3560.399 [Reserved]

§3560.400 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart I--Servicing

§3560.401 General.

(a) Purpose. This subpart contains actions the Agency may take to service and collect loans or other debts owed by multi-family housing (MFH) borrowers. The loan servicing and other actions set forth are designed to protect Agency and tenant interests and assist borrowers in meeting program objectives.

(b) General servicing policies. Borrowers must repay loans or other amounts due to the Agency according to provisions specified in promissory notes, loan agreements and resolutions, mortgages, deeds-of-trust, assumption agreements, reamortization agreements, or other agreements executed between the borrower and the Agency.

(c) Special servicing actions. The Agency will not agree to any proposal for loan servicing or debt collection action other than actions consistent with this section, debt instruments, and other agreements. When payments due to the Agency from a borrower remain unpaid for more than 30 days after the due date, past due, after the Agency may initiate the special servicing actions described in subpart J of this part.

§3560.402 Loan payment processing.

(a) Predetermined Amortization Schedule System (PASS) requirements. All loans, except the loans specified in paragraph (c) of this section, must be closed and serviced using the PASS.

(b) Required conversion to PASS. Borrowers with Daily Interest Accrual System (DIAS) accounts must convert to PASS whenever a loan servicing action on the account involves a change in the loan rates or terms or whenever a subsequent loan to the borrower is closed.

(c) Exceptions. Seasonal farm labor housing loans and on-farm labor housing loans may be closed on DIAS, monthly, or annual payment schedules.

§3560.403 Account servicing.

(a) Payment due dates. Loan or other payments due to the Agency are due on the first day of each month unless otherwise established in the debt instrument or other agreement executed with the Agency.

(b) Payment application order. Loan payments will be applied to the borrower's account in the following order of priority:

(1) Amortized audit receivables. (i.e., amounts due to the Agency, over a period of time, as a result of a finding from an audit or other monitoring activity.)

(2) Unamortized audit receivables. (i.e., amounts due to the Agency, in a lump sum payment, as a result of a finding from an audit or other monitoring activity.)

(3) Late fees. (i.e., amounts due to the Agency as a result of late payments.)

(4) Amortized recoverable costs. (i.e., amounts due to the Agency, over a period of time, as a result of Agency payments made on behalf of a borrower for housing project related expenses such as taxes or insurance premiums.)

(5) Unamortized recoverable costs. (i.e., amounts due to the Agency, in a lump sum payment, as a result of Agency payments made on behalf of a borrower for housing project related expenses such as taxes or insurance premiums.)

(6) Overage. (i.e., amounts due to the Agency as a result of a tenant's tenant contribution being higher than basic rent.)

(7) Interest. (i.e., amounts due to the Agency as a result of scheduled interest on a loan and as a result of interest charged on unpaid delinquent principal amounts.)

(8) Principal. (i.e., amounts due to the Agency as the loan principal.)

(9) Advance payments. (Any funds remaining after disbursement of a payment to all other payment priorities will be applied to the borrower's account as an advance regular payment unless a borrower specifically designates, in writing, another application.)

(c) Late fees. If payments on a borrower's account, under PASS, are more than $15 delinquent after the close of business on the 10th day after the payment due date, a late fee will be charged to the borrower's account.

(1) Late fees charged to a borrower's account will equal 6 percent of the total regular payments due as specified in any promissory notes, assumption agreements, or reamortization agreements related to the borrower's account.

(2) Late fees are a borrower expense and must not be paid from housing project funds.

(3) The Agency may waive late fees for circumstances beyond a borrower's control and when a waiver is determined by the Agency to be in the best financial interest of the Federal Government.

(d) Interest on unpaid overdue principal. On the first day of the month following a payment due date, the Agency will charge interest at the note rate on any unpaid principal payment due according to the loan's amortization schedule (i.e., interest will be charged on delinquent principal). The interest charged on the unpaid principal payment due will be charged to the borrower in addition to the scheduled interest due on payments according to the loan's amortization schedule.

§3560.404 Final loan payments.

(a) Payoff statements. At the borrower's request, the Agency will provide a statement indicating the pay off amount necessary to pay the borrower's account in full.

(b) Final payments. A borrower's final loan payment must include repayment of all outstanding obligations to the Agency.

(1) Any supervised funds being held by the Agency will be applied to the borrower's account or, at the borrower's option, will be returned to the borrower following acceptance of final payment on all outstanding obligations.

(2) If a balance due remains on a borrower's account after Agency acceptance of a final payment, due to borrower error or fraud or Agency error, the Agency will initiate collection action in accordance with the unauthorized assistance collection procedures described in subpart O of this part.

(c) Final payment loans. Borrowers with loans for which the Agency approved an amortization period that exceeded the term of the loan may request a loan to finance the final payment in accordance with the requirements of §3560.74.

(d) Loan prepayment requests. If prepayment of an Agency loan is requested, the applicable preservation requirements of subpart N of this part, including the execution of any appropriate restrictive-use agreements, must be met prior to the Agency's acceptance of a final loan payment under the prepayment request.

(e) Payment forms. Final payments may be made by cashier's check, certified check, money order, bank draft, or other withdrawal instruments approved by the Agency.

(1) If borrowers use forms of payment requiring special handling, the borrower is responsible for the cost of the special handling.

(2) When payment is provided in a form that is not the equivalent of cash, the Agency will consider the payment to be received at the time the payment has been converted to cash and funds have been transferred to the Agency.

(f) Release of security instruments. The Agency will release security instruments, subject to applicable restrictive-use agreements referenced in subpart N of this part, when full payment of all outstanding obligations to the Agency has been received, accepted, and the funds have been transferred to the Agency.

(1) If the Agency and the borrower agree to settle an account for less than the full amount owed, the Agency will release security instruments when the borrower has paid in full all agreed upon obligations.

(2) Recording costs for the release of the security instruments will be the responsibility of the borrower, except where state law requires the mortgagee to record or file the satisfaction.

(g) Special circumstances--Refund of entire principal. If the entire principal of the loan is refunded after the loan is closed, the borrower must pay interest from the date of the note to the date of receipt of the refund.

§3560.405 Borrower organizational structure or ownership interest changes.

(a) General. The requirements of this section apply to changes in a borrower entity's organizational structure or to a change in a borrower entity's controlling interest. If 100 percent of a borrower entity's ownership interest is transferred, within a 12-month period, the change will be considered a housing project transfer and the provisions of §3560.406, which covers transfers or sales of housing projects, will apply.

(b) Agency requirements. Borrowers must notify the Agency prior to the implementation of any changes in a borrower entity's organizational structure. The Agency must give its consent prior to the implementation of changes in a borrower entity's controlling interest.

(1) Borrowers must submit written requests for Agency consent to the Agency at least 45 days prior to the anticipated effective date of the proposed organizational change. The request must document that the proposed changes will not adversely affect the program purposes or security interest of the Agency and will not adversely affect tenants.

(2) If the controlling interest change involves a transfer of interest to an entity not previously holding an ownership interest in the borrower entity, the request for consent must include a written certification, executed by the party receiving the ownership interest, certifying that the recipient of the ownership interest agrees to assume responsibilities and obligations required of a borrower as established in Agency program requirements including requirements in the promissory note, loan agreement, or other document related to Agency loans held by the borrower entity.

(3) The Agency will not take a consent request for a controlling interest change under consideration if the borrower's request fails to meet the requirements specified in paragraph (b)(2) of this section.

(c) Documentation of organizational structures and ownership interest. Borrowers must annually document their organizational structure and ownership.

(1) Documentation must be submitted with the annual financial reports required by §3560.308 and must reflect any changes made during the 12-month period preceding the submission of the annual financial reports.

(2) If no changes in a borrower entity's organizational structure or ownership were made during the 12-month period prior to submission of the annual financial reports, borrowers are not required to submit documentation, but must submit a statement certifying that no changes have been made in the documents on file with the Agency.

(3) Organizational structure and ownership documentation must include the following items:

(i) A current organization description reflecting all approved changes in the organizational structure of the borrower entity and listing the names, addresses, and tax identification numbers of all parties with an ownership interest in the borrower entity; and

(ii) A written statement by the borrower certifying that the changes in the borrower entity's organizational structure or ownership interests were completed in compliance with state and local laws and in accordance with organizational requirements of the borrower entity.

§3560.406 MFH ownership transfers or sales.

(a) General. The provisions of this section apply to ownership transfers or sales (e.g., title transfers) involving an Agency financed housing project. The provisions cover situations where Agency loans are being assumed as a part of a housing project transfer or sale.

(b) Agency consent requirements. Agency consent must be obtained prior to an ownership transfer or sale and Agency consent will only be given when the transfer or sale is in the best interest of the Federal Government. Any ownership transfer or sale without the consent of the Agency will be considered a default and will be handled in accordance with subpart J of this part.

(1) Priority consideration will be given to ownership transfers or sales needed to remove a hardship to the borrower that was caused by circumstances beyond the borrower's control.

(2) Ownership transfers or sales with an assumption of debt at an amount less than the borrower's debt amount will only be approved by the Agency when all persons in the borrower entity who are transferring their ownership interest or are involved in the selling of the property are not part of the transferee organization.

(c) Consent request requirements. Borrowers must submit written requests for Agency consent to an ownership transfer or sale of a housing project to the Agency at least 45 days prior to proposed ownership transfer or sale date. The consent request must document that the proposed transfer or sale meets the requirements of paragraph (d) of this section and must include the following items:

(1) A statement disclosing any identity-of-interest between the borrower and the party to which the housing project ownership is being transferred or sold.

(2) A statement certifying that the housing project's financial accounts are funded at required levels, less authorized withdrawals, and that payments due for operation and maintenance expenses, tax assessments, insurance premiums, any required tenant security deposit accounts, and other obligations incurred as a part of the housing project operations are paid in full with no overdue balances or a statement explaining the housing project's financial situation and the reasons for overdue payments or under funded accounts.

(3) A proposed housing project budget covering the partial year, if applicable, and first full year operation following the ownership transfer or housing project sale.

(4) A written statement, signed by the proposed transferee or buyer, certifying that the transferee or buyer will assume the borrower responsibilities and obligations specified in Agency program requirements including requirements in a promissory note, loan agreement or other documents related to Agency loans held by the borrower entity.

(5) A certification from the borrower and the proposed transferee or buyer that the borrower does not and will not have a reversionary interest in the housing project.

(d) Requirements for ownership transfers or sales. An ownership transfer or sale of a housing project with an assumption of Agency loans by the transferee or buyer must comply with the following conditions:

(1) The transferee or buyer must be an eligible borrower under the requirements established by subpart B of this part;

(2) The transferee or buyer must agree to set basic rents at the housing project covered by the assumed loans at levels that do no exceed conventional rents for comparable units in the area, except that when determined necessary by the Agency to allow for decent, safe and sanitary housing to be provided in market areas where conventional rents are not sufficient to cover necessary operating, maintenance, and reserve costs. Basic rents may be allowed to exceed comparable rents for conventional units, but in no case by more than 150% of the comparable rent for conventional unit rent level; and

(3) The value of the housing project covered by the loans to be assumed, at the time of an ownership transfer or sale, must be sufficient to ensure that all Agency loans being assumed and all subsequent loans being offered as a part of the transfer or sale can be secured to a level that fully protects the Agency's interest. Loans from third-party sources that are not dependent on project revenue for payment will not be included in this determination.

(i) If the total value of the loans being offered as a part of an ownership transfer or sale is $100,000 or less, the security value of the housing project may be determined through either: An Agency review of

monitoring reports conducted in accordance with the requirements in subpart H of this part or an appraisal paid for by the borrower and conducted in accordance with subpart P of this part.

(ii) If the total value of the loans being offered as a part of an ownership transfer or sale exceeds $100,000, the security value of the housing project must be determined through an appraisal obtained by the Agency and conducted in accordance with subpart P of this part.

(iii) The Agency may approve a loan write-down, in accordance with §3560.455, prior to an ownership transfer or sale to reduce the amount of debt being assumed by the transferee or buyer.

(4) Prior to Agency approval of an ownership transfer or sale, an environmental review, as required under the National Environmental Policy Act and in accordance with 7 CFR part 1940, subpart G, must be conducted on all property related to the ownership transfer or sale. If contamination from hazardous substances or petroleum products is found on the property, the finding must be disclosed to the Agency and the transferee or buyer and must be taken into consideration in the determination of the housing project's value.

(5) All immediate and long-term repair and rehabilitation needs must be identified by a capital needs assessment. The reserve requirements for the housing project will be reviewed by the Agency and adjusted, if necessary, to adequately cover the cost of addressing the property's capital needs. The Agency may approve the release of the current reserve amount to the transferor provided the transferee agrees to deposit the amount to cover the project's immediate needs into the reserve account at closing.

(6) The borrower and transferee must disclose to the Agency all terms, conditions, or other considerations related to the ownership transfer or sale. All side or other agreements must be disclosed and all sources and uses of funds related to the ownership transfer or sale must be disclosed.

(7) An agreement must be signed between the borrower and the transferee listing all repairs known by the borrower to be necessary to bring the housing project into compliance with Agency requirements for decent, safe, and sanitary housing as listed in subpart C of this part.

(i) The agreement must include repairs required to correct compliance violations cited in a compliance violation notice issued by the Agency.

(ii) The agreement must specify whether each repair listed will be completed by the borrower prior to the ownership transfer or by the transferee in accordance with a workout agreement developed in accordance with the requirements of §3560.453 and executed between the transferee or buyer and the Agency.

(8) A civil rights compliance review, as required by 7 CFR part 1901, subpart E, will be conducted by the Agency prior to the ownership transfer or sale.

(9) During or immediately after the transfer, a review of the property must be conducted to ensure that it complies with or will comply with section 504(c) of the Americans with Disabilities Act (ADA), which covers accessibility requirements, and the Title VI of the Fair Housing Act of 1968.

(10) A transferee must ensure that tenant certifications in compliance with subpart D of this part for all occupied rental units are on file with the Agency.

(11) A transferee must comply with insurance and bonding requirements established in subpart C of this part at the time of the transfer.

(12) A transferee must agree to submit financial reports to the Agency according to subpart G of this part.

(13) A transferee must establish that there are no liens, judgments, or other claims against the housing project other than those by the Agency and those to which the Agency has previously agreed.

(14) A limited profit Rural Rental Housing transferee's initial investment and return on investment will remain the same as that originally provided to the transferor unless:

(i) The property is transferred to a non-profit entity and the return on investment is eliminated; or

(ii) The transferee contributes additional funds for repair or rehabilitation and the Agency agrees to recognize a higher initial investment.

(e) Equity payments. The Agency will withhold any equity payment due to the borrower, as part of an ownership transfer or sale, if any of the following conditions exist:

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

(2) Any non-Agency prior liens against a housing project are not paid in full.

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

(4) Any management deficiencies cited in a compliance violation notice issued by the Agency to the borrower have not been corrected or the housing project is not operating under an approved management plan or, if applicable, an approved management agreement.

(5) Any operation and maintenance deficiencies cited in compliance violation notices issued by the Agency have not been corrected or are not scheduled for correction in a workout agreement developed in accordance with the requirements of §3560.453.

(6) The borrower entity is, at the time of the ownership transfer or sale, cited by the Agency or other Federal, state, or local agencies for violations of Fair Housing or Equal Opportunity requirements.

(7) The borrower entity is, at the time of the ownership transfer or sale, cited by the Agency or any other entity involved in the financing of the housing project for misappropriation of funds.

(f) Equity payment funding sources. Equity may be provided in cash or through a loan. If a full equity payment to the transferor is not paid at the time of the ownership transfer or sale or has not been paid through an Agency equity loan or third-party equity loan approved by the Agency to the borrower, the transferee must certify that equity payments due to the borrower will be paid from sources other than housing project's funds and must identify the sources of such payments.

(g) Restrictive-use requirement. Transferees assuming Agency loans, including loans approved prior to December 21, 1979, will be required to execute a restrictive-use agreement that contains the language specified in §3560.662. The restrictive-use agreement will require the housing project to be used for program purposes for a specified period of time beyond the date that the ownership transfer or sale is closed. When an equity loan is involved at the time of transfer, the restrictions will be for 30 years.

(h) Subsequent loans. The Agency may approve a subsequent loan or permit a loan from a third-party source in conjunction with an ownership transfer or sale of a housing project. The subsequent loan may be in the form of a junior or parity lien.

(1) Subsequent loans on a housing project proposed in conjunction with an ownership transfer or sale must be requested and processed in accordance with the Agency loan origination requirements in subpart B of this part.

(2) The Agency may amortize the subsequent loan over a period not to exceed the remaining economic life of the housing or 50 years, whichever is less.

(3) The Agency may extend the term of the existing loan to a period not to exceed 30 years or the remaining economic life of the housing, whichever is less.

(i) Loan assumption interest rates. The interest rate for Agency loans assumed in conjunction with an ownership transfer or sale will be determined as follows:

(1) The interest rate for all loans, except farm labor housing loans, will be set at the lower of:

(i) The note rate of the existing Agency loan;

(ii) The Agency note rate on the day the transfer is approved;

(iii) The Agency note rate on the day the transfer is closed; or

(iv) If the rents are increased due to a transfer, the transfer will be done under new rates and terms when the Agency determines that it is in the best interest of the government. Subsequent loan may be in the form of a senior, junior or parity lien or soft second.

(2) The interest rate on farm labor housing loans will be the rate specified in the note, except that loans transferred to public bodies, nonprofit organizations of farm workers, and broadly-based nonprofit corporations for farm labor housing purposes may be at a one percent interest rate regardless of the rate specified in the note if the Agency determines that such a reduction is necessary to maintain affordable rental rates for tenants.

(j) Loan assumption terms. The amount of the loan balance that may be assumed through an ownership transfer or sale must not exceed the security value of the housing project determined according to §3560.406(d)(3)(i).

(1) The Agency may reamortize a loan assumed e time of the transfer or sale, to a monthly payment amortization and will be made subject to PASS. When on- or off-farm labor housing projects are involved in an ownership transfer or sale, the related loans may be transferred on a DIAS basis or converted to PASS if the Agency determines that such a conversion will not be detrimental to the operation of the farm labor housing.

(k) Processing ownership transfers or sales.

(1) At the time of the transfer, the Agency will require the borrower to transfer all equipment, related facilities, and housing project financial accounts to the transferee including the operation and maintenance account, reserve account, tenant security deposit account, tax and insurance escrow accounts.

(i) Any funds remaining in a rental assistance contract not dispersed by the transferor will be assigned to the transferee unless the rental assistance is not needed for tenants or another form of rental subsidy is to be used.

(ii) Any rental assistance determined to be unnecessary will be reassigned to other housing projects in accordance with the provisions of subpart F of this part.

(2) The Agency will require that appropriate loan documents are executed by the transferee. The Agency may require such documents to be referenced in security instruments (e.g., mortgage or deed of trust).

(3) If all of a borrower's outstanding Agency debt is not assumed or paid off at the time of the transfer or sale, the Agency will not release a borrower from liability unless the Agency determines that the borrower is unable to pay the remaining debt from assets taken as security through the debt settlement procedure in accordance with §3560.457.

(l) Ownership transfers or sales under special rates, terms, and conditions. Housing projects may be transferred or sold to entities that do not meet borrower eligibility requirements for the type of loans being assumed. However, such a transfer or sale will only be considered when it is determined by the Agency to be in the best interest of the Federal Government and the objectives of the original loan can no longer be met. The following special rates, terms, and conditions will apply to such situations.

(1) The transferee makes a down payment of at least 10 percent of the remaining loan balance to be assumed.

(2) The transferee has the ability to pay the Agency debt.

(3) Monthly or annual installments will be amortized over the term of the loan and the interest rate will be at a rate of interest at least one percent higher than the interest rate offered to eligible borrowers as specified in paragraphs (i)(1) or (2) of this section.

§3560.407 Sales or other disposition of security property.

(a) General. Borrowers must obtain Agency approval prior to selling or exchanging all or a part of, or an interest in, property serving as security for Agency loans. Agency approval also must be requested and received prior to the granting or conveyance of rights-of-way through property serving as security property. An environmental review must be completed in accordance with 7 CFR part 1940, subpart G, before the Agency approves all such sales or other dispositions of security property.

(b) Request requirements. Requests for Agency approval of transactions related to security property must document that the following conditions will be met.

(1) The borrower's ability to repay the Agency debt will not be impaired;

(2) The transaction will not interfere with the successful operation of the housing project or prevent the borrower from carrying out the purpose for which the loan was made.

(3) The monetary or other consideration offered in the transaction is equal to or greater than the market value of the security property being disposed of or the rights being granted, except that right-of-way easements may be granted or conveyed with minimal or no consideration being offered if:

(i) The value of the security property will not be reduced;

(ii) The suitability of the security property for the intended purpose will not be impaired; and

(iii) The easement is granted to allow the borrower to develop additional lots or units that will be integrated into the housing project or for enhancement of streets, utilities or other services provided by a public body.

(4) The property that will remain as security for Agency loans, after any transaction related to security property, will fully secure the borrower's debt to the Agency.

(5) Borrowers must report to the Agency the total of all proceeds derived from the sale or other disposition of property serving as security for Agency loans. The proceeds from the disposition of the security property will be used for purposes approved by the Agency.

§3560.408 Lease of security property.

(a) General. Borrowers must obtain Agency approval prior to entering into a lease agreement related to any property serving as security for Agency loans. An environmental review must be completed in accordance with 7 CFR part 1940, subpart G, before the Agency can give lease approval for real property serving as security for Agency loans.

(b) Leases to public housing authorities. Borrowers may not lease all or part of their housing facilities to a housing authority. Lease agreements in place prior to the effective date of this regulation may be continued provided that leases are in a form acceptable to the housing authority and are on terms that will enable the borrower to comply with Agency program requirements, to meet Agency program objectives, and make loan and other required payments to the Agency on an Agency approved schedule.

(c) Lease of a portion of the security property. The Agency may, subject to the applicable provisions governing loan purposes found in of §3560.53, §3560.553 and §3560.603, approve the leasing of facilities related to a housing project (e.g., central kitchens, recreation facilities, laundry rooms, and community rooms) when the borrower will continue to operate the facilities for the purposes for which the loan was made. Agency approval is not required for leases with a term of less than 30 days. The Agency will only approve a lease with a term over 30 days if the following conditions are met:

(1) The lease is in the best interest of the borrower, the tenants, and the Federal Government.

(2) The amount of the consideration agreed to in the lease is adequate to pay all prorated operating and maintenance expenses, a prorated share of the annual reserve deposit, and the prorated part of the loan amortization at the note rate of interest.

(3) All compensation and considerations, whether payments, a share of proceeds, or improvements to the property paid for by the lessee, must be disclosed to the Agency. No payments or compensation for entering into a lease shall flow to the borrower or any identity-of-interest related to the borrower.

(4) The lease provides at its termination for the restoration of the leased space to its original condition or a condition acceptable to the owner and the Federal Government.

(5) Consent to the lease will not exceed 3 years at a time unless the Agency determines that a longer lease is advantageous to the borrower, the tenants, and the Federal Government.

(6) When another lienholder's mortgage requires that lienholder's consent to a lease, the borrower must obtain written consent from the lienholder before the Agency will consider approving the lease.

(d) Mineral leases. Mineral leases will be handled according to 7 CFR 3550.159 except that all references to County Supervisor will be construed to mean District Director when applied to the MFH Programs.

§3560.409 Subordinations or junior liens against security property.

(a) General. Borrowers must obtain Agency consent prior to entering into any financial transaction that will require a subordination of the Agency security interest in the property (i.e., granting of a prior interest to another lender.) An environmental review must be completed in accordance with 7 CFR part 1940, subpart G, before the Agency can consent to a subordination or junior lien against the property. Borrowers must use an Agency approved subordination agreement.

(1) If a lien is placed against property serving as security for an Agency loan without prior Agency consent, the Agency will declare the borrower to be in

default and will pursue liquidation of the borrower's loans in accordance with the procedures specified in §3560.457, unless an agreement can be reached between the borrower and the Agency to work out removal of the lien or post approve the lien.

(2) Subordinations or junior liens need not encompass the entire site, (e.g., a subordination or junior lien requested to permit an interim lender to advance construction funds may only cover the portion of the site proposed for construction.)

(3) The subordination or junior lien must be for a specific amount.

(4) The subordination or junior lien must not adversely impact the Agency's ability to service the loan according to the requirements of this part.

(b) Consent request requirements. Borrowers proposing to have the Agency subordinate its interest to another lender or to give a creditor a junior lien against property serving as security for an Agency loan must submit a consent request to the Agency. The consent request must document the following:

(1) The action will enable the borrower to obtain financial resources for improvements or repairs on the security property that are consistent with the purposes of the Agency loan secured by the property.

(2) The action will not adversely impact the borrower's financial condition and the borrower's ability to repay the Agency loan being secured by the property.

(3) The action will not result in basic rents at the security property that exceed conventional rents for comparable units in the area.

(4) The terms and conditions of the credit to be secured by the subordination or junior lien are not expected to adversely affect the borrowers ability to meet the terms and conditions of the Agency loan secured by the property.

(5) The proposed use of the funds obtained through the granting of a subordination or junior lien will not adversely affect the borrower's ability to meet Agency program requirements or to operate and manage the housing project in a manner consistent with program objectives.

(6) The creditor receiving the “subordination” of interest in the property or the junior lien will agree that a foreclosure or acceptance of a deed-in-lieu of foreclosure will not be initiated without at least 30 days prior notice to the Agency.

(7) The subordination or junior lien is not being secured with any funding from housing project financial accounts.

(8) The “subordination” of interest or junior lien will not cause the debt from all sources to exceed the value of the security property.

(9) The transaction related to the placement of a “subordination” of interest or junior lien against the property serving as security for an Agency loan is in the best interest of the Federal Government.

(c) Required conditions for subordinations and junior liens. Subordinations of interest in or junior liens against property serving as security for an Agency loan may be approved by the Agency only if they improve a borrower's financial condition and allow for improvements or repairs that are consistent with the purposes of the Agency loan secured by the property.

(1) Farm Labor Housing loans on farm tracts may be subordinated for essential farm improvements and operations.

(2) Any proposed development must be planned and performed according to 7 CFR part 1924, subpart A, or in a manner directed by the other lienholder that meets the objectives of 7 CFR part 1924, subpart A.

(d) Other liens against a property or other assets.

(1) Borrowers must not enter into any agreements to place a lien on a housing project or any equipment related to a housing project without prior Agency approval and unless the following conditions are met:

(i) The transaction will not adversely affect the Agency's security position;

(ii) The lien is not related to a non-program eligible action;

(iii) The items to be acquired by the funding related to the lien is needed for the operation of the property; and

(iv) The financing arrangements are otherwise sound.

(2) In cases where the above criteria are met, borrowers must complete and provide the Agency a copy of the financing statement, loan document, or contract, as applicable, as well as a security agreement acceptable to the Agency.

§3560.410 Consolidations.

(a) General. With Agency approval, loans, loan agreements, or loan resolutions may be consolidated to reduce the administrative burden (i.e., record keeping, budgeting), to improve the cost effectiveness and efficiencies of housing project operations, and to effectively utilize facilities common to housing projects.

(b) Loan consolidations. Loan consolidations will only be considered when:

(1) Multiple loans to the one borrower entity are being transferred to a different borrower entity in accordance with §3560.406, or

(2) One borrower entity has an initial loan and one or more subsequent loans for the same housing project and all the loans were closed on the same date and with the same rates and terms.

(c) Loan agreement or loan resolution consolidations. Loan agreements or loan resolutions may be consolidated, even if the loans related to the agreement or resolution are not consolidated, to allow borrowers to comply with reporting, accounting, and other Agency requirements as a single housing project.

(1) The loan agreements or loan resolutions may only be consolidated when they are related to loans made for the same purposes, to the same borrower, and operating under the same type of interest credit, if applicable.

(2) All of a borrower's loan accounts must be current after the loan agreement or loan resolution consolidation is processed, unless otherwise approved by the Agency.

§§3560.411-3560.449 [Reserved]

§3560.450 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart J--Special Servicing, Enforcement, Liquidation, and Other Actions

§3560.451 General.

This subpart contains special servicing, enforcement, liquidation, and other actions that the borrower may request or the Agency may implement when compliance violations, monetary defaults, or non-monetary defaults cannot be resolved through regular servicing.

(a) Agency obligations. The Agency is under no obligation to offer or agree to any special servicing actions.

(b) Relationship to workout agreements. Special servicing actions may be implemented either as a part of a workout agreement, developed in accordance with §3560.453, or as an action approved by the Agency separate from a workout agreement unless indicated otherwise in this subpart.

§3560.452 Monetary and non-monetary defaults.

(a) General. Borrowers are in default when they have received a compliance violation notice, issued in accordance with §3560.354, and have failed to correct the compliance violation identified in the compliance violation notice within the time period specified in the notice. Compliance violations include, but are not limited to, violations of promissory note provisions, loan or grant agreement provisions, regulatory, or other Agency requirements, including requirements imposed on a borrower through a workout agreement developed in accordance with §3560.453.

(b) Monetary defaults. A monetary default exists when any amount due to the Agency or a third party (such as real estate taxes and insurance) under a promissory note, loan or grant agreement, workout agreement, or other agreement remains due more than 30 days after the due date.

(c) Nonmonetary defaults. A nonmonetary default exists when a borrower fails to correct a compliance violation, other than a monetary amount past due, within the time period specified in a compliance violation notice issued in accordance with §3560.354. Nonmonetary defaults include, but are not limited to, failure to:

(1) Operate and manage a housing project in accordance with the Agency approved management plan or Agency requirements;

(2) Maintain the physical condition of a housing project in a decent, safe, and sanitary manner and in accordance with Agency requirements;

(3) Keep general operating expense, reserve, and other financial accounts related to a housing project at required funding levels;

(4) Occupy rental units with eligible tenants, unless granted an exception by the Agency;

(5) Charge correct rents or to correctly calculate net tenant contributions, utility allowances, or rental assistance payments or to properly administer the Agency rental assistance assigned to the housing project;

(6) Submit required annual financial reports to the Agency within time periods specified in §3560.308;

(7) Submit management plans, leases, occupancy rules, and other required materials to the Agency in accordance with Agency requirements; and,

(8) Comply with applicable Federal laws including laws related to civil rights, fair housing, disabilities, and environmental conditions.

(d) Default notice. When borrowers are in default, the Agency will notify borrowers, in writing, that they are in default. The default notice will identify the compliance violation that led to the default, will specify actions necessary to cure the default, and will establish a date by which the default must be cured to preclude Agency initiation of enforcement actions, liquidation, or other actions.

(e) Agency action. If a borrower fails to cure a default within the time period specified in the default notice, the Agency may initiate the enforcement actions described in §3560.461 or liquidation as described in §3560.456. Also, Agency compliance violation notices and related default notices may be referred to Federal, state, and local agencies with jurisdictions related to the violations for handling, in accordance with their requirements.

§3560.453 Workout agreements.

(a) General.

(1) Prevention or resolution of compliance violations or default cures are a borrower's responsibility.

(2) A borrower may develop and submit to the Agency for approval a workout agreement that proposes actions to be taken over a period of time to prevent or correct a compliance violation or to cure a monetary or non-monetary default.

(3) A borrower developed workout agreement may propose, but is not limited to, the following actions:

(i) A combination of one or more of the special servicing actions outlined in §§3560.454 and 3560.455;

(ii) A change in operations and management at a housing project; or

(iii) A commitment of additional financial resources to the housing project with the amount and source of the additional resources to be committed to the housing project specifically identified.

(b) Workout agreement approval.

(1) The Agency is under no obligation to approve a workout agreement as submitted by a borrower or to act with forbearance when a housing project is in monetary or non-monetary default.

(2) Borrower developed workout agreements may not be implemented until the borrower receives written approval from the Agency.

(3) The Agency will only approve a workout agreement if the Agency determines that the actions proposed are likely to prevent or correct compliance violations or cure a default and approval is in the best interest of the Federal Government and tenants.

(4) The Agency will only approve a workout agreement if the proposed actions are consistent with the borrower's management plan. If proposed actions are not consistent with the borrower's management plan, applicable revisions to the borrower's management plan must be made before approval of the workout agreement is given.

(c) Workout agreement required content.

(1) Workout agreements submitted to the Agency for approval must be in writing and signed by the borrower. Workout agreements must describe proposed actions in sufficient detail to demonstrate the likelihood of the actions to prevent or correct compliance violations or cure defaults.

(2) At a minimum, workout agreements must include the following.

(i) The name and address of the housing project, project number, borrower's tax identification number, and other information necessary to identify the housing project.

(ii) A description of the potential or actual compliance violation or default situation, including an explanation of related causes, such as cash flow concerns, budget revisions, deferred maintenance, vacancies, or violations of statutes.

(iii) A definition and description of the housing project's market area, including information on housing availability, rents, and vacancy rates in the market area.

(iv) A description of the proposed actions to prevent or correct compliance violations or to cure defaults along with a date specific schedule indicating when interim and final actions will be taken to correct the compliance violation or cure the default.

(v) A description of financial and other resources necessary to prevent or correct the compliance violation or cure the default including an identification of the sources for such resources.

(d) Workout agreement budgets. Budget revisions submitted as a part of a workout agreement for a housing project experiencing cash flow problems must prioritize cash disbursements in the following order:

(1) Prior lienholder, if any;

(2) Critical operating and maintenance expenses, including taxes and insurance;

(3) Agency debt payments;

(4) Reserve account requirements; and

(5) Other authorized expenditures.

(e) Workout agreement terms and cancellation.

(1) Workout agreements shall be in effect for no longer than a 2-year time period, beginning on the date of Agency approval. If an approved workout agreement calls for actions that extend beyond a 2-year period, borrowers must submit an updated and, if necessary, revised workout agreement to the Agency for approval. The updated workout agreement must be submitted to the Agency, 30 days prior to the expiration of the workout agreement in effect.

(2) The Agency may cancel a workout agreement at any time if the borrower fails to comply with the terms of the agreement. The Agency will provide notice to the borrower upon cancellation of the workout agreement.

§3560.454 Special servicing actions related to housing operations.

(a) Changing rents or revising budgets. The Agency may approve a borrower request for a rent change, rent incentives, or a revised budget, at any time during a housing project's fiscal year.

(b) Occupancy waivers. If the Agency determines that a housing project with high vacancies could be kept operationally and financially viable by allowing the borrower to accept as tenants persons with incomes above the income eligibility standards specified in §3560.152(a), the Agency, in writing, may grant the borrower an occupancy waiver to allow such persons as tenants. Occupancy waivers will be in effect only during the time period specified by the Agency when the waiver is granted. In addition, borrowers must rent to all eligible applicants on the housing projects waiting list prior to accepting persons with incomes above the Agency standards as tenants.

(c) Additional rental assistance (RA). If the Agency determines that a housing project with high vacancies could be kept operationally and financially viable by increasing the amount of RA allocated to the housing project, the Agency, subject to available funds,

may offer the housing project RA as a means of preventing or correcting a compliance violation or curing a default.

(d) Special note rents. When a Plan II housing project is experiencing severe vacancies due to market conditions, the Agency may approve a rent less than the note rent to attract and keep tenants whose incomes, according to the formula in §3560.203, would require them to pay the note rent. The reduced rent is called a Special Note Rent (SNR) and, as noted in §3560.210, approval of an SNR may affect approvals of loan proposals submitted to the Agency for the market area where the SNR is in effect.

(1) An SNR rent may only be requested as a part of a proposed workout agreement and must include documentation of market conditions, the housing project's vacancy rates, evidence of marketing efforts, and other concerns necessitating the request for an SNR.

(2) Borrowers must forego the annual return to owner for each housing project's fiscal year that an SNR is in effect for all or part of a fiscal year at a housing project.

(3) SNR's may be increased, decreased, or terminated any time during a housing project's fiscal year when market conditions, vacancy rates, or other concerns that necessitated the SNR warrant a change.

(4) In addition to any state lease law requirements that might be related to the implementation of an SNR, the borrower must notify each tenant of any change in rents or utility allowances that result from approval of an SNR, in accordance with §3560.205(c) and must submit the appropriate budget changes to the Agency for approval.

(e) Termination of management agreement. If the Agency determines that a compliance violation or loan default was caused, in full or in part, by actions or inactions of the housing project's management agent, the Agency will require the borrower to terminate the management agreement with that agent, or in the case of a borrower managed housing project, to enter an agreement with a third-party non-identity of interest management agent, unless the borrower and the Agency agree on a written plan to prevent reoccurrence of the violation. Housing project funds may not be used to pay a management fee to a management agent after the Agency has directed the borrower to terminate a management agreement with that agent, except during an Agency approved transition period.

§3560.455 Special servicing actions related to loan accounts.

(a) General. To prevent or correct a compliance violation or to prevent or cure a default in a situation that cannot be resolved through regular servicing, the Agency may approve a deferral of loan payments or a loan restructuring. Nothing herein precludes the Agency from initiating appropriate legal action to correct a compliance violation if the Agency determines such action is more in the Government's interest than entering into a special servicing agreement as provided for in this section. Procedures for debt collection are discussed in §3560.460. As part of a workout agreement, the Agency may agree to accept less than full monthly payment installments due on an Agency loan for a specified period of time, not to exceed the effective period of the workout agreement.

(b) Loan reamortizations. A loan reamortization is a restructuring of loan terms and conditions over a period of time that does not exceed the remaining useful life of the housing project.

(1) Loan reamortizations will only be approved when they are in the best interest of the Federal Government and tenants and when the following conditions are met.

(i) The Agency determines that the borrower will be unable to meet their obligations without a reduction in monthly payment installments; and

(ii) The Agency is satisfied that the security, including the potential income for debt service, will be adequate to protect the Agency's interest over the term of the reamortization and that the reamortization will not adversely affect the Federal Government's lien priority.

(2) If the Agency approves a reamortization of a loan under this section, it will be at the existing note rate, or the current interest rate at the time of reamortization closing or approval, whichever is less.

(3) Loan reamortization may be used to:

(i) Restructure loan repayments to prevent or correct a compliance violation or cure a default caused by circumstances beyond the borrower's control in situations where the borrower is otherwise in compliance with Agency requirements;

(ii) Repay principal, outstanding interest, overage, and advances made by the Agency for recoverable cost items when less than full payments were authorized under the provisions of an Agency approved workout agreement;

(iii) Restructure a borrower's loan payments in conjunction with an incentive package developed in accordance with §3560.656 to prevent prepayment of the loan;

(iv) Restructure an existing loan in conjunction with a subsequent loan for rehabilitation; or

(v) Restructure remaining debt when a portion of the property serving as loan security is sold and there is a need to reestablish the financial stability of the housing project.

(c) Loan writedowns. A loan writedown is a reduction of a borrower's debt approved by the Agency.

(1) Loan writedowns will only be approved when they are in the best interest of the Federal Government and when the following conditions exist:

(i) Sound management of the housing project is evident or sound management practices are proposed for correction in accordance with an Agency approved workout agreement; and

(ii) The housing project's financial stability is being affected by conditions beyond the borrower's control, such as market weaknesses, unforeseen site problems, or natural disasters.

(2) Prior to Agency approval for a loan writedown, the borrower must obtain an appraisal of the housing project that concludes the ‘as-is’ market value, subject to restricted rents, conducted in accordance with subpart P of this part. The Agency will not approve a loan write-down unless the appraisal indicates the Federal Government's interests are secured at the proposed writedown level.

(3) Any writedown will be conditioned on a finding that the borrower does not have the ability to pay a higher loan payment, even if the loan is reamortized.

(4) Loan writedowns may be used to allow for a loan transfer and assumption for less than the total amount of outstanding debt.

§3560.456 Liquidation.

Prior to any servicing action which might lead to the acquisition of real property by the Agency, the Agency must complete a due diligence report to assess any potential contamination of the property from hazardous substances, hazardous wastes, or petroleum products. The borrower must cooperate with the Agency in the development of this report.

(a) Before acceleration. Before accelerating a project loan, the Agency will consider the possibility that the borrower is forcing an acceleration to circumvent the prepayment process. If it is found that this is the borrower's motivation, the Agency will consider alternatives to acceleration, such as suing for specific performance under loan and management documents.

(b) Acceleration. When a borrower is in monetary or non-monetary default, the Agency will accelerate the loan unless the Agency decides other enforcement measures are more appropriate.

(1) If the borrower does not pay the full account balance and meet the other terms of the acceleration notice within the time period set forth in the acceleration notice, the Agency will foreclose or acquire the security property through deed in lieu of foreclosure.

(2) The Agency will suspend interest credit and rental assistance.

(3) The Agency will not accept partial payment of an accelerated loan unless required by state law.

(c) Voluntary liquidation. After acceleration, borrowers may voluntarily liquidate through either of the following mechanisms:

(1) Deed in lieu of foreclosure. RHS may accept a deed in lieu of foreclosure to convey title to the security property only after the debt has been accelerated and when it is in the Government's best interest.

(2) Offer by third party. If a junior lienholder or cosigner makes an offer in the amount of at least the net recovery value, RHS may assign the note and mortgage after all appeal rights have expired.

(d) Foreclosure.

(1) The Agency will initiate foreclosure when a borrower is in monetary or non-monetary default and foreclosure is in the best interest of the Federal Government.

(2) When a junior lienholder foreclosure does not result in payment in full of the Agency debt but the property is sold subject to the Agency lien, the Agency will liquidate the account.

(e) Acquisition of chattel properties.

(1) The Agency will accept voluntary conveyance of chattel property only when the borrower can convey ownership free of other liens and the Agency has agreed to release the borrower from further liability on the account.

(2) If the Agency decides to accept an offer of voluntary conveyance of chattel property, the borrower must provide an itemized listing of each chattel property item being conveyed and provide title to vehicles or other equipment, where applicable.

§3560.457 Negotiated debt settlement.

(a) Borrower proposals to settle debt. A borrower who cannot pay the full amount of loan payments may propose an offer to settle an outstanding debt for less than the full amount of that debt. The Agency may approve a negotiated debt settlement only in cases where a default is evident and doing so is in the best interest of the Federal Government and tenants.

(b) Required information. Borrowers requesting debt settlement must submit complete and accurate information from which a full determination of financial condition can be made. Debt settlement offers will not be approved by the Agency unless the financial information submitted by the borrower indicates that the borrower will be able to make the debt settlement payments as proposed.

(c) Effective date of approval. Debt settlement offers will not be accepted until the borrower receives written approval from the Agency.

(d) Appraisal requirement. No debt settlement offer will be accepted for less than the net recovery value of the security as determined by a licensed appraiser or other qualified official, and concurred in by the Agency's qualified appraisal review official or other qualified official.

(e) Disposition of security prior to offer. Borrowers are not required to dispose of security prior to making a debt settlement offer. However, if a borrower has disposed of security prior to making a debt settlement offer, the proceeds from the disposed security must be applied to the borrower's account prior to any negotiations on the debt settlement offer.

(f) Final release condition. Upon full payment of the approved debt settlement, the Agency will release the borrower from liability.

§3560.458 Special property circumstances.

(a) Abandonment. When the Agency determines that a borrower has abandoned security for a loan under this part, the Agency will take the steps necessary to protect the Federal Government's interest in the security. Costs associated with managing abandoned property are the responsibility of the borrower and will be charged to the borrower's account until liquidation is completed.

(b) Other security. The Agency will service security such as collateral assignments, assignments of rents, Housing Assistance Payments Contracts, and notices of lienholder interest according to acceptable practices in the respective states.

(c) Taking of additional security to protect Agency interests. The Agency may require borrowers to provide additional security in the form of real estate, cash reserves, letters of credit, or other security when needed to improve the chances that the Agency will not suffer a loss, and when:

(1) The account is in default; or

(2) The property has not been properly managed or maintained.

(d) Due diligence. When the Agency has completed an environmental review in accordance with 7 CFR part 1940, subpart G, and decides not to acquire security property through liquidation action or chooses to abandon its security interest in real property, whether due in whole or in part, to the presence of contamination from hazardous substances, hazardous wastes, or petroleum products, the Agency will provide the appropriate environmental authorities with a copy of its due diligence report.

§3560.459 Special borrower circumstances.

(a) Deceased borrower, bankruptcy, insolvency, and divorce actions. The Agency will address borrower accounts affected by special circumstances such as death, bankruptcy, insolvency, and divorce on a case-by-case basis. The Agency will make servicing decisions in such cases on the basis of best interest to the Federal Government and tenants. The Agency will bring a legal action to establish the legal capacity of the borrower to administer the project if found necessary to protect the government's interests. In order for the Agency to make servicing decisions in such cases, the borrower or the borrower's representative will provide to the Agency:

(1) On the part of the heirs or executor of the borrower's estate, evidence of legal action due to a will or court actions that establish who is to become the owner;

(2) The financial status of the borrower and any member pledging additional security for the debt;

(3) The status of the security property; and

(4) The impact of the identified actions on the operation of the project.

(b) Membership liability agreements. If a borrower's note is endorsed by individuals other than the borrower or a borrower has security agreements with members of the organization for the purchase of shares of stock or for the payment of a pro rata share of the loan in the event of default, or has individual liability agreements, which are usually assigned to and held by the Agency as additional security for the loan, the security and liability agreements must be adequate to protect the Agency's interest.

(c) Security issues in participation loans. When a multi-family housing (MFH) project is receiving financing or a subsidy from sources other than the Agency, the Agency will service the account in accordance with the participation agreements made with the Agency and the other funding sources under §3560.65.

§3560.460 Double damages.

(a) Action to recover assets or income.

(1) The Agency may request to the Attorney General to bring an action in a United States district court to recover any assets or income used by any person in violation of the provisions of a loan made by the Agency under this section or in violation of any applicable statute or regulation.

(2) For the purposes of this section, a use of assets or income in violation of the applicable loan, statute, or regulation includes any use for which the documentation in the books and accounts does not establish that the use was made for a reasonable operating expense or necessary repair of the project or for which the documentation has not been maintained in accordance with the requirements of the Agency and in reasonable condition for proper audit.

(3) For the purposes of this section, the term “person” means:

(i) Any individual or entity that borrows funds in accordance with programs authorized by this section;

(ii) Any individual or entity holding 25 percent or more interest in any entity that the Agency funds in accordance with programs authorized by this section; and

(iii) Any officer, director, or partner of an entity that borrows funds in accordance with programs authorized by this section.

(b) Amount recoverable.

(1) In any judgment favorable to the United States entered under this section, the Attorney General may recover double the value of the assets and income of the project that the court determines to have been used in violation of the provisions of a loan made by the Agency under this section or any applicable statute or regulation, plus all costs related to the actions, including reasonable attorney and auditing fees.

(2) Notwithstanding any other provisions of law, the Agency may use amounts recovered under this section for activities authorized under this section and such funds must remain available for such use until expended.

(c) Time limitation. Notwithstanding any other provisions of law, an action under this section may be commenced at any time during the six-year period beginning on the date that the Agency discovered or should have discovered the violation of the provisions of this section or any related statutes or regulations.

(d) Continued availability of other remedies. The remedy provided in this section is in addition to and not in substitution of any other remedies available to the Agency or the United States.

§3560.461 Enforcement provisions.

(a) Equity skimming.

(1) Criminal penalty. Whoever, as an owner, agent, employee, or manager, or is otherwise in custody, control, or possession of property that is security for a loan made under this title, willfully uses, or authorizes the use, of any part of the rents, assets, proceeds, income, or other funds derived from such property, for any purpose other than to meet actual, reasonable, and necessary expenses of the property, or for any other purpose not authorized by this title or the regulations adopted pursuant to this title, must be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(2) Civil sanctions. An entity or individual who as an owner, operator, employee, or manager, or who acts as an agency for a property that is security for a loan made under this title where any part of the rents, assets, proceeds, income, or other funds derived from such property are used for any purpose other than to meet actual, reasonable, and necessary expenses of the property, or for any other purpose not authorized by this title of the regulations adopted pursuant to this title, must be subject to a fine of not more than $25,000 per violation. The sanctions provided in this paragraph may be imposed in addition to any other civil sanctions or civil monetary penalties authorized by law.

(b) Civil monetary penalties.

(1) When civil monetary penalties may be imposed. The Agency may, after notice and opportunity for a hearing, impose a civil monetary penalty in accordance with this section against any individual or entity, including its owners, officers, general partners, limited partners, or employees, who knowingly and materially violate, or participate in the violation of, the provisions of this title, the regulation issued by the Agency pursuant to this title, or agreements made in accordance to this title by:

(i) Submitting information to the Agency that is false.

(ii) Providing the Agency with false certifications.

(iii) Failing to submit information requested by the Agency in a timely manner.

(iv) Failing to maintain the property subject to loans made under this title in good repair and condition, as determined by the Agency.

(v) Failing to provide management for a project that received a loan made under this title that is acceptable to the Agency.

(vi) Failing to comply with the provisions of applicable civil rights statutes and regulations.

(2) Amount.

(i) The amount of a civil penalty imposed under this section must not exceed the greater of twice the damages the Agency or the project that is secured for a loan under this section suffered or would have suffered as a result of the violation, or $50,000 per violation.

(ii) Determination. In determining the amount of a civil monetary penalty under this section, the Agency must take into consideration:

(A) The gravity of the offense;

(B) Any history of prior offenses by the violator (including offenses occurring prior to the enactment of this section);

(C) Any injury to tenants;

(D) Any injury to the public;

(E) Any benefits received by the violator as a result of the violation;

(F) Deterrence of future violations; and

(G) Such other factors as the Agency may establish by regulation.

(3) Payment of penalties. No payment of a penalty assessed under this section may be made from funds provided under this title or from funds of a project which serve as security for a loan made under this title.

(4) Remedies for noncompliance.

(i) Judicial intervention. If a person or entity fails to comply with a final determination by the Agency imposing a civil monetary penalty, the Agency may request the Attorney General of the United States to bring an action in an appropriate district court to obtain a monetary judgment against such an individual or entity and such other relief as may be available. The monetary judgment may, in the court's discretion, include attorney's fees and other expenses incurred by the United States in connection with the action.

(ii) Reviewability of determination. In an action under this paragraph, the validity and appropriateness of a determination by the Agency imposing the penalty must not be subject to review.

(c) Conditions for renewal extension. The Agency may require that expiring loan or assistance agreements entered into under this title must not be renewed or extended unless the owner executes an agreement to comply with additional conditions prescribed by the Agency, or executes a new loan or assistance agreement in the form prescribed by the Agency.

§3560.462 Money laundering.

The Agency will act in accordance with U.S. Code Title 18, part I, chapter 95, section 1956(c)(7)(D).

§3560.463 Obstruction of Federal audits.

The Agency will act in accordance with U.S. Code Title 18, part I, chapter 73, section 1516(a).

§§3560.464-3560.499 [Reserved]

§3560.500 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart K--Management and Disposition of Real Estate Owned (REO) Properties

§3560.501 General.

This subpart contains Agency procedures and other policies related to the management and disposition of multi-family housing (MFH) projects in the Agency's inventory (Real Estate Owned (REO) property). Housing projects will not be accepted into the Agency's inventory unless one of the following has occurred:

(a) The borrower has abandoned the housing project and the Agency has performed the required steps to take the housing project into custody.

(b) The housing project title has been transferred to the Agency as a result of foreclosure, voluntary conveyance, redemption, or other action.

§3560.502 Tenant notifications and assistance.

Each tenant in an REO property designated to be sold as a non-program property will be notified by the Agency, in writing, of the housing projects' non-program designation and will be given an opportunity to obtain a Letter Of Priority Entitlement (LOPE) as specified in §3560.159(c).

§3560.503 Disposition of REO property.

(a) Preference will be given to offers from bidders who are determined eligible by the Agency to purchase REO property designated to be sold as program property. It is the Agency's priority that property previously operated as program property prior to becoming REO inventory property be sold as program property. However, REO property may be sold under whatever Agency program is most appropriate for the property and the community needs regardless of the program under which the property was originally financed or whether the property was being used to secure loans under more than one Agency program.

(b) When the Agency determines that the REO property to be sold is not decent, safe, and sanitary and/or does not meet cost effective energy conservation standards, it will disclose the basis for this determination to prospective purchasers. The deed by which such an REO property is conveyed will contain a covenant restricting it from residential use until it is decent, safe, and sanitary, and meets the Agency's cost effective conservation standards. The Agency will also notify any potential purchaser of any known lead based paint hazards.

§3560.504 Sales price and bidding process.

(a) The loan documents related to REO property sold for program purposes must contain the restrictive-use language specified in §3560.662(a).

(b) Entities bidding on REO property designated to be sold as program property must submit a loan application package that meets the requirements specified in subpart B of this part.

(1) Bidders on REO property designated to be sold as program property must meet the eligibility requirements established under §3560.55.

(2) Bidders determined by the Agency to be ineligible to purchase REO property designated to be sold as program property will be notified in writing. The bidding process will continue regardless of pending appeals.

(3) All offers from bidders determined to be eligible to purchase REO property designated to be sold as program property will be considered in the bidding process and must provide evidence of financial stability and credit worthiness.

(c) The Agency will determine the successful bidder on REO property designated to be sold as program property by conducting a drawing of sealed bids.

(1) The Agency may authorize the sale of an REO property by sealed bid or public auction when it is in the best interest of the Government. The Agency will publicly solicit requests for sealed bids and publicize auctions. If the highest bid is lower than the minimum acceptable bid established by the Agency, or if no acceptable bids are received, the Agency may negotiate a sale without further public notice.

(2) Bidders who desire to withdraw their bids must do so prior to the drawing date.

(d) Property designated to be sold as non-program property may be sold to entities that do not meet the Agency's eligible borrower requirements specified in §3560.55, and must be sold for cash or on terms approved by the Agency. Cash sales will be given first preference and will be drawn before any sales on terms.

§3560.505 Agency loans to finance purchases of REO properties.

(a) Agency loans to finance the purchase of REO property designated to be sold as program property must meet the same requirements as specified in subparts A and B of this part. In addition, the following provisions apply.

(1) At the borrower's option, the interest rate will be the prevailing rate at the time of loan approval or the prevailing rate at loan closing.

(2) Purchasers may pay closing costs from their own funds or, if allowable under subparts B, L, or M of this part, as applicable, may finance such costs as part of the Agency loan.

(b) Agency loans to finance the purchase of REO property designated to be sold as non-program property must meet the following terms.

(1) A down payment of not less than 10 percent of the purchase price is required at closing.

(2) The interest rate will equal the lesser of the prevailing interest rate at the time of loan approval or loan closing for MFH loans plus one-half percent.

(3) The note amount will be amortized over a period not to exceed 10 years. If the Agency determines that more favorable terms are necessary to facilitate the sale, the note amount may be amortized using a 30-year factor with payment in full due no later than 10 years from the date of closing (balloon payment). In no case will the term be longer than the useful life of the property.

(4) Agency loans to finance the purchase of non-program REO property are subject to the availability of funds.

(c) Loan limits and allowable uses of loan funds specified in subparts B, L, and M of this part, as applicable, are applicable to any Agency-financed (credit) sale of REO property.

(d) Title clearance and loan closing for an Agency financed sale and any subsequent loan to be closed simultaneously with the sale must meet the requirements in subpart B of this part for an initial loan, with the following exceptions:

(1) A “Quit Claim” or other non-warranty deed will be used; and

(2) The buyer must pay attorney's fees, insurance costs, recording fees and other customary fees unless they are included in a subsequent loan and the subsequent loan is for purposes other than closing costs and fees.

(e) After approval of an Agency-financed sale of occupied REO property designated to be sold as program property, but prior to closing, the purchaser must prepare a budget for housing operations in accordance with subpart B of this part. If a rent increase is necessary, procedures specified in subparts E and F of this part for calculating rents, net tenant contributions, and rental assistance will be followed by the borrower.

§3560.506 Conversion of single family type REO property to MFH use.

Single family type REO property may be sold for conversion to MFH program use under the following conditions:

(a) The Agency will allow nonprofit organizations, public bodies, or for-profit entities to purchase single family type REO property for conversion to MFH program use. When the Agency finances the sale of single family-type REO property for conversion to rural rental housing program use (i.e., MFH including group homes and homes for the elderly or disabled, farm labor housing, or rural cooperative housing), the sale price will be the lesser of the Federal Government's investment or an amount based on the “as-is” market value of the housing project as determined by an appraisal conducted in accordance with subpart P of this part.

(b) The Agency will only accept written offers to purchase two or more single family type REO properties for conversion to rural rental housing from nonprofit organizations, public bodies, or for-profit entities with a good record of providing housing under the Agency's MFH programs. The single family type properties are not required to be contiguous, however, they must be located in close enough proximity so that management capabilities are not diminished because of distance.

§§3560.507-3560.549 [Reserved]

§3560.550 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart L--Off-Farm Labor Housing

§3560.551 General.

This subpart establishes the requirements for making loans and grants for off-farm labor housing and for ongoing operations of this housing. Unless otherwise specified in this subpart, the requirements of subparts A through K, N, O, and P of this part will apply in addition to the requirements in this subpart.

§3560.552 Program objectives.

(a) In addition to the objectives stated in §3560.52, off-farm labor housing loan and grant funds will be used to increase:

(1) The supply of affordable housing for farm labor; and

(2) The ability of communities to attract farm labor by providing housing which is affordable, decent, safe and sanitary.

(b) Under section 516(i) of the Housing Act of 1949 (42 U.S.C. 1486(i)), the Agency may award technical assistance grants to encourage the development of farm labor housing.

§3560.553 Loan and grant purposes.

(a) In addition to the purposes stated in §3560.53, off-farm labor housing loan and grant funds may be used to provide facilities for seasonal or temporary residential use with appropriate furnishings and equipment. A temporary residence is a dwelling which is used for occupancy, usually for a short period of time, but is not the legal domicile for the occupant.

(b) The Agency may award technical assistance grants to eligible private and public nonprofit agencies. These grant recipients will, in turn, assist other organizations to obtain loans and grants for the construction of farm labor housing.

(c) Technical assistance services may not be used to reimburse a nonprofit or public body applicant for technical services provided by a nonprofit organization, with housing and/or community development experience, to assist the nonprofit applicant entity in the development and packaging of its loan/grant docket and project. In addition, technical assistance will not be funded by the Agency when an identity of interest exists between the technical assistance provider and the loan or grant applicant.

§3560.554 Use of funds restrictions.

Off-farm labor housing loan and grant funds may not be used for any purpose prohibited by §3560.54 except §3560.54(a)(1). Off-farm labor housing may be used to serve migrant farmworkers.

§3560.555 Eligibility requirements for off-farm labor housing loans and grants.

(a) Eligibility for loans. Applicants for off-farm labor housing loans must be:

(1) A broad-based nonprofit organization, a nonprofit organization of farmworkers, a federally recognized Indian tribe, a community organization, or an agency or political subdivision of State or local government, and must meet the requirements of §3560.55, excluding §3560.55(a)(6). A broad-based nonprofit organization is a nonprofit organization that has a membership that reflects a variety of interests in the area where the housing will be located; or

(2) A limited partnership with a non-profit general partner which meets the requirements of §3560.55(d).

(b) Eligibility for grants. To be eligible for off-farm labor housing grants, applicants must:

(1) Meet the requirements in §3560.555(a)(1); and

(2) Be able to contribute at least one-tenth of the total farm labor housing development cost from its own or other resources. The applicant's contribution must be available at the time of grant closing. An off-farm labor housing loan financed by RHS may be used to meet this requirement.

(c) Limitation. Limited partnerships eligible under paragraph (a)(2) of this section are not eligible for farm labor housing grants.

§3560.556 Application requirements and processing.

Off-farm loans and grants will be available under a Notice of Funding Availability (NOFA) that will be published in the Federal Register each fiscal year.

§3560.557 [Reserved]

§3560.558 Site requirements.

The requirements established in §3560.58 apply to all applications for off-farm labor housing loans and grants except that off-farm labor housing are not limited to rural areas.

§3560.559 Design and construction requirements.

(a) General. The requirements established in §3560.60 apply to all applications for off-farm labor housing loans and grants except that seasonal off-farm labor housing that will be occupied for eight months or less per year by migrant farmworkers while they are away from their residence, may be constructed in accordance with Exhibit I of 7 CFR part 1924, subpart A.

(b) Additional requirements. In addition to the requirements established in §3560.60, it is encouraged that the design of off-farm labor housing incorporate outdoor shower, boot washing station, and/or hose bibb facilities as necessary to protect the resident and the asset from excess dirt and chemical exposure.

(c) Davis-Bacon wage requirements. Construction financed with the assistance of a Section 516 grant will be subject to the provisions of the Davis-Bacon Act (40 U.S.C. 276(a)-276(a)(7)), and the implementing regulations published by the Department of Labor at 29 CFR parts 1, 3, and 5.

§3560.560 Security.

The security requirements established in §3560.61 will apply to all applications for off-farm labor housing loans.

§3560.561 Technical, legal, insurance and other services.

The requirements established under §3560.62 apply to all applications for off-farm labor housing loans and grants.

§3560.562 Loan and grant limits.

(a) Determining the security value. The requirements established under §3560.63(a) apply to off-farm labor housing loans.

(b) Maximum amount of loan. The requirements established in §3560.63(c)(1) and (2), regarding borrower equity contribution apply to all applications for off-farm labor housing loans. (For applicants eligible under §3560.555(a)(2), the amount of Agency financing for the housing will not exceed 95 percent of the total development cost or 95 percent of the security value available for the Agency loan, whichever is lower.) In determining the amount of the loan, the Agency will also review the capacity of the applicant to amortize such loan, considering any rental assistance provided for use in the housing, and any rents anticipated to be paid by farmworkers expected to occupy the housing.

(c) Maximum amount of grant. The amount of any off-farm labor housing grant must not exceed the lesser of:

(1) Ninety percent of the total development cost, or

(2) That portion of the total development cost which exceeds the sum of any amount provided by the applicant from their own resources plus the amount of any loans approved for the applicant, considering the capacity of the applicant to amortize the loan.

§3560.563 Initial operating capital.

The requirements for §3560.64 apply to all applications for off-farm labor housing loans and grants.

§3560.564 Reserve accounts.

The requirements for §3560.65 apply to all applications for off-farm labor housing loans and grants.

§3560.565 Participation with other funding or financing sources.

The requirements established in §3560.66 apply to all applications for off-farm labor housing loans and grants, except that the 25 percent requirements stated in paragraph §3560.66(b)(1) may consist of loan and/or grant funds.

§3560.566 Loan and grant rates and terms.

(a) Amortization period. The loan will be amortized over a period not to exceed 33 years. The amortization schedule will take into account the depreciation of the security and ensure that the loan will be adequately secured.

(b) Interest rate. The effective interest rate will be 1 percent.

(c) Term of grant agreement. The grant agreement will remain in effect for so long as there is a need for farm labor housing..

§3560.567 Establishing the profit base on initial investment.

The requirements established under §3560.68 apply to applicants eligible under §3560.555(a)(2) and operating as a limited partnership with a nonprofit general partner.

§3560.568 Supplemental requirements for seasonal off-farm labor housing.

For off-farm labor housing operating on a seasonal basis, the management plan must establish specific opening and closing dates. During the off-season, off-farm labor housing may be used as defined in subpart A of this part under short-term lease provisions. Where rents are charged on a per-unit basis and family income qualifies the household for rental assistance, rental assistance may be used.

§3560.569 Supplemental requirements for manufactured housing.

The requirements established in §3560.70 apply to all applications for off-farm labor housing loans and grants.

§3560.570 Construction financing.

The requirements established in §3560.71 apply to all applications involving off-farm labor housing loans and grants. In addition, the following requirements apply.

(a) Equity contributions being made by a borrower or grantee must be contributed and disbursed prior to any disbursement of interim loan funds and any loan or grant funds from the Agency.

(b) If the Agency is providing both loan and grant funds, loan funds must be fully released and expended prior to the release of grant funds by the Agency.

(c) If construction is financed with a Labor Housing grant, it is subject to the provisions of the Davis-Bacon Act (published in the Department of Labor regulations 29 CFR parts 1, 2, and 5).

§3560.571 Loan and grant closing.

The requirements established in §3560.72 apply to all applications for off-farm labor housing loans and grants. In addition, the following requirements apply.

(a) A nonprofit organization will have its Board of Directors adopt an Agency-approved loan and/or grant resolution, which is required as part of the loan docket before loan and/or grant approval. All other loan applicants will execute an Agency-approved loan agreement.

(b) For grants, an Agency approved grant agreement, must be executed by the applicant on the date of grant closing.

(c) The obligations incurred by the applicant, as a condition of accepting the grant, will be in accordance with the off-farm labor housing grant agreement.

(d) Off-farm labor housing loans used to build or acquire new units made pursuant to a contract entered into on or after the effective date of this regulation, will be subject to the restrictive-use provision stated in §3560.72(a)(2)(ii). All other off-farm labor housing loans are subject to the restrictive-use provisions contained in their loan documents and as outlined in subpart N of this regulation. Such restrictions must be included in the mortgage and deed of trust.

§3560.572 Subsequent loans.

The requirements established in §3560.73 will apply to all applications for subsequent off-farm labor housing loans.

§3560.573 Rental assistance.

(a) Rental assistance may be provided to income eligible tenants living in off-farm labor housing in accordance with subpart F of this part. The requirements established in §3560.252 apply to all tenants receiving rental assistance.

(b) For dormitory style facilities operating on a per bed basis, rental assistance will be made available to the housing on a per unit basis, but may be pro-rated to tenants on a per bed basis. However, total rent charged for a unit must not exceed conventional rent for comparable units in the area or a similar area and per bed rents must be comparable to per bed rents in the market.

§3560.574 Operating assistance.

Operating assistance may be used in lieu of tenant-specific rental assistance in off-farm labor housing projects financed under section 514 or section 516(i) of the Housing Act of 1949 (U.S.C. 1486(i)) that serve migrant farmworkers. Owners of eligible projects may choose tenant-specific rental assistance as described in §3560.573 or operating assistance, or a combination of both, however, any tenant or unit assisted under this section may not receive rental assistance under §3560.572. The objective of this program is to provide assistance toward the cost of operating the project so that rents may be set at rates that are affordable to very low and low-income migrant farmworkers.

(a) Project eligibility requirements. To be eligible for the operating assistance program, projects must be:

(1) Off-farm labor housing projects financed under section 514 or section 516 with units that are for migrant farmworkers. Housing units for year-round farmworker households are ineligible; and

(2) Eligible for the Agency's rental assistance program as defined in §3560.573.

(b) Operating assistance limits. The amount of operating assistance requested by the owner must be based on the project's actual income and expenses and must be approved by the Agency. In the case of a mixed project, the amount of operating assistance must be based on the portion of actual income and expenses that are attributable to the units that are for migrant farmworkers. In no instance may the annual amount of operating assistance exceed 90 percent of the annual operating costs that are attributable to the migrant units.

(c) Owner responsibilities.

(1) Requesting for operating assistance program. Owners of off-farm labor housing projects with units for migrant farmworkers may request operating assistance by submitting a request to the Agency, which must include a budget. The budget must include:

(i) Estimated operating costs for the migrant units, including authorized expenditures such as reserve deposits;

(ii) Proposed rental rates for the migrant units to generate sufficient funds for operating costs of those units, taking into consideration all other sources of project income; and

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

(2) Requesting operating assistance payments. Each month, the owner will submit a request for operating assistance to the Agency.

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

(4) Reporting requirements.

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

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

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

§3560.575 Rental structure and changes.

Off-farm labor housing is subject to the tenant contribution and rental unit rent requirements for Plan II housing established under subpart E of this part, except where seasonal housing will be occupied for less than a 3-month period. In such instances the best available and practical income verification methods may be used with prior approval of the Agency.

§3560.576 Occupancy restrictions.

(a) Restrictions on conditions of occupancy.

(1) No borrower or grantee will be permitted to require that an occupant work on any particular farm or for any particular owner or interest as a condition of occupancy of the housing.

(2) Tenant selection should be in accordance with the loan agreement, subpart D of this part and §3560.577.

(3) No borrower or grantee will discriminate, or permit discrimination by any agent, lessee, or other operator in the use or occupancy of the housing or related facilities because of race, color, religion, sex, age, disability, familial status, or national origin.

(b) Eligible households. To be eligible for occupancy in off-farm labor housing, households must meet the following requirements.

(1) Occupational. An eligible household must include a domestic tenant or co-tenant farm laborer, a retired domestic farm laborer, or a disabled domestic farm laborer.

(2) Income. The household must meet the definition of income eligible as established in §3560.152 and the tenant or co-tenant must receive a substantial portion of income from farm labor employment. To determine if a substantial portion of income is from farm labor employment, the following measures will be used.

(i) For housing rented to farm laborers and owned by public bodies, public or private nonprofit organizations, and limited partnerships when charging rent.

(A) Actual dollars earned from farm labor by domestic farm laborers other than migrant farmworkers must equal at least 65 percent of the annual income limits indicated for the Standard Federal regions as published by the Agency for their particular region of the country. For migrant farmworkers living in seasonal housing the actual dollars earned from farm labor by a domestic farm laborer must equal at least 50 percent of annual income limits indicated for the Standard Federal regions, as published by the Agency.

(B) An alternate measure for determining substantial portion of income when actual earnings are not available may be the duration of time a farm laborer worked on a farm or other farming enterprise as a domestic farmworker during the preceding 12 months. In order to be considered as substantial the farm laborer must have worked at least 110 whole days in farm work. For purposes of this section one whole day is the equivalent of at least 7 hours. When using a period of more than 1 year, a yearly average must amount to at least 110 days per year.

(ii) For housing owned by a farmer, family-farm partnership, family-farm corporation, or an association of farmers which was initially provided on a non-rental basis, a substantial portion of
income is earned when housing is provided by the owner as part of employment compensation for farm labor.

(iii) When a natural disaster has occurred, such as a drought, flood, freeze, etc., figures for the 12 months preceding such disaster will be used to determine substantial portion of income under paragraph (b)(2) of this section.

(iv) The tenant who qualifies as a domestic farm laborer residing in a property with a nonrestrictive farm labor clause in the mortgage covenants must not have adjusted income which exceeds the moderate income limit for the appropriate household size and appropriate geographical area.

(3) Occupancy. The household must remain in compliance with the borrower's occupancy policy as established in §3560.155.

(c) Tenant eligibility requirements for operating assistance rents. To be eligible for operating assistance rents, tenants must meet the rental assistance eligibility requirements described in §3560.573 and in §3560.252.

(d) Ineligible tenants. Tenants who, at any time, fail to meet all the requirements in paragraph (b) of this section will be deemed ineligible for occupancy in off-farm labor housing. Ineligible tenants in off-farm labor housing will be addressed in accordance with the requirements of §3560.158.

(e) Non-farm laborer tenants. When there is a diminished need for housing for persons or families in the above categories, units in off-farm labor housing complexes may be made available to persons or families eligible for occupancy under §3560.152. Eligible tenants under this section may occupy the labor housing until such time the units are again needed by persons or families eligible under paragraph (b) of this section. As the basis for Agency approval or disapproval of the borrower's determination of diminished need, the borrower must submit a current analysis of need and demand to the Agency, identical to the market analysis that is required of loan applicants in the loan origination process. The borrower's determination and the State Director's recommendation should be forwarded to the National Office for concurrence. The procedures specified in §3560.158 shall be followed when tenants are required to vacate housing to allow for occupancy by persons eligible under paragraph (b) of this section.

§3560.577 Tenant priorities for labor housing.

Tenant occupancy in off-farm labor housing is based on eligible farm labor certified through the income certification process required by §3560.152 and is prioritized in the following order.

(a) First priority is to be given to eligible active farm laborer households with first priority going to very low-income households, next priority to low-income households, and last to moderate-income households.

(b) Second priority is given to retired domestic farm laborer households and disabled domestic farm laborer households who were active in the local farm labor market area at the time of retiring or becoming disabled. Occupancy priority will be given in accordance with paragraph (a) of this section.

(c) Third priority is to be given to retired domestic farm laborer households and disabled domestic farm laborer households who were not active in the local farm labor market at the time of retiring or becoming disabled. Occupancy priority will be given in accordance with paragraph (a) of this section.

§3560.578 Financial management of labor housing.

The requirements established in subpart G of this part will apply to all off-farm labor housing.

§3560.579 Servicing off-farm labor housing.

The requirements established in subparts I and J of this part will apply to all off-farm labor housing. Servicing according to subparts I and J of this part shall apply throughout the term of the loan or grant, whichever is longer.

§§3560.580-3560.599 [Reserved]

§3560.600 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart M--On-Farm Labor Housing

§3560.601 General.

This subpart contains the requirements for making loans for on-farm labor housing and for ongoing operation and management of on-farm labor housing. Unless otherwise specified in this subpart, the requirements of subparts A through K, N, O, and P of this part will apply in addition to requirements given in this subpart.

§3560.602 Program objectives.

In addition to the objectives stated in §3560.52, on-farm labor housing funds will be used to increase:

(a) The supply of affordable housing for farm labor; and

(b) The ability of the farmer to provide affordable, decent, safe and sanitary housing for farm workers.

§3560.603 Loan purposes.

On-farm labor housing loans may be made only for the purposes established in §3560.553. Grants are not available for on-farm labor housing.

§3560.604 Restrictions on use of funds.

On-farm labor housing loans may not be used for any purpose prohibited by §3560.54 except §3560.54(a)(1). On-farm labor housing may be used to serve migrant workers. In addition, on-farm labor housing loan funds may not be used to provide housing for members of the immediate family of the applicant when the applicant is an individual farm owner, family farm corporation, family farm partnership, or a member of an association of farmers. Immediate family includes mother, father, brothers, sisters, sons, and daughters of the applicant and spouse.

§3560.605 Eligibility requirements.

(a) To be eligible for an on-farm labor housing loan, the applicant must meet the requirements of §3560.55(a) with the exception of §3560.55(a)(1), (5), and (6) and the following requirements.

(1) The applicant must be a farm owner, family farm partnership, family farm corporation, or an association of farmers engaged in agricultural or aquacultural farming operations whose farming operations demonstrate a need for on-farm labor housing and who will own the housing and operate it on a nonprofit basis.

(2) The applicant must agree to use the labor housing to engage in the farming operations of the individual farm owner applicant, or in the farming operations of its members if it is a family farm corporation or partnership, or an association of farmers.

(3) The applicant must, as determined by the Agency, be unable to provide the necessary housing from the applicant's own resources and be unable to obtain credit from any other source upon terms and conditions which the applicant could reasonably be expected to fulfill. If the applicant is an association of farmers or family farm corporation or partnership, the individual members, individually and jointly, must be unable to provide the necessary housing by utilizing their own resources and be unable, by pledging their personal liability, to obtain other credit that would enable them to provide housing for farm workers at rental rates they can afford to pay. The individual resources of family farm corporation or partnership members with less than a 10 percent corporate or partnership interest should not be considered when determining if the applicant can obtain credit elsewhere.

(b) The Agency may make an exception to the requirement that an individual farm owner, family farm corporation, family farm partnership or an association of farmers be unable to obtain the necessary credit elsewhere when all of the following conditions exist:

(1) There is a housing need in the area for domestic farmworkers who are migrants and the applicant will provide such housing; and

(2) There are no qualified state or political subdivisions or public or private nonprofit organizations available, or likely to become available within 12 months of the application, that are willing and able to provide the housing.

(c) When an applicant is determined eligible under paragraph (b) of this section, the interest rate for such loans will be determined in accordance with 7 CFR part 1810, subpart A.

(d) On-farm labor housing that consists of buildings with less than three units is not subject to the requirement that five percent of the units be constructed as fully accessible units, as described in §3560.60(d).

§3560.606 Application requirements and processing.

(a) On-farm labor housing loan applications will be processed according to 7 CFR part 1940, subpart L. Applicants must submit an application in an Agency-approved format that adequately documents the need for the housing and the eligibility of the applicant.

(b) The applicant must certify that the farm workers for which the housing is intended are or will be involved in the applicant's agricultural or aquacultural farming operations.

(c) The applicant must certify that housing operations will be conducted in a non-profit manner such that income from the housing does not exceed eligible expenses associated with the housing. Eligible expenditures for the housing include, but are not limited to housing repairs and upkeep, payment of installments on the loan, taxes, insurance and reserves and other essential uses needed for success of the operations.

§3560.607 [Reserved]

§3560.608 Site and construction requirements.

(a) General. Cost and development standards for on-farm labor housing will be consistent with the requirements, standards, and cost limits specified in subpart B of this part, if the housing is a multi-family housing type structure, or consistent with section 502 of the Housing Act of 1949, if the housing is a single family type structure.

(b) Permanent units. On-farm labor housing occupied for 8 months or more of the year will be required to meet the following requirements.

(1) Housing may be multi-family or single family in type and may be located on the farm away from farm service buildings, or in the nearby community. Single-family type housing is defined as an individual or a group of individual single family detached dwelling units. All sites and housing shall be planned and constructed in accordance with 7 CFR part 1924, subparts A and C.

(2) Sites must be accessible from a public road, when feasible.

(c) Seasonal units. On-farm labor housing occupied for less than 8 months of the year will be considered seasonal housing. Such housing must meet the following requirements.

(1) Housing designed for seasonal occupancy may be either single family or multi-family.

(2) Seasonal housing may be constructed in accordance with exhibit I of 7 CFR part 1924, subpart A. If constructed in accordance with exhibit I, the housing must be suitable to allow for conversion to full-year occupancy if the need for migrant farmworkers in the area declines.

(d) Accessibility. On-farm labor housing that consists of buildings with less than three units, need not meet the requirement that five percent of the units be constructed as fully accessible units, as described in §3560.60(d). This does not, however, eliminate any other accessibility requirements.

§3560.609 [Reserved]

§3560.610 Security.

(a) Security instruments must meet the requirements established under §3560.560.

(b) When feasible, the on-farm labor housing will be located on a tract of land that is surveyed such that, for security purposes, it is considered separate and distinct from the farm. The security for the loan must include a lien on the tract of land where the on-farm labor housing is located and the security must have adequate value to protect the Federal government's interest. The Agency will seek a first or parity lien position on Agency-financed property in all instances, however, the Agency may accept a junior lien position if the Federal government's interests are adequately secured.

(c) The Agency will determine the value of the security for the loan in accordance with 7 CFR part 1922, subpart B if the farm is used as security or in accordance with section 502 of the Housing Act of 1949, if only the on-farm labor housing and related land is used for security.

(d) If necessary to provide adequate security for the loan, the Agency may require that any household furnishings purchased with loan funds also be secured.

(e) Personal liability and recourse will be required of all borrowers, including the individual members, stockholders or partners of an association of farmers, family farm corporations or partnerships, respectively.

§3560.611 Technical, legal, insurance and other services.

When technical, legal, insurance, or services are required for development of on-farm labor housing, applicants must comply with the applicable requirements of §3560.62. Regarding insurance coverage, the requirements of §3560.62(d) apply to on-farm labor housing.

§3560.612 Loan limits.

The maximum loan amount will be 100 percent of the allowable total development costs of on-farm labor housing and related facilities subject to §§3560.603, 3560.604 and 3560.608.

§3560.613 [Reserved]

§3560.614 Reserve accounts.

When on-farm labor housing operations include 12 or more units, the Agency will require such properties to comply with the reserve account requirements in §3560.65.

§3560.615 Participation with other funding sources.

The Agency encourages the use of other funding sources in conjunction with on-farm labor housing loans. Use of such financing in conjunction with an on-farm labor housing loan is subject to the approval of the Agency and must comply with the requirements of §3560.66.

§3560.616 Rates and terms.

(a) The interest rate for on-farm labor housing loans will be 1 percent.

(b) The term of the on-farm labor housing loan will not exceed 33 years.

(c) Loan amortization for on-farm labor housing may be on a monthly or an annual basis.

§3560.617 [Reserved]

§3560.618 Supplemental requirements for on-farm labor housing.

The management plan for on-farm labor housing operated on a seasonal basis must have specific opening and closing dates. During the off-season, on-farm labor housing may be used under short-term lease provisions.

§3560.619 Supplemental requirements for manufactured housing.

On-farm labor housing loan funds used for manufactured housing must comply with §3560.70. Manufactured housing located on-farm may consist of individual units.

§3560.620 Construction financing.

The requirements established in §3560.71 apply to all applications involving on-farm labor housing loans.

§3560.621 Loan closing.

Applicants for on-farm labor housing loans must execute an Agency-approved loan agreement. In addition, if determined appropriate by the Agency, on-farm labor housing loans made on or after the effective date of this regulation may be subject to the restrictive-use provisions as stated in §3560.72(a)(2)(ii). All other on-farm labor housing loans are subject to the restrictive-use provisions contained in their loan documents and as outlined in subpart N of this regulation.

§3560.622 Subsequent loans.

The requirements established in §3560.572 apply to all applications for on-farm labor housing subsequent loans.

§3560.623 Housing management and operations.

Borrowers with on-farm labor housing loans must:

(a) Develop and submit to the Agency a management plan in a format specified by the Agency. At a minimum, the management plan will detail the borrower's operational and occupancy policies, how the borrower will deal with resident complaints, and how repairs will be completed; and

(b) Maintain a lease or employment contract with each tenant specifying employment with the borrower as a condition for continued occupancy.

§3560.624 Occupancy restrictions.

(a) The immediate relatives of the borrowers are ineligible occupants for on-farm labor housing.

(b) Occupants must meet the definition of a domestic farm laborer, as defined in §3560.11.

(c) Occupancy of on-farm labor housing is restricted to employees of the borrower unless otherwise approved by the Agency.

(d) With prior written permission of the Agency, on-farm labor housing may be occupied by ineligible tenants on a short-term basis. The permission of the Agency must also be for a limited duration.

§3560.625 Maintaining the physical asset.

On-farm labor housing must meet state and local building and occupancy codes.

§3560.626 Affirmative Fair Housing Marketing Plan.

On-farm labor housing must meet the requirements of §3560.104.

§3560.627 Response to resident complaints.

The management plan submitted in accordance with §3560.623 (a) will include a provision for dealing with resident complaints.

§3560.628 Establishing and modifying rental charges.

If it becomes necessary to establish or modify a shelter cost, the borrower must obtain Agency approval as specified in subpart E of this part.

§3560.629 Security deposits.

Borrowers that require security deposits to be paid by the tenants will be required to comply with the requirements of §3560.204.

§3560.630 Financial management.

Financial information must be submitted in an Agency-approved format and will show operation of the housing in a nonprofit manner.

§3560.631 Agency monitoring.

A compliance review and physical inspection will be conducted by the Agency at least once every 3 years. The purpose of this review will be to inspect:

(a) Tenant eligibility documentation;

(b) Financial information on the operation and management of the labor housing, including relevant borrower financial materials;

(c) Payment of taxes, insurance and hazard insurance;

(d) Compliance with the security deposit requirements;

(e) Compliance with the operating plan;

(f) Compliance with the loan agreement;

(g) Compliance with Agency requirements for affordable, decent, safe, and sanitary housing; and

(h) Compliance with civil rights requirements.

§3560.632-3560.649 [Reserved]

§3560.650 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart N--Housing Preservation

§3560.651 General.

(a) This subpart contains the Agency's housing preservation requirements as related to prepayment requests and restrictive-use provisions (RUPs). The requirements of this subpart support the Agency's commitment to the preservation of decent, safe, sanitary, and affordable multi-family housing (MFH) for very low-, low-, and moderate-income households.

(b) The Agency will coordinate, direct, and monitor the Agency's MFH preservation activities from the National Office level.

§3560.652 Prepayment and restrictive-use categories.

(a) Loans with prepayment prohibitions include:

(1) Initial Section 515 loans made on or after December 15, 1989, and

(2) Subsequent loans made on or after December 15, 1989, for additional rental units.

(b) Loans without prepayment prohibitions but with restrictive-use provisions include:

(1) All loans made after December 21, 1979, but prior to December 15, 1989;

(2) Subsequent loans made on or after December 15, 1989, for purposes other than additional rental units; or

(3) Loans subsequently restricted by servicing actions including transfers.

(c) Loans without prepayment prohibitions or restrictive-use provisions include all loans made on or before December 21, 1979, or loans that had restrictive-use provisions that have expired. Such loans are eligible to receive incentives subject to the provisions of this subpart.

(d) Loans may be prepaid if another loan or grant from the Agency imposes the same or more stringent restrictive-use provisions on the housing project covered by the loan being prepaid.

(e) Third-party subsidy (e.g., Section 8) will not be used as a substitute for RUPs.

§3560.653 Prepayment requests.

(a) Borrowers seeking to prepay an Agency loan must submit a written prepayment request to the Agency at least 180 days in advance of the anticipated prepayment date and must obtain Agency approval before the Agency will accept prepayment.

(b) Prior to submitting a prepayment request, borrowers must take whatever actions are necessary to provide the following items:

(1) A clear description of the loan to be prepaid, the housing project covered by the loan being prepaid, and the requested date of prepayment.

(2) A statement documenting the borrower's ability to prepay under the terms specified.

(3) A certification that the borrower will comply with any Federal, State, or local laws or regulations which may relate to the prepayment request and a statement of actions needed to assure such compliance.

(4) A copy of lease language to be used during the period between the submission date and the final resolution of the prepayment request notifying tenant applicants that the owner of the housing project has submitted a prepayment request to the Agency and explaining the potential affect of the request on the lease.

(5) Borrowers are required to submit a signed release of information form along with the prepayment request. The Agency will notify nonprofit organizations and public bodies involved in providing affordable housing or financial assistance to tenants of the receipt of a borrower's request to prepay their MFH loan(s). Additionally, the Agency is to notify nonprofit organizations and public bodies whenever a borrower, who has requested prepayment, is required or elects to offer their property for sale to a nonprofit or public body.

(6) A certification that the borrower has notified all governmental entities involved in providing affordable housing or financial assistance to tenants in the project has provided a statement specifying how long financial assistance from such parties will be provided to tenants after prepayment.

(7) A statement affirming that units in the property applying for prepayment will continue to be available for rent by eligible residents during the prepayment process.

(c) The Agency will review complete requests to determine if:

(1) The loan is eligible for prepayment under §3560.652(b);

(2) The borrower has the ability to prepay; and

(3) The borrower has complied or has the ability to comply with applicable Federal, State, and local laws related to the prepayment request.

(d) If a prepayment request lacks full and complete information on any item, the Agency will return the prepayment request to the borrower with a letter citing the deficiencies in the prepayment request. The Agency will offer borrowers an opportunity, within 30 days following the date of the return, to address the reasons given by the Agency for the return of the prepayment request and will allow the borrower to submit a revised prepayment request appropriately satisfies all the conditions listed in paragraph (d) of this section, the Agency will process the prepayment request and make a reasonable effort to enter into a new restrictive-use agreement with the borrower in accordance with §3560.662 or §3560.655. If the Agency determines that a loan is ineligible for prepayment or the borrower does not have the ability to prepay, the Agency will return the prepayment request to the borrower with a written explanation of the Agency's determinations.

§3560.654 Tenant notification requirements.

(a) Within 30 calendar days of receiving a complete prepayment request, the Agency will send a prepayment request notice to each tenant in the housing project. Borrowers must post the Agency's prepayment request notice in public areas throughout the housing project from the date of the notice until the final resolution of the prepayment request. The prepayment request notice will establish a date and place where tenants may meet with the Agency to discuss the prepayment request and will advise tenants that:

(1) They may review all information submitted with the prepayment request except financial information regarding the borrower entity, which the Agency will withhold from tenant review unless given written permission for the release of the information from the borrower; and,

(2) They have 30 days from the date of the prepayment request notice to give the Agency comments on the prepayment request.

(b) Borrowers may provide a prepayment request notice of their own directly to tenants and may establish a date and place where tenants may meet with the borrower to discuss the prepayment request. The Agency and other providers of housing assistance for very-low, low, and moderate-income households may attend a borrower's prepayment request meeting with tenants.

(c) If the Agency agrees to accept prepayment on a loan, the Agency will send a prepayment acceptance notice to each tenant in the housing project at least 60 days prior to the prepayment date. Borrowers must post copies of the Agency's prepayment acceptance notice in public areas throughout the housing project until prepayment is made. If the prepayment acceptance was based on a borrower's agreement to comply with restrictive-use provisions, the notice will describe the restrictive-use provisions that will apply to the housing project after prepayment and the tenant's rights to enforcement of the provisions.

(d) If the borrower withdraws the prepayment request, the Agency will provide a prepayment request cancellation notice to each tenant in the housing project. Borrowers must post copies of the prepayment request cancellation notice in the public areas throughout the housing project for a period of 60 days following the date of the prepayment request cancellation notice.

(e) If the borrower agrees to accept incentives and restrictive-use provisions, the Agency will notify each tenant, in writing, of the agreement and provide a description of the restrictive-use provision.

(f) If a borrower agrees to sell a housing project involved in a prepayment request to a nonprofit organization or public body, the Agency will notify each tenant, in writing, of the proposed sale to a nonprofit organization or public body and will explain the timeframes involved with the proposed sale, any potential impact on tenants, and the actions tenants may take to alleviate any adverse impact. Borrowers must post copies of the Agency's proposed sale notice in public areas throughout the housing project until the housing project is sold or the offer to sell is withdrawn.

(g) If a tenant applicant signs a lease in a housing project for which a prepayment request has been submitted, the borrower must provide the tenant with copies of all notifications provided to tenants by the Agency or the borrower prior to the tenant's occupancy in the housing project.

(h) If a borrower is unable to sell a housing project involved in a prepayment request to a nonprofit organization or public body within 180 days as specified in §3560.659, the Agency will send a notice to each tenant in the housing project explaining the potential impact of the borrower's inability to sell the housing project on tenants and the actions tenants may take to alleviate any adverse impact. Borrowers must post the Agency's notice in public areas throughout the housing project for a period of 60 days following the date of the notice.

§3560.655 Agency requested extension.

Before accepting an offer to prepay from a borrower with a restricted loan, the Agency must first make a reasonable effort to enter into a new restrictive-use agreement with the borrower. Under this agreement, the borrower would make a binding commitment to extend the low-income use of the housing and related facilities for 20 years for loans with interest credit, beginning on the date on which the new agreement is executed. If the borrower is unwilling to enter into a new restrictive-use provisions and restrictive-use agreement, the Agency should proceed to take the actions described in §3560.658.

§3560.656 Incentives offers.

(a) The Agency will offer a borrower, who submits a prepayment request meeting the conditions of §3560.653(d), incentives to agree to the restrictive-use period in §3560.662 if the following conditions are met:

(1) The market value of the housing project is determined by the Agency, based on an appraisal conducted in accordance with subpart P of this part.

(2) There are no restrictive-use agreements or prepayment prohibitions in effect.

(b) Specific incentives offered will be based on the Agency's assessment of:

(1) The value of the housing project as determined by the Agency based on an "as-is" market value appraisal conducted in accordance with subpart P of this part;

(2) An incentive amount that will provide a fair return to the borrower;

(3) An incentive amount that will not cause basic rents at the housing project to exceed conventional rents for comparable units; except that when determined necessary by the Agency to allow for decent, safe and sanitary housing to be provided in market areas where conventional rents are not sufficient to cover necessary operating, maintenance, and reserve costs. Basic rents may be allowed to exceed comparable rents for conventional units, but in no case by more than 150 percent of the comparable rent for conventional unit rent level; and

(4) An incentive amount that will be the least costly alternative for the Federal Government while being consistent with the Agency's commitment to the preservation of housing for very-low, low, and moderate income households in rural areas.

(c) The Agency may offer the following incentives:

(1) The Agency may increase the borrower's annual return on equity by one of the following two methods. The actual withdrawal of the return remains subject to the procedures and conditions for withdrawal specified in subpart G of this part.

(i) The Agency may recognize the borrower's current equity in the housing project. The equity will be determined using an Agency accepted appraisal based on the housing project's value as unsubsidized conventional housing.

(ii) When a current appraisal indicates an equity loan cannot be made, the Agency may recognize the borrower's current equity in the housing project at the higher of the original rate of return or the current 15-year Treasury bond rate plus 2 percent rounded to the nearest one-quarter percent. The equity will be determined using the most recent Agency accepted appraisal of the housing project prior to receiving the prepayment request.

(2) The Agency may agree to convert projects without interest credit or with Plan I interest credit to Plan II interest credit or increase the interest credit subsidy for loans with Section 8 assistance to lower the interest rate on the loan and make basic rents more financially feasible.

(3) The Agency may offer additional rental assistance, or an increase in assistance provided under existing contracts under Section 521(a)(2), 521(a)(5) of the Housing Act of 1949 (42 U.S.C. 1490a(a)(2)) or Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437).

(4) The Agency may make an equity loan to the borrower. The equity loan must not adversely affect the borrower's ability to repay other Agency loans held by the borrower and must be made in conformance with the following requirements:

(i) The equity loan must not exceed the difference between the current unpaid loan balance and 90 percent of the housing project's value as determined by an "as-is" market value appraisal conducted in accordance with subpart P of this part.

(ii) Borrowers with farm labor housing loans are not eligible to receive equity loans as incentives.

(iii) I f an incentive offer for an equity loan is accepted, the equity loan may be processed and closed with the borrower or any eligible transferee.

(iv) Excess reserve funds will be used to reduce the amount of an equity loan offered to a borrower.

(v) Equity loans may not be offered unless the Agency determines that other incentives are not adequate to provide a fair return on the investment of the borrower to prevent prepayment of the loan or to prevent displacement of project tenants.

(5) The Agency will offer rental assistance to protect tenants from rent overburden caused by any rent increase as a result of a borrower's acceptance of an incentive offer or tenants who are currently overburdened.

(6) In housing projects with project-based Section 8 assistance, the Agency may permit the borrower to receive rents in excess of the amounts determined necessary by the Agency to defray the cost of long-term repair or maintenance of such a project.

(d) The Agency must determine that the combination of assistance provided is necessary to provide a fair return on the investment of the borrower and is the least costly alternative for the Federal Government.

(e) At the time a specific incentive offer is developed, the Agency must take into consideration the costs of any deferred maintenance, items in the housing project's operating budget, and any expected long-term repair or replacement costs based on a capital needs assessment developed in accordance with §3560.103(c). Deferred maintenance may include specific items identified in previous Agency inspections where the borrower has had the opportunity and resources available to take corrective actions and did not.

(1) Deferred maintenance does not include routine repair and replacement that results from normal wear and tear of the physical asset. The amount required for the reserve account to be considered fully funded will be adjusted accordingly. To determine if basic rents exceed conventional rents for comparable units in the area, monthly contributions necessary to obtain the adjusted fully funded reserve account will be included in the calculation of basic rents.

(2) Deferred maintenance including any deficiencies identified in project compliance with Section 504 of the Rehabilitation Act of 1973 must be addressed as part of the development of the incentive and must be completed as part of an acceptance agreement of any incentive.

(f) Existing loans must be consolidated, provided consolidation retains the Agency's lien position, and reamortized in accordance with subparts I and J of this part, provided it maintains feasibility of the housing for the tenants or reduces the debt service or the level of monthly rental assistance.

(g) The borrower must accept or reject the incentive offer within 30 days. If no answer

to the offer is received within 30 days, the Agency may consider the incentive offer to be rejected.

(1) If the borrower accepts the incentive offer, procedures outlined in §3560.657 must be followed.

(2) If the borrower rejects the incentive offer, the borrower must comply with requirements listed in §3560.658.

§3560.657 Processing and closing incentive offers.

(a) Borrower responsibilities. If a borrower accepts the Agency's offer of incentives, the borrower must complete the following actions:

(1) Subject to the Agency's approval, the borrower must legally restrict the use of the project in accordance with and for the number of years stated in §3560.662.

(2) If the incentive offer accepted includes an equity loan, the borrower must complete an application for the equity loan, and the borrower must continue to qualify as an eligible borrower or transferee in accordance with subpart B of this part.

(3) If the incentive offer accepted includes rent increases, the borrower must follow the rent increase requirements established in subpart E of this part.

(b) Waiting lists. If funds for components of incentive offers are limited, the Agency will establish a waiting list of accepted incentive offers for funding in the date order that the complete prepayment request was received.

(c) Unfunded incentive offers. If the borrower accepts the incentive offer but the Agency is unable to fund the incentive within 15 months, the borrower may choose one of the following actions:

(1) The borrower may offer to sell the housing project in accordance with §3650.659. In this case the borrower will be removed from the list of borrowers awaiting incentives.

(2) The borrower may stay on the list of borrowers awaiting incentives until the borrower's incentive offer is funded. The Agency will not negotiate the incentive offer; but, at a borrower's request, may adjust the incentive amount to reflect an updated appraisal, loan balance, and terms of third party financing.

(3) The borrower may withdraw the prepayment request and be removed from the list of borrowers awaiting incentives and either continue operating the housing project for program purposes and in accordance with Agency requirements or continue processing their prepayment process in accordance with §3560.658. If the borrower chooses to withdraw their request, the borrower may resubmit an updated prepayment request, at any time, and repeat the prepayment process in accordance with this subpart.

(4) The borrower may elect to obtain a third-party equity loan provided rents will not exceed comparable rents in the market area.

§3560.658 Borrower rejection of the incentive offer.

(a) If a borrower rejects the incentive package offered by the Agency or an Agency request to extended restrictive-use provisions, made in accordance with §3560.662, the loan will only be prepaid if the borrower elects to agree to the following:

(1) The borrower agrees to sign restrictive-use provisions to extend restrictive-use by 10 years from the date of prepayment, and at the end of the restrictive-use period offer to sell the housing to a qualified nonprofit organization or public body in accordance with §3560.659.

(2) If housing opportunities for minorities would be lost as a result of prepayment, the borrower will offer to sell the housing to a qualified nonprofit organization or public body in accordance with §3560.659.

(b) If the borrower does not elect or agree to enter an agreement in accordance with paragraph (a) of this section, then the Agency will assess the impact of prepayment on two factors: housing opportunities for minorities and the supply of decent, safe, sanitary, and affordable housing in the market area. The Agency will review relevant information to determine the availability of comparable affordable housing for existing tenants in the market area and if minorities in the project, on the waiting list or in the market area will be disproportionately adversely affected by the loss of the affordable rental housing units.

(1) If restrictive-use provisions are in place, the borrower will agree to sign the restrictive-use provisions, as determined by the Agency, and at the end of the restrictive-use period, offer to sell the housing to a qualified nonprofit organization or public body in accordance with §3560.659.

(2) If restrictive-use provisions are in place, the borrower will agree to sign the restrictive-use provisions, as determined by the Agency, and at the end of the restrictive-use period offer to sell the housing to a qualified nonprofit organization or public body in accordance with §3560.659.

(3) If the Agency determines that prepayment will have an adverse impact on minorities, then the borrower must offer to sell to a qualified nonprofit organization or public body in accordance with the provisions of paragraph (a) of this section.

(4) If the Agency determines that the prepayment will not have an adverse effect on housing opportunities for minorities but there is not an adequate supply of decent, safe, and sanitary rental housing affordable to program eligible tenant households in the market area, the loan may be prepaid only if the borrower

agrees to sign restrictive-use provisions, as determined by the Agency, to protect tenants at the time of prepayment.

(5) I f the Agency determines that there is no adverse impact on minorities and there is an adequate supply of decent, safe, and sanitary rental housing affordable to program eligible tenant households in the market area the prepayment will be accepted with no further restriction.

(c) If the borrower agrees to the restrictive-use provisions, as determined by the Agency, the applicable language must be included in the release documents and the borrower must execute a restrictive-use agreement acceptable to the Agency and a deed restriction.

(d) If the borrower will not agree to applicable restrictive-use provisions, as determined by the Agency, the borrower must offer to sell to a nonprofit or public body in accordance with §3560.659 or withdraw their prepayment request.

§3560.659 Sale or transfer to nonprofit organizations and public bodies.

(a) Sales price. For the purposes of establishing a sales price when a borrower is required or elects to sell a housing project to a nonprofit organization or public body, two independent appraisals will be ordered, one by the Agency and one by the borrower. Both appraisals will conclude market value and be in accordance with subpart P of this part. If the borrower's assessment of the Agency's appraised market value indicates that no further appraisal is needed, the borrower may agree to accept the Agency's appraisal.

(1) The expense of the borrower's appraisal shall be borne by the borrower. The appraiser selected may not have an identity of interest with the borrower.

(2) If the two appraisers fail to agree on the market value, the Agency and the borrower will jointly select an appraiser whose appraisal will be binding on the Agency and the borrower. The Agency and the borrower shall jointly fund the cost of the appraisal.

(b) Marketing to nonprofit organizations and public bodies. If a borrower must offer the property for sale to a nonprofit organization or public body under this paragraph, the borrower must take the following actions to inform appropriate entities of the sale:

(1) The borrower must advertise and offer to sell the project for a minimum of 180 days. The borrower may choose to suspend advertising and other sales efforts while eligibility of an interested purchaser is determined. If the purchaser is determined to be ineligible, the borrower must resume advertising for the balance of the required 180 days.

(2) The Agency will assist the borrower in initially notifying nonprofit organizations and public bodies.

(3) The borrower must provide the nonprofit organizations and public bodies contacted with sufficient information regarding the housing project and its operations for interested purchasers to make an informed decision. The information provided must include the minimum value of the housing project based on the market value determined in accordance with paragraph (a) of this section.

(4) If an interested purchaser requests additional information concerning the housing project, the borrower must promptly provide the requested materials.

(c) Preference for local nonprofit and public bodies. Local nonprofit organizations and public bodies have priority over regional and national nonprofit organizations and public bodies. The Agency may determine that no local nonprofit organizations or public bodies are available to purchase the housing project. After this determination, the borrower may accept an offer from a regional or national nonprofit organization or public body.

(d) Eligible nonprofit organizations. To be eligible to purchase properties under the conditions of this subpart, nonprofit organizations may not have among its officers or directorate any persons or parties with an identity-of-interest (or any persons or parties related to any person with identity-of-interest) in loans financed under Section 515 that have been prepaid. In addition to local nonprofit organizations, eligible nonprofit organizations include regional or national nonprofit organizations or public bodies provided no part of the net earnings of which accrue to the benefit of any member, founder, contributor or individual.

(e) Requirements for nonprofit organizations and public bodies. To purchase and operate a housing project, a nonprofit organization or public body must meet the following requirements:

(1) The purchaser must agree to maintain the housing project for very low- and low-income families or persons for the remaining useful life of the housing and related facilities. However, currently eligible moderate-income tenants will not be required to move.

(2) The purchaser must agree that no subsequent transfer of the housing project will be permitted for the remaining useful life of the housing project unless the Agency determines that the transfer will further the provision of housing for low-income households, or there is no longer a need for the housing project. Language to be included in the deed, conveyance instrument, loan resolution, and assumption agreement (as applicable) is provided in §3560.662.

(3) The purchaser must demonstrate financial feasibility of the housing project including anticipated funding.

(4) The purchaser must certify to the Agency that no identity-of-interest relationships in accordance with §3560.102(g). The purchaser must not have any identity of interest with the seller or any borrower that has previously prepaid or

requested prepayment of an Agency MFH loan.

(5) The purchaser must complete an Agency-approved application and obtain Agency approval in accordance with subpart B of this part.

(6) The purchaser must make a good faith offer taking into consideration the value of the housing project as determined in accordance with paragraph (a) of this section.

(f) Selection priorities. If more than one qualified nonprofit organization or public body submits an offer to purchase the project at the same time, priority will be given to local nonprofit organizations and public bodies over regional and national nonprofit organizations or public bodies. When selecting between offers equally meeting all other criteria, the borrower will first consider the success of the nonprofit organization's or public body's previous experience in developing and maintaining subsidized housing, with preference given to the most successful. If the offers continue to be equal, the borrower will then consider the number of years experience that the nonprofit organization or public body has had in developing and maintaining subsidized housing, with preference given to the greater number of years.

(g) Loans made by the Agency or other sources to nonprofit organizations and public bodies. Agency loans to nonprofit organizations or public bodies may be made for the purposes described in this paragraph. Agency loans will be processed in accordance with subpart B of this part. Loans from other sources will be approved by the Agency in accordance with subpart I of this part.

(1) Agency loans to nonprofit organizations or public bodies for the purchase of a housing project will be based on the appraised value determined in accordance with paragraph (a) of this section.

(2) With proper justification, an Agency loan may be made to help the nonprofit organization or public body meet the housing project's first year operating expenses if there are insufficient funds in the housing project's general operating and expense account to meet such expenses. An Agency loan, for the purpose of covering first year operating expenses, may not exceed 2 percent of the housing project's appraised value determined in accordance with paragraph (c) of this section.

(h) Advances for nonprofit organizations and public bodies. The Agency may make advances, in accordance with Section 502(c)(5)(c)(i), not in excess of limits established by Congress to nonprofit organizations or public bodies that are purchasing housing under this subpart. Grant funds may be used to cover any direct costs other than the purchase price, incurred by nonprofit organizations or public bodies in purchasing and assuming responsibility for the housing project.

(i) Waiting list. If funds for sales to nonprofit organizations and public bodies are

limited, the Agency will add the funding requests to the waiting list for incentives and follow the process established in §3560.657(b) and (c).

(j) Withdrawal from sales process. A borrower may withdraw the prepayment request at any time prior to the sale of the property. The borrower will be responsible for any damages associated with breaking a sales contract established with a nonprofit organization or public body.

(k) When no offer to purchase is received. Prepayment with no further restriction may be accepted by the Agency when the borrower agrees to offer the housing project for sale to a nonprofit organization or public body in accordance with §3560.659 and no good faith offer is received within 180 days from the date that the housing project was advertised for sale to a nonprofit organization or public body, or a good faith offer was received within 180 days from the advertisement date but the offeror was unable to fulfill the terms of the offer within 24 months of the offer date, provided the owner cooperated with the potential purchaser.

§3560.660 Acceptance of prepayments.

(a) When the Agency agrees to accept prepayment, the Agency will notify borrowers, in writing, of the conditions under which the Agency will accept prepayment including the specific restrictive-use provisions to which the borrower has agreed and the date by which the borrower must make the prepayment.

(1) Prepayment must be made 180 days from the date of the Agency's prepayment acceptance notice to the borrower.

(2) If the borrower's prepayment is not received within 180 days of the prepayment acceptance notice and the Agency has not agreed to an alternative date based on a written request from the borrower, the Agency may cancel the prepayment acceptance agreement.

(b) Owners will provide certification stating that they will meet State and local laws prior to prepayment acceptance.

(c) Tenants will be notified of the prepayment acceptance agreement in accordance with §3560.654(c). If a prepayment is anticipated to result in increased net tenant contributions, displacements or involuntary relocations, the tenants, who are affected by such a circumstance, may request a Letter Of Priority Entitlement (LOPE) in accordance with §3560.159(c). Tenants must request a LOPE within one year of the prepayment acceptance notice date.

§3560.661 Sale or transfers.

(a) If a sale or transfer is to take place in conjunction with the Agency incentive offer, the sale or transfer must comply with the processing provisions of subpart I of this part.

(b) If a proposed transferee is determined not to be eligible for the transfer and assumption, the borrower will be given an additional 45 days to find another transferee.

(c) In cases where the existing owner is in program non-compliance or default, the Agency may make an offer of incentives contingent on the successful transfer of the housing to an acceptable purchaser. The Agency may offer a smaller incentive or no incentive if the borrower does not agree to transfer the project to an acceptable purchaser, or if the transfer does not take place.

§3560.662 Restrictive-use provisions and agreements.

All restrictions require Agency approval and must be in accordance with the following restrictions:

(a) The undersigned, and any successors in interest, agree to use the property (described herein) in compliance with 42 U.S.C. 1484 or 1485, whichever is applicable, and applicable regulations and the subsequent amendments, for the purpose of housing:

(1) Very low-, or low-income households when required by §3560.658(a)(3), or

(2) Very low-, low-, or moderate-income households.

(b) The period of the restriction will be inserted in accordance with the following:

(1) 10 years if required by §3560.658(a)(1);

(2) The last existing tenant (that occupied the property on the date of prepayment) voluntarily vacates if required by §3560.658(b)(2)

(3) 30 years if required by §3560.406(g);

(4) Remaining period of existing restrictive-use provisions and any agreed extension if required by §3560.655 or §3560.658 (a)(2);

(5) The remaining useful life of the housing and related facilities if required by §3560.658(a)(3); and

(6) 20 years in all other cases.

(c) When required by §3560.658(a)(1) or (a)(2), the undersigned agrees that at the end of the expiration of the period described in paragraph (b) of this section, the property will be offered for sale to a qualified nonprofit organization or public body, in accordance with previously cited statutes and regulations.

(d) The Agency and eligible tenants or applicants may enforce these restrictions.

(e) The undersigned also agrees to:

(1) To set rents, other charges, and conditions of occupancy in a manner to meet these restrictions;

(2) To post an Agency approved notice of this restriction for the tenants of the property;

(3) To adhere to applicable local, State, and Federal laws; and

(4) To obtain Agency concurrence for any rental procedures that deviate from those approved at the time of prepayment, prior to implementation.

§3560.663 Post-payment responsibilities for loans subject to continued restrictive-use provisions.

(a) If a borrower prepays a loan and the housing project remains subject to restrictive-use provisions, the requirements of this section apply after prepayment.

(b) Owners of prepaid housing projects will be responsible for ensuring that the restrictive-use provisions agreed to as a condition of prepayment are observed.

(c) Owners must maintain appropriate documentation to demonstrate compliance with the restrictive-use provisions and must make the documentation and the housing project site available for Federal Government inspection upon request.

(1) Owners must document rent increases in accordance with subpart G of this part.

(2) Owners must document tenant eligibility in accordance with §3560.152.

(3) In an Agency approved format, owners must provide the Agency with a signed and dated certification within 30 days of the beginning of each calendar year for the full period of the restrictive-use provisions establishing that the restrictive-use provisions are being met.

(d) Owners must observe Agency policies on tenant grievances as described in §3560.160. The Agency may enforce restrictive-use provisions through administrative and legal actions. Tenants may enforce the restrictive-use provisions by contacting the Agency or through legal action. The Agency will release the restrictive-use provisions when the Agency conditions have been met.

§3560.664-3560.699 [Reserved]

§3560.700 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart O--Unauthorized Assistance

§3560.701 General.

(a) This subpart contains the policies for recapturing unauthorized assistance when the Agency determines that a borrower or tenant was ineligible for, or improperly used, assistance received from the Agency.

(b) The Agency may seek repayment of any unauthorized assistance provided to a borrower or tenant, plus the cost of collection, regardless of whether the unauthorized assistance was due to errors by the Agency, the borrower, or the tenant.

§3560.702 Unauthorized assistance sources and situations.

(a) Unauthorized assistance can be received by a borrower or tenant in the form of loans, grants, interest credit, rental assistance, or other assistance provided by the Agency including assistance received as a result of an incorrect interest rate being applied to an Agency loan. Agency officials may pursue identification and recapture of unauthorized assistance through any legal remedies available.

(b) Unauthorized assistance may result from situations such as:

(1) Assistance being provided to an ineligible borrower or tenant;

(2) Assistance to an eligible borrower or tenant being used for an unauthorized purpose;

(3) Assistance being obtained as a result of inaccurate, incomplete, or fraudulent information provided by a borrower or tenant; or

(4) Assistance being obtained as a result of errors by the Agency, borrower, or tenant.

§3560.703 Identification of unauthorized assistance.

(a) The Agency will use all available means to identify unauthorized assistance, including Agency monitoring activities, OIG reports, GAO reports, and reports from any source, if the information provided can be substantiated by the Agency.

(b) Borrowers have the primary responsibility for identifying repayment of unauthorized assistance received by tenants.

§3560.704 Unauthorized assistance determination notice.

(a) The Agency will notify borrowers, in writing, when a determination has been made that unauthorized assistance was received by the borrower. Borrowers will notify tenants, in writing, when a determination is made that unauthorized assistance was received by the tenant and will simultaneously send the Agency of copy of the written notice to the tenant.

(b) The unauthorized assistance determination notice is a preliminary notice, not a demand letter. The unauthorized assistance determination notice will:

(1) Specify the reasons the assistance was determined to be unauthorized;

(2) State the amount of unauthorized assistance to be repaid and specify the party responsible for repayment of the unauthorized assistance (i.e., the tenant or borrower) according to the provision of §3560.708;

(3) Establish a place and time when the person receiving the unauthorized assistance determination notice may meet with the Agency or, in the case of tenants, may meet with the borrower, to discuss issues related to the unauthorized assistance notice such as the establishment of a repayment schedule; and

(4) Advise the borrower or tenant that they may present facts, figures, written records, or other information within a specified period of time which might alter the determination that the assistance received was unauthorized.

(c) Upon request, the Agency or borrower, in the case of tenants, will grant additional time for discussions related to an unauthorized assistance determination notice. Borrowers must notify the Agency of schedule revisions when additional time is granted to a tenant in unauthorized assistance claims.

§3560.705 Recapture of unauthorized assistance.

(a) The Agency will seek repayment of all unauthorized assistance received by a borrower or tenant, plus the cost of collection, to the fullest extent permitted by law. Agency efforts to collect unauthorized assistance may include offsets, the use of private or public collection agents, and any other remedies available. Agency findings related to unauthorized assistance determinations will be referred to credit reporting bureaus and other federal, state, or local agencies with jurisdictions related to the unauthorized assistance findings for suspension, debarment, civil or criminal action to the fullest extent permitted by law.

(b) If a borrower or tenant agrees to repay unauthorized assistance, the amount due will be the amount stated in the unauthorized assistance determination notice unless another amount has been approved by the Agency.

(c) Repayment may be made either with a lump sum payment or through payments made over a period of time. If a borrower or tenant agrees to repay unauthorized assistance, the borrower or tenant proposed repayment schedule must be approved by Agency prior to implementation. Agency approval of a repayment schedule will take into consideration the best interest of the borrower, the tenant, and the Federal Government.

(d) Borrowers must retain copies of all correspondence and a record of all conversations between the borrower and a tenant regarding unauthorized assistance received by a tenant.

(e) When a tenant, who has received unauthorized assistance due to tenant error or fraud as determined by the Agency, moves out of a housing project, the borrower is no longer responsible for recapturing the unauthorized assistance provided that the borrower notifies the Agency of the tenant's move and transfers all records related to the tenant's unauthorized assistance to the Agency within 30 days of the tenant's move. The Agency will pursue collection of the unauthorized assistance from the tenant.

(f) If a borrower refuses to enter into an unauthorized assistance repayment schedule with the Agency, the Agency will initiate liquidation procedures, in accordance with §3560.456, or other enforcement actions, such as suspension, debarment, civil, or criminal penalties, in accordance with §3560.461. If a tenant refuses to enter into an unauthorized assistance repayment schedule, the Agency will initiate recovery actions against the tenant.

(g) Borrowers may not use housing project funds to pay amounts due to the Agency as a result of unauthorized assistance due to borrower fraud.

§3560.706 Offsets.

Offsets and any other available remedies may be used by the Agency to recapture unauthorized assistance. Guidance concerning use of offsets can be found at 7 CFR 3550.210.

§3560.707 Program participation and corrective actions.

(a) With Agency approval, a borrower or tenant, who has received unauthorized assistance, may continue to participate in the project if they have the legal and financial capabilities to do so. Approval considerations for such forbearance and repayment are in §3560.705.

(b) A borrower or tenant who was responsible for the circumstances causing the unauthorized assistance must take appropriate action to correct the problem within 90 days of the unauthorized assistance determination notice date, unless an alternative date is agreed to by the Agency.

(c) When the interest rate shown in a debt instrument resulted in the receipt of unauthorized assistance, the debt instrument will be modified to the correct interest rate. All payments made by the borrower at the incorrect interest rate will be reapplied at the correct interest rate, and remaining payments due on the loan will be recalculated on the basis of the correct interest rate, plus any amounts due to the Agency as a result of the use of an incorrect interest rate, unless the Agency agrees to a separate repayment process.

§3560.708 Unauthorized assistance received by tenants.

(a) Tenant actions that require tenant repayment of unauthorized assistance received by tenants include, but are not limited to:

(1) Knowingly or mistakenly misrepresenting income, assets, adjustments to income, or household status to the borrower as required under subpart D of this part; or

(2) Failure to properly report changes in income, assets, adjustments to income, or household status to the borrower as required in subpart D of this part.

(b) Borrower actions that require borrower repayment of unauthorized assistance received by tenants include, but are not limited to:

(1) Incorrect determination of tenant income or household status by the borrower, resulting in rental assistance or interest credit that is not allowable under the provisions of subparts D, E, or F of this part, as applicable; or

(2) Assignment of rental assistance to a household that is ineligible under the requirements of subpart F of this part.

(c) When it is determined that a tenant has received unauthorized assistance, the borrower shall notify the tenant and the Agency through the procedure specified in §3560.704.

(d) Borrowers may not charge tenants to pay amounts due to the Agency as a result of unauthorized assistance to tenants through borrower error.

(e) Borrowers must notify the Agency of all collections from tenants as repayments for unauthorized assistance and must remit or credit the amounts collected to applicable housing project accounts.

(f) When rental assistance was improperly assigned to a tenant, for any reason, the rental assistance benefit must be canceled and reassigned.

(1) Before a borrower notifies a tenant of rental assistance cancellation, the borrower must request Agency approval. If the Agency determines that the unauthorized rental assistance was received by the tenant due to borrower fraud or error, the borrower must give the tenant 30 days notice, in writing, that the unit was assigned in error and that the rental assistance benefit will be canceled effective on date that the next monthly rental payment is due after the end of the 30-day notice period.

(2) Tenants also must be notified, in writing, that they may cancel their lease without penalty at the time the rental assistance is canceled. Tenants must be offered an opportunity to meet with a borrower to discuss the rental assistance cancellation.

§3560.709 Demand letter.

(a) If a borrower fails to respond to an unauthorized assistance determination notice or fails to agree to a repayment schedule, the Agency will send the borrower a demand letter specifying:

(1) The amount of unauthorized assistance to be repaid and the basis for the unauthorized assistance determination; and

(2) The actions to be taken by the Agency if repayment is not made by a specified date.

(b) If a tenant fails to respond to the unauthorized assistance determination notice or fails to agree to a repayment schedule, the borrower will send the tenant a demand letter specifying:

(1) The amount of unauthorized assistance to be repaid and the basis for the unauthorized assistance determination;

(2) The actions to be taken if repayment is not made by a specified date, including termination of tenancy; and

(3) The appeal rights of the tenant as specified in §3560.160.

(c) A demand letter may be sent to a borrower or tenant, in lieu of an unauthorized assistance determination notice, when the evidence documenting the unauthorized assistance determination is deemed to be conclusive by the Agency or borrower sending the letter.

§§3560.710-3560.749 [Reserved]

§3560.750 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart P--Appraisals

§3560.751 General.

This subpart sets forth appraisal policies for Agency-financed multi-family housing (MFH) projects consisting of five or more rental units. Agency-financed housing projects with fewer than five rental units may be appraised in accordance with the Agency's single family housing appraisal policies established under 7 CFR 3550.62.

§3560.752 Appraisal use, request, review, and release.

(a) Appraisal uses. The Agency will use appraisals to determine whether the security offered by an applicant or borrower is adequate to secure a loan or determine appropriate servicing or preservation decisions. Appraisals used for Agency decision-making must be current, unless the Agency and the applicant, or borrower, mutually agree to the use of an appraisal that is not current. A current appraisal is an appraisal with a report date that is not more than one year old.

(b) Appraisal requests. Appraisal requests must be in writing and must specify the client and other intended users, the intended use, the purpose, and the scope of work of the appraisal, including the type and definition of the value(s) to be developed.

(1) Type of Value. The appraisal request must indicate whether the “market value”, the “market value, subject to restricted rents”, or any other type of value of the housing project and related facilities is to be concluded.

(i) A request for “market value, subject to restricted rents” means the appraisal will take into consideration any rent limits, rent subsidies, expense abatements, or restrictive-use conditions that will affect the property as a result of an agreement with the Agency or any other financing source. Each type of financing involved, including, but not limited to, interest credit subsidy, low-interest loans from other sources,

tax-exempt bond financing, tax credits, and grants, must be valued separately in the appraisal.

(ii) A request for "market value" means the appraisal will take into consideration the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(A) Buyer and seller are typically motivated;

(B) Both parties are well informed or well advised and acting in what they consider their best interests;

(C) A reasonable time is allowed for exposure in the open market;

(D) Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and

(E) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(2) "As-is Value" or "Prospective Value". The appraisal request must indicate whether the "as-is value" or "prospective value" of the housing is to be concluded.

(i) "As-is value" means the value of the housing and related facilities as of the effective date of the appraisal. It relates to what physically exists and is legally permissible at the time of the appraisal and excludes all hypothetical conditions.

(ii) "Prospective value" means the forecasted value of the housing and related facilities as of a specified future date. For Agency appraisals, this date will typically be the projected completion date of proposed new construction or rehabilitation.

(3) Section 8 project-based assistance. Depending on the intended use of the appraisal, the Agency will specify whether or not section 8 project-based assistance will be considered in the valuation of the housing. The remaining term of the section 8 contract and the probability of subsequent renewal terms being authorized will be taken into consideration when making this determination.

(4) Low-Income Housing Tax Credit (LIHTC) and other financing sources. Depending on the intended use of the appraisal, the Agency will specify whether or not tax credits and other financing sources involved in the housing will be considered in the valuation of the housing.

(c) Appraisal review. All MFH appraisals that were not written by an Agency appraiser will be reviewed by an Agency appraiser, who will write and file a technical review report that complies with the Uniform Standards of Professional Appraisal Practice (USPAP) and Agency requirements.

(d) Release of appraisals. MFH appraisals procured by the Agency will be released to owners/applicants, from their own files, upon their request.

§3560.753 Agency appraisal standards and requirements.

(a) General. The Agency recognizes USPAP as the basic standards for appraisals. Appraisals used by the Agency must comply with USPAP and this subpart.

(b) Appraisers. MFH appraisals prepared for the Agency will be written by Agency appraisers or independent fee appraisers who are state certified general appraisers, certified in the state where the property is located. Technical review reports will be written by Agency state certified general appraisers.

(c) Appraisal report. The appraisal report format may be a form appraisal or a narrative appraisal. The Agency will specify the appraisal format that is most appropriate for the scope of work involved when the appraisal is requested.

(1) Form appraisal reports. The Agency will accept appraisal report forms that meet generally accepted industry standards, comply with USPAP, and have been approved by the Agency.

(2) Narrative appraisal reports. Narrative appraisal reports must, at a minimum, contain the following items:

(i) Transmittal letter;

(ii) Factual information about the property;

(iii) Regional and neighborhood data;

(iv) Description of the subject property;

(v) Description of existing and planned improvements;

(vi) A highest and best use analysis;

(vii) A statement regarding any environmental issues, such as potential contamination of the property from hazardous substances, hazardous wastes, or petroleum products;

(viii) A cost approach analysis (if applicable);

(ix) A sales comparison approach analysis (if applicable);

(x) An income approach analysis (if applicable);

(xi) A reconciliation of the value indications derived from the included approaches to value; and

(xii) A signed and dated certification of value.

(3) At the time an appraisal is requested, the Agency will specify either a complete or a limited appraisal and one of the following types of appraisal reports, based upon the complexity of the appraisal assignment.

(i) A self-contained report that comprehensively describes all information significant to the solution of the appraisal problem;

(ii) A summary report that summarizes all information significant to the solution of the appraisal problem; or

(iii) A restricted use report, intended for Agency use only, that briefly states all information significant to the solution of the appraisal problem.

(d) Highest and best use statement and analysis. The highest and best use is to be concluded for the subject site as though it was vacant, and for the subject property as improved, if improvements have been made. If the highest and best use of a subject property is for something other than MFH, the appraisal report must provide this information to the Agency for consideration in the loan process. In addition to being reasonably probable and appropriately supported, the highest and best use of both the land as though vacant and the property as improved must meet four implicit criteria. The highest and best use must be:

(1) Physically possible;

(2) Legally permissible;

(3) Financially feasible; and

(4) Maximally productive.

(e) Valuation methods and variances. The final opinion of value presented in an appraisal report must have considered a cost approach, a sales comparison approach, and an income approach. If one of these standard approaches is not used, the reconciliation narrative will provide a full and complete explanation of the reasons the approach was excluded. The reconciliation will fully discuss and reconcile variances in the value indications concluded by each approach.

(f) Real estate history. Appraisals must contain a 5-year ownership and sales history for the housing project being appraised.

(g) Reserve accounts. Funds in the housing project's reserve account will not be considered in the valuation of the housing project.

(h) Escrow accounts. Short-term prepaid escrow accounts for general operating expenses, such as taxes and insurance, shall not be considered in the valuation of the housing project.

(i) Rental rates comparison. The appraisal report must document whether the housing project's basic rents are less than, equal to, or greater than market rents for comparable conventional, or non-subsidized, units in the area where the housing is located.

(j) Description of housing and property rights. The appraisal report must identify and describe both the real estate, which is the land and improvements, and the real property, or property rights, being appraised.

(k) Exclusion of rental units from valuation. The Agency will provide appraisers with instructions and supporting information on any rental units that do not produce rental income at the time of the appraisal.

(l) Non-contiguous sites. When a housing project has real property located on non-contiguous sites, a separate appraisal must be developed for each site.

§§3560.754-3560.799 [Reserved]

§3560.800 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

APPENDIX 2

7 CFR Part 11—NATIONAL APPEALS DIVISION

Subpart A – National Appeals Division Rules of Procedure

Sec.

11.1 Definitions.
11.2 General Statement.
11.3 Applicability.
11.4 Inapplicability of other laws and regulations.
11.5 Informal review of adverse decisions.
11.6 Director review of agency determination of appealability and right of participants to Division hearing.
11.7 Ex parte communications.
11.8 Division hearings.
11.9 Director review of determinations of Hearing Officers.
11.10 Basis for determinations.
11.11 Reconsideration of Director determinations.
11.12 Effective date and implementation of final determinations of the Division.
11.13 Judicial review.
11.14 Filing of appeals and computation of time.

AUTHORITY: 5 U.S.C. 301; Title II, Subtitle H, Pub. L. 103-354, 108 Stat. 3228 (7 U.S.C. 6991 *et seq.)*; Reorganization Plan No. 2 of 1953 (5 U.S.C. App.).

§ 11.1 Definitions.

For purposes of this part:

Adverse decision means an administrative decision made by an officer, employee, or committee of an agency that is adverse to a participant. The term includes a denial of equitable relief by an agency or the failure of an agency to issue a decision or otherwise act on the request or right of the participant within timeframes specified by agency program statutes or regulations or within a reasonable time if timeframes are not specified in such statutes or regulations. The term does not include a decision over which the Board of Contract Appeals has jurisdiction.

Agency means:

1. The Agricultural Stabilization and Conservation Service (ASCS);
2. The Commodity Credit Corporation (CCC);
3. The Farm Service Agency (FSA);
4. The Federal Crop Insurance Corporation (FCIC);
5. The Natural Resources Conservation Service (NRCS);
6. The Risk Management Agency (RMA);
7. The Rural Business-Cooperative Service (RBS);
8. Rural Development (RD);
9. The Rural Housing Service (RHS);
10. The Rural Utilities Service (RUS) (but not for programs authorized by the Rural Electrification Act of 1936 or the Rural Telephone Bank Act, 7 U.S.C. 901 et seq.);
11. The Soil Conservation Service (SCS);
12. A State, county, or area committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)); and
13. Any predecessor or successor agency to the above-named agencies, and any other agency or office of the Department which the Secretary may designate.

Agency record means all the materials maintained by an agency related to an adverse decision which are submitted to the Division by an agency for consideration in connection with an appeal under this part, including all materials prepared or reviewed by the agency during its consideration and decisionmaking process, but shall not include records or information not related to the adverse decision at issue. All materials contained in the agency record submitted to the Division shall be deemed admitted as evidence for purposes of a hearing or a record review under §11.8.

Agency representative means any person, whether or not an attorney, who is authorized to represent the agency in an administrative appeal under this part.

Appeal means a written request by a participant asking for review by the National Appeals Division of an adverse decision under this part.

Appellant means any participant who appeals an adverse decision in accordance with this part. Unless separately set forth in this part, the term "appellant" includes an authorized representative.

Authorized representative means any person, whether or not an attorney, who is authorized in writing by a participant, consistent with §11.6(c), to act for the participant in an administrative appeal under this part. The authorized representative may act on behalf of the participant except when the provisions of this part require action by the participant or appellant personally.

Case record means all the materials maintained by the Secretary related to an adverse decision. The case record includes both the agency record and the hearing record.

Days means calendar days unless otherwise specified.

Department means the United States Department of Agriculture (USDA).

Director means the Director of the Division or a designee of the Director.

Division means the National Appeals Division established by this part.

Equitable relief means relief which is authorized under section 326 of the Food and Agriculture Act of 1962 (7 U.S.C. 1339a) and other laws administered by the agency.

Ex parte communication means an oral or written communication to any officer or employee of the Division with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports, or inquiries on Division procedure, in reference to any matter or proceeding connected with the appeal involved.

Hearing, except with respect to §11.5, means a proceeding before the Division to afford a participant the opportunity to present testimony or documentary evidence or both in order to have a previous determination reversed and to show why an adverse determination was in error.

Hearing Officer means an individual employed by the Division who conducts the hearing and determines appeals of adverse decisions by any agency.

Hearing record means all documents, evidence, and other materials generated in relation to a hearing under §11.8.

Implement means the taking of action by an agency of the Department in order fully and promptly to effectuate a final determination of the Division.

Participant means any individual or entity who has applied for, or whose right to participate in or receive, a payment, loan, loan guarantee, or other benefit in accordance with any program of an agency to which the regulations in this part apply is affected by a decision of such agency. The term does not include persons whose claim(s) arise under:

1. Programs subject to various proceedings provided for in 7 CFR part 1;

2. Programs governed by Federal contracting laws and regulations (appealable under other rules and to other forums, including to the Department's Board of Contract Appeals under 7 CFR part 24);

3. The Freedom of Information Act (appealable under 7 CFR part 1, subpart A);
4. Suspension and debarment disputes, including, but not limited to, those falling within the scope of 7 CFR parts 1407 and 3017;
5. Export programs administered by the Commodity Credit Corporation;
6. Disputes between reinsured companies and the Federal Crop Insurance Corporation;
7. Tenant grievances or appeals prosecutable under the provisions of 7 CFR part 1944, subpart L, under the multi-family housing program carried out by RHS;
8. Personnel, equal employment opportunity, and other similar disputes with any agency or office of the Department which arise out of the employment relationship;
9. The Federal Tort Claims Act, 28 U.S.C. 2671 et seq., or the Military Personnel and Civilian Employees Claims Act of 1964, 31 U.S.C. 3721;
10. Discrimination complaints prosecutable under the nondiscrimination regulations at 7 CFR parts 15, 15a, 15b, 15e, and 15f; or
11. Section 361, et seq., of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1361, et seq.) involving Tobacco Marketing Quota Review Committees.

Record review means an appeal considered by the Hearing Officer in which the Hearing Officer's determination is based on the agency record and other information submitted by the appellant and the agency, including information submitted by affidavit or declaration.

Secretary means the Secretary of Agriculture.

§ 11.2 General statement.

(a) This part sets forth procedures for proceedings before the National Appeals Division within the Department. The Division is an organization within the Department, subject to the general supervision of and policy direction by the Secretary, which is independent from all other agencies and offices of the Department, including Department officials at the state and local level. The Director of the Division reports directly to the Secretary of Agriculture. The authority of the Hearing Officers and the Director of the Division, and the administrative appeal procedures which must be followed by program participants who desire to appeal an adverse decision and by the agency which issued the adverse decision, are included in this part.

(b) Pursuant to section 212(e) of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Pub. L. 103-354 (the Act), 7 U.S.C. 6912(e), program participants shall seek review of an adverse decision before a Hearing Officer of the Division, and may seek further review by the Director, under the provisions of this part prior to seeking judicial review.

§ 11.3 Applicability.

(a) Subject matter. The regulations contained in this part are applicable to adverse decisions made by an agency, including, for example, those with respect to:

1. Denial of participation in, or receipt of benefits under, any program of an agency;
2. Compliance with program requirements;
3. The making or amount of payments or other program benefits to a participant in any program of an agency; and
4. A determination that a parcel of land is a wetland or highly erodible land.

(b) Limitation. The procedures contained in this part may not be used to seek review of statutes or USDA regulations issued under Federal Law.

§ 11.4 Inapplicability of other laws and regulations.

(a) Reserved.

(b) The Federal Rules of Evidence, 28 U.S.C. App., shall not apply to proceedings under this part.

§ 11.5 Informal review of adverse decisions.

(a) Required informal review of FSA adverse decisions. Except with respect to farm credit programs, a participant must seek an informal review of an adverse decision issued at the field service office level by an officer or employee of FSA, or by any employee of a county or area committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act, 16 U.S.C. 590h(b)(5), before NAD will accept an appeal of a FSA adverse decision. Such informal review shall be done by the county or area committee with responsibility for the adverse decision at issue. The procedures for requesting such an informal review before FSA are found in 7 CFR part 780. After receiving a decision upon review by a county or area committee, a participant may seek further informal review by the State FSA committee or may appeal directly to NAD under §11.6(b).

(b) Optional informal review. With respect to adverse decisions issued at the State office level of FSA and adverse decisions of all other agencies, a participant may request an agency informal review of an adverse decision of that agency prior to appealing to NAD. Procedures for requesting such an informal review are found at 7 CFR part 780 (FSA), 7 CFR part 614 (NRCS), 7 CFR part 1900, subpart B (RUS), 7 CFR part 1900, subpart B (RBS), and 7 CFR part 1900, subpart B (RHS).

(c) Mediation. A participant also shall have the right to utilize any available alternative dispute resolution (ADR) or mediation program, including any mediation program available under title V of the Agricultural Credit Act of 1987, 7 U.S.C. 5101 et seq., in order to attempt to seek resolution of an adverse decision of an agency prior to a NAD hearing. If a participant:

1. Requests mediation or ADR prior to filing an appeal with NAD, the participant stops the running of the 30-day period during which a participant may appeal to NAD under §11.6(b)(1), and will have the balance of days remaining in that period to appeal to NAD once mediation or ADR has concluded.

2. Requests mediation or ADR after having filed an appeal to NAD under §11.6(b), but before the hearing, the participant will be deemed to have waived his right to have a hearing within 45 days under §11.8(c)(1) but shall have a right to have a hearing within 45 days after conclusion of mediation or ADR.

§ 11.6 Director review of agency determination of appealability and right of participants to Division hearing.

(a) Director review of agency determination of appealability.

1. Not later than 30 days after the date on which a participant receives a determination from an agency that an agency decision is not appealable, the participant must submit a written request personally signed by the participant to the Director to review the determination in order to obtain such review by the Director.

2. The Director shall determined whether the decision is adverse to the individual participant and thus appealable or is a matter of general applicability and thus not subject to appeal, and will issue a final determination notice that upholds or reverses the determination of the agency. This final determination is not appealable. If the Director reverses the determination of the agency, the Director will notify the participant and the agency of that decision and inform the participant of his or her right to proceed with an appeal.

3. The Director may delegate his or her authority to conduct a review under this paragraph to any subordinate official of the Division other than a Hearing Officer. In any case in which such review is conducted by such a subordinate official, the subordinate official's determination shall be considered to be the determination of the Director and shall be final and not appealable.

(b) Appeals of adverse decisions.

1. To obtain a hearing under §11.8, a participant personally must request such hearing not later than 30 days after the date on which the participant first received notice of the adverse decision or after the date on which the participant receives notice of the Director's determination that a decision is appealable. In the case of the failure of an agency to act on the request or right of a recipient, a participant personally must request such hearing not later than 30 days after the participant knew or reasonably should have known that the agency had not acted within the timeframes specified by agency program regulations, or, where such regulations specify no timeframes, not later than 30 days after the participant reasonably should have known of the agency's failure to act.

2. A request for a hearing shall be in writing and personally signed by the participant, and shall include a copy of the adverse decision to be reviewed, if available, along with a brief statement of the participant's reasons for believing that the decision, or the agency's failure to act, was wrong. The participant also shall send a copy of the request for a hearing to the agency, and may send a copy of the adverse decision to be reviewed to the agency, but failure to do either will not constitute grounds for dismissal of the appeal. Instead of a hearing, the participant may request a record review.

(c) If a participant is represented by an authorized representative, the authorized representative must file a declaration with NAD, executed in accordance with 28 U.S.C. 1746, stating that the participant has duly authorized the declarant in writing to represent the participant for purposes of a specified adverse decision or decisions, and attach a copy of the written authorization to the declaration.

§ 11.7 Ex parte communications.

(a) Ex parte communications.

(1) At no time between the filing of an appeal and the issuance of a final determination under this part shall any officer or employee of the Division engage in ex parte communications regarding the merits of the appeal with any person having any interest in the appeal pending before the Division, including any person in an advocacy or investigative capacity. This prohibition does not apply to:

1. Discussions of procedural matters related to an appeal; or

2. Discussions of the merits of the appeal where all parties to the appeal have been given notice and an opportunity to participate.

(2) In the case of a communication described in paragraph (a)(1)(ii) of this section, a memorandum of any such discussion shall be included in the hearing record.

(b) No interested person shall make or knowingly cause to be made to any officer or employee of the Division an ex parte communication relevant to the merits of the appeal.

(c) If any officer or employee of the Division receives an ex parte communication in violation of this section, the one who receives the communication shall place in the hearing record:

1. All such written communications;

2. Memoranda stating the substance of all such oral communications; and

3. All written responses to such communications, and memoranda stating the substance of any oral responses thereto.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section the Hearing Officer or Director may, to the extent consistent with the interests of justice and the policy of the underlying program, require the party to show cause why such party's claim or interest in the appeal should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

§ 11.8 Division hearings.

(a) General rules.

1. The Director, the Hearing Officer, and the appellant shall have access to the agency record of any adverse decision appealed to the Division for a hearing. Upon request by the appellant, the agency shall provide the appellant a copy of the agency record.

2. The Director and Hearing Officer shall have the authority to administer oaths and affirmations, and to require, by subpoena, the attendance of witnesses and the production of evidence. A Hearing Officer shall obtain the concurrence of the Director prior to issuing a subpoena.

i. A subpoena requiring the production of evidence may be requested and issued at any time while the case is pending before the Division.

ii. An appellant or an agency, acting through any appropriate official, may request the issuance of a subpoena requiring the attendance of a witness by submitting such a request in writing at least 14 days before the scheduled date of a hearing.

The Director or Hearing Officer shall issue a subpoena at least 7 days prior to the scheduled date of a hearing.

iii. A subpoena shall be issued only if the Director or a Hearing Officer determined that:

A. For a subpoena of documents, the appellant or the agency has established that production of documentary evidence is necessary and is reasonably calculated to lead to information which would affect the final determination or is necessary to fully present the case before the Division; or

B. For a subpoena of a witness, the appellant or the agency has established that either a representative of the Department or a private individual possesses information that is pertinent and necessary for disclosure of all relevant facts which could impact the final determination, that the information cannot be obtained except through testimony of the person, and that the testimony cannot be obtained absent issuance of a subpoena.

iv. The party requesting issuance of a subpoena shall arrange for service. Service of a subpoena upon a person named therein may be made by registered or certified mail, or in person. Personal service shall be made by personal delivery of a copy of the subpoena to the person named therein by any person who is not a party and who is not less than 18 years of age. Proof of service shall be made by filing with the Hearing Officer or Director who issued the subpoena a statement of the date and manner of service and of the names of the persons served, certified by the person who made the service in person or by return receipts for certified or registered mail.

v. A party who requests that a subpoena be issued shall be responsible for the payment of any reasonable travel and subsistence costs incurred by the witness in connection with his or her appearance and any fees of a person who serves the subpoena in person. The Department shall pay the costs associated with the appearance of a Department employee whose role as a witness arises out of his or her performance of official duties, regardless of which party requested the subpoena.

The failure to make payment of such charges on demand may be deemed by the Hearing Officer or Director as sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

vi. If a person refuses to obey a subpoena, the Director, acting through the Office of the General Counsel of the Department and the Department of Justice, may apply to the United States District Court in the jurisdiction where that person resides to have the subpoena enforced as provided in the Federal Rules of Civil Procedure (28 U.S.C. App.).

3. Testimony required by subpoena pursuant to paragraph (a)(2) of this section may, at the discretion of the Director or a Hearing Officer, be presented at the hearing either in person or telephonically.

(b) Hearing procedures applicable to both record review and hearings.

1. Upon the filing of an appeal under this part of an adverse decision by any agency, the agency promptly shall provide the Division with a copy of the agency record. If requested by the applicant prior to the hearing, a copy of such agency record shall be provided to the appellant by the agency within 10 days of receipt of the request by the agency.

2. The Director shall assign the appeal to a Hearing Officer and shall notify the appellant and agency of such assignment. The notice also shall advise the appellant and the agency of the documents required to be submitted under paragraph (c)(2) of this section, and notify the appellant of the option of having a hearing by telephone.

3. The Hearing Officer will receive evidence into the hearing record without regard to whether the evidence was known to the agency officer, employee, or committee making the adverse decision at the time the adverse decision was made.

(c) Procedures applicable only to hearings.

1. Upon a timely request for a hearing under §11.6(b), an appellant has the right to have a hearing by the Division on any adverse decision within 45 days after the date of receipt of the request for the hearing by the Division.

2. The Hearing Officer shall set a reasonable deadline for submission of the following documents:

i. By the appellant:

A. A short statement of why the decision is wrong;

B. A copy of any document not in the agency record that the appellant anticipates introducing at the hearing; and

C. A list of anticipated witnesses and brief descriptions of the evidence such witnesses will offer.

ii. By the agency:

A. A copy of the adverse decision challenged by the appellant;

B. A written explanation of the agency's position, including the regulatory or statutory basis therefor;

C. A copy of any document not in the agency record that the agency anticipates introducing at the hearing; and

D. A list of anticipated witnesses and brief descriptions of the evidence such witnesses will offer.

iii. Not less than 14 days prior to the hearing, the Division must provide the appellant, the authorized representative, and the agency a notice of hearing specifying the date, time, and place of the hearing. The hearing will be held in the State of residence of the appellant, as determined by the Hearing Officer, or at a location that is otherwise convenient to the appellant, the agency, and the Division. The notice also shall notify all parties of the right to obtain an official record of the hearing.

iv. Pre-hearing conference. Whenever appropriate, the Hearing Officer shall hold a pre-hearing conference in order to attempt to resolve the dispute or to narrow the issues involved. Such pre-hearing conference shall be held by telephone unless the Hearing Officer and all parties agree to hold such conference in person.

v. Conduct of the hearing.

i. A hearing before a Hearing Officer will be in person unless the appellant agrees to a hearing by telephone.

ii. The hearing will be conducted by the Hearing Officer in the manner determined by the Division most likely to obtain the facts relevant to the matter or matters at issue. The Hearing Officer will allow the presentation of evidence at the hearing by any party without regard to whether the evidence was known to the officer, employee, or committee of the agency making the adverse decision at the time the adverse decision was made.

The Hearing Officer may confine the presentation of facts and evidence to pertinent matters and exclude irrelevant, immaterial, or unduly repetitious evidence, information, or questions. Any party shall have the opportunity to present oral and documentary evidence, oral testimony of witnesses, and arguments in support of the party's position; controvert evidence relied on by any other party; and question all witnesses. When appropriate, agency witnesses requested by the appellant will be made available at the hearing. Any evidence may be received by the Hearing Officer without regard to whether that evidence could be admitted in judicial proceedings.

iii. An official record shall be made of the proceedings of every hearing. This record will be made by an official tape recording by the Division. In addition, either party may request that a verbatim transcript be made of the hearing proceedings and that such transcript shall be made the official record of the hearing. The party requesting a verbatim transcript shall pay for the transcription service, shall provide a certified copy of the transcript to the Hearing Officer free of charge, and shall allow any other party desiring to purchase a copy of the transcript to order it from the transcription service.

vi. Absence of parties.

i. If at the time scheduled for the hearing either the appellant or the agency representative is absent, and no appearance is made on behalf of such absent party, or no arrangements have been made for rescheduling the hearing, the Hearing Officer has the option to cancel the hearing unless the absent party has good cause for the failure to appear. If the Hearing Officer elects to cancel the hearing, the Hearing Officer may:

A. Treat the appeal as a record review and issue a determination based on the agency record as submitted by the agency and the hearing record developed prior to the hearing date;

B. Accept evidence into the hearing record submitted by any party present at the hearing (subject to paragraph (c)(6)(ii) of this section), and then issue a determination; or

C. Dismiss the appeal.

ii. When a hearing is canceled due to the absence of a party, the Hearing Officer will add to the hearing record any additional evidence submitted by any party present, provide a copy of such evidence to the absent party

or parties, and allow the absent party or parties 10 days to provide a response to such additional evidence for inclusion in the hearing record.

iii. Where an absent party has demonstrated good cause for the failure to appear, the Hearing Officer shall reschedule the hearing unless all parties agree to proceed without a hearing.

vii. Post-hearing procedure.

The Hearing Officer will leave the hearing record open after the hearing for 10 days, or for such other period of time as the Hearing Officer shall establish, to allow the submission of information by the appellant or the agency, to the extent necessary to respond to new facts, information, arguments, or evidence presented or raised at the hearing. Any such new information will be added by the Hearing Office to the hearing record and sent to the other party or parties by the submitter of the information. The Hearing Officer, in his or her discretion, may permit the other party or parties to respond to this post-hearing submission.

(d) *Interlocutory review*. Interlocutory review by the Director of rulings of a Hearing Officer are not permitted under the procedures of this part.

(e) *Burden of proof*. The appellant has the burden of proving that the adverse decision of the agency was erroneous by a preponderance of the evidence.

(f) *Timing of issuance of determination*. The Hearing Officer will issue a notice of the determination on the appeal to the named appellant, the authorized representative, and the agency not later than 30 days after a hearing or the closing date of the hearing record in cases in which the Hearing Officer receives additional evidence from the agency or appellant after a hearing. In the case of a record review, the Hearing Officer will issue a notice of determination within 45 days of receipt of the appellant's request for a record review. Upon the Hearing Officer's request, the Director may establish an earlier or later deadline. A notice of determination shall be accompanied by a copy of the procedures for filing a request for Director review under §11.9. If the determination is not appealed to the Director for review under §11.9, the notice provided by the Hearing Officer shall be considered to be a notice of a final determination under this part.

§ 11.9 Director review of determinations of Hearing Officers.

(a) Requests for Director review.

1. Not later than 30 days after the date on which an appellant receives the determination of a Hearing Officer under §11.8, the appellant must submit a written request, signed personally by the named appellant, to the Director to review the determination in order to be entitled to such review by the Director. Such request shall include specific reasons why the appellant believes the determination is wrong.

2. Not later than 15 business days after the date on which an agency receives the determination of a Hearing Officer under §11.8, the head of the agency may make a written request that the Director review the determination. Such request shall include specific reasons why the agency believes the determination is wrong, including citations of statutes or regulations that the agency believes the determination violates. Any such request may be made by the head of an agency only, or by a person acting in such capacity, but not by any subordinate officer of such agency.

3. A copy of a request for Director review submitted under this paragraph shall be provided simultaneously by the submitter to each party to the appeal.

(b) Notification of Parties. The Director promptly shall notify all parties of receipt of a request for review.

(c) Responses to request for Director review. Other parties to an appeal may submit written responses to a request for Director review within 5 business days from the date of receipt of a copy of the request for review.

(d) Determination of Director.

1. The Director will conduct a review of the determination of the Hearing Officer using the agency record, the hearing record, the request for review, any responses submitted under paragraph (c) of this section, and such other arguments or information as may be accepted by the Director, in order to determine whether the decision of the Hearing Officer is supported by substantial evidence. Based on such review, the Director will issue a final determination notice that upholds, reverses, or modifies the determination of the Hearing Officer. The Director's determination upon review of a Hearing Officer's decision shall be considered to be the final determination under this part and shall not be appealable. However, if the Director determines that the hearing record is inadequate or that new evidence

has been submitted, the Director may remand all or a portion of the determination to the Hearing Officer for further proceedings to complete the hearing record or, at the option of the Director, to hold a new hearing.

2. The Director will complete the review and either issue a final determination or remand the determination not later than—

   (a) 10 business days after receipt of the request for review, in the case of a request by the head of an agency; or

   (b) 30 business days after receipt of the request for review, in the case of a request by an appellant.

3. In any case or any category of cases, the Director may delegate his or her authority to conduct a review under this section to any Deputy or Assistant Directors of the Division. In any case in which such review is conducted by a Deputy or Assistant Director under authority delegated by the Director, the Deputy or Assistant Director's determination shall be considered to be the determination of the Director under this part and shall be final and not appealable.

(e) Equitable relief. In reaching a decision on an appeal, the Director shall have the authority to grant equitable relief under this part in the same manner and to the same extent as such authority is provided an agency under applicable laws and regulations.

§ 11.10 Basis for determinations.

(a) In making a determination, the Hearing Officers and the Director are not bound by previous findings of facts on which the agency's adverse decision was based.

(b) In making a determination on the appeal, Hearing Officers and the Director shall ensure that the decision is consistent with the laws and regulations of the agency, and with the generally applicable interpretations of such laws and regulations.

(c) All determinations of the Hearing Officers and the Director must be based on information from the case record, laws applicable to the matter at issue, and applicable regulations published in the Federal Register and in effect on the date of the adverse decision or the date on which the acts that gave rise to the adverse decision occurred, whichever date is appropriate under the applicable agency program laws and regulations.

§ 11.11 Reconsideration of Director determinations.

(a) Reconsideration of a determination of the Director may be requested by the appellant or the agency within 10 days of receipt of the determination. The Director will not consider any request for reconsideration that does not contain a detailed statement of a material error of fact made in the determination, or a detailed explanation of how the determination is contrary to statute or regulation, which would justify reversal or modification of the determination.

(b) The Director shall issue a notice to all parties as to whether a request for reconsideration meets the criteria in paragraph (a) of this section. If the request for

reconsideration meets such criteria, the Director shall include a copy of the request for reconsideration in the notice to the non-requesting parties to the appeal. The non-requesting parties shall have 5 days from receipt of such notice from the Director to file a response to the request for reconsideration with the Director.

(c) The Director shall issue a decision on the request for reconsideration within 5 days of receipt of responses from the non-requesting parties. If the Director's decision upon reconsideration reverses or modifies the final determination of the Director rendered under §11.9(d), the Director's decision on reconsideration will become the final determination of the Director under §11.9(d) for purposes of this part.

§ 11.12 Effective date and implementation of final determinations of the Division.

(a) On the return of a case to an agency pursuant to the final determination of the Division, the head of the agency shall implement the final determination not later than 30 days after the effective date of the notice of the final determination.

(b) A final determination will be effective as of the date of filing of an application, the date of the transaction or event in question, or the date of the original adverse decision, whichever is applicable under the applicable agency program statutes or regulations.

§ 11.13 Judicial review.

(a) A final determination of the Division shall be reviewable and enforceable by any United States District Court of competent jurisdiction in accordance with chapter 7 of title 5, United States Code.

(b) An appellant may not seek judicial review of any agency adverse decision appealable under this part without receiving a final determination from the Division pursuant to the procedures of this part.

§ 11.14 Filing of appeals and computation of time.

(a) An appeal, a request for Director Review, or any other document will be considered "filed" when delivered in writing to the Division, when postmarked, or when a complete facsimile copy is received by the Division.

(b) Whenever the final date for any requirement of this part falls on a Saturday, Sunday, Federal holiday, or other day on which the Division is not open for the transaction of business during normal working hours, the time for filing will be extended to the close of business on the next working day.

(c) The time for filing an appeal, a request for Director review, or any other document expires at 5:00 p.m. local time at the office of the Division to which the filing is submitted on the last day on which such filing may be made.

§ 11.15 Participation of third parties and interested parties in Division proceedings.

In two situations, parties other than the appellant or the agency may be interested in participating in Division proceedings. In the first situation, a Division proceeding may in fact result in the adjudication of the rights of a third party, e.g., an appeal of a tenant involving a payment shared with a landlord, an appeal by one recipient of a portion of a payment shared by multiple parties, an appeal by one heir of an estate. In the second situation, a party may desire to receive notice of and perhaps participate in an appeal because of the derivative impact the appeal determination will have on that party, e.g., guaranteed lenders and reinsurance companies. The provisions in this section set forth rules for the participation of such third and interested parties.

(a) Third parties. When an appeal is filed, the Division shall notify any potential third party whose rights may be adjudicated of its right to participate as an appellant in the appeal. This includes the right to seek Director review of the Hearing Officer determination. Such third parties may be identified by the Division itself, by an agency, or by the original appellant. The Division shall issue one notice to the third party of its right to participate, and if such party declines to participate, the Division determination will be binding as to that third party as if it had participated. For purposes of this part, a third party includes any party for which a determination of the Division could lead to an agency action on implementation that would be adverse to the party thus giving such party a right to a Division appeal.

(b) Interested parties. With respect to a participant who is a borrower under a guaranteed loan or an insured under a crop insurance program, the respective guaranteed lender or reinsurance company having an interest in a participant's appeal under this part may participate in the appeal as an interested party, but such participation does not confer the status of an appellant upon the guaranteed lender or reinsurance company such that it may request Director review of a final determination of the Division.

APPENDIX 3

FORMS REFERENCED IN THIS HANDBOOK

Below is a list of forms that are mentioned in the text of this handbook. Since the Rural Development forms may change more frequently than the handbook, users are encouraged to obtain the most updated copy of these forms from the Rural Development Instructions home page (http://rdinit.usda.gov/regs) for their own reference.

Form AD-425, Contractor's Affirmative Action Plan for Equal Employment Opportunity
Form AD 1047, Certification Regarding Debarment, Suspension and Other Responsibility Matters – Primary Covered Transactions
Form AD 1048, Certification Regarding Debarment and Suspension: Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions
Form ASTM Standard E-1528 (TSQ), Transaction Screen Questionnaire
Form FEMA 81-93, Standard Flood Hazard Determination
Form HUD 935.2, Affirmative Fair Housing Marketing Plan
Form IRS 8609, Low-Income Housing Credit Allocation Certification
Form RD 400-1, Equal Opportunity Agreement
Form RD 400-3, Notice to Contractors and Applicants
Form RD 400-4, Assurance Agreement
Form RD 400-6, Compliance Statement
Form RD 410-7, Notification to Applicant on Use of Financial Information from Financial Institution
Form RD 410-9, Statement Required by the Privacy Act
Form RD 440-34, Option to Purchase Real Estate Property
Form RD 1910-5, Request for Verification of Employment
Form RD 1910-11, Applicant Certification Federal Collection Policies for Consumer or Commercial Debts
Form RD 1924-6, Construction Contract
Form RD 1924-7, Contract Change Order
Form RD 1924-9, Certification of Contractor's Release
Form RD 1924-10, Release by Claimants
Form RD 1924-12, Inspection Report
Form RD 1924-13, Estimate and Certificate of Actual Cost
Form RD 1924-16, Record of Pre-Construction Conference
Form RD 1924-18, Partial Payment Estimate
Form RD 1924-19, Builder's Warranty
Form RD 1924-25, Plan Certification
Form RD 1927-5, Affidavit Regarding Work of Improvement
Form RD 1940-20, Request for Environmental Information
Form RD 1940-22, Environmental Checklist for Categorical Exclusions
Form RD 2006-38, Civil Rights Impact Analysis
Form RD 3550-6, Notice of Special Flood Hazards, Flood Insurance Purchase Requirements, and Availability of Federal Disaster Relief Assistance
Form RD 3560-7, Multiple Family Housing Project Budget/Utility Allowance

Form RD 3560-8, Tenant Certification
Form RD 3560-9, Interest Credit and Rental Assistance Agreement
Form RD 3560-13, Management Certification
Form RD 3560-25, Initial Request for Rental Assistance or Operating Assistance
Form RD 3560-29, Notice of Payment Due Report
Form RD 3560-30, Certification of No Identity of Interest (IOI)
Form RD 3560-31, Identity of Interest Disclosure/Qualification Certificate
Form RD 3560-33, Loan Agreement
Form RD 3560-34, Loan Agreement
Form RD 3560-35, Loan Resolution
Form RD 3560-37, Previous Participation Certification
Form RD 3560-38, Application for Cooperative Housing Membership
Form RD 3560-51, Obligation Fund Analysis
Form RD 3560-52, Promissory Note
Form RD 3560-53, Cancellation of U.S. Treasury Check and/or Obligation
Forms SF-100, Equal Employment Opportunity Employer Information Report EEO-1
Form SF 424, Application for Federal Assistance

APPENDIX 4

HANDBOOK LETTERS REFERENCED IN THIS HANDBOOK

Handbook Letter 101 (3560), Standardized Adverse Decision Letter
Handbook Letter 102 (3560), Letter of Conditions, Loan Approval, or Obligation of Funds
Handbook Letter 103 (3560), Cover Letter to the Initial Application Package
Handbook Letter 104 (3560), Letter To Interim Lender
Handbook Letter 105 (3560), Notice To Proceed
Handbook Letter 106 (3560), Notice of Pre-application Review Action
Handbook Letter 107 (3560), A Letter Informing the Applicant of the Lack of Funds
Handbook Letter 108 (3560), Letter Denying Funding due to Ineligibility
Handbook Letter 109 (3560), Letter Informing of National Office Review

Handbook Letter 101 (3560)

REFERENCE: HB-1-3560 Chapter 1

PURPOSE: Standardized Adverse Decision Letter

RURAL DEVELOPMENT
[*LOCATION*]

[*insert date*]

Dear [*insert name*]:

After careful consideration, we [*insert* were unable to take favorable action on your application/request for Rural Development services *or* are canceling/reducing the assistance you are presently receiving]. The specific reasons for our decision are:

[*Insert the adverse decision and all of the specific reasons for the adverse action*]

If you have any questions concerning the decision or the facts used in making our decision and desire further explanation you may call or write to our office at the above address and telephone number within 15 calendar days of the date of this letter. You should present any new information or evidence along with possible alternatives for our consideration. You may also have the right to appeal this decision to a hearing officer in lieu of, or in addition to, a meeting with this office.

If you do not wish a meeting, and as outlined above wish to appeal, a request for a hearing must be sent to the National Appeals Division, USDA, [*Include appropriate NAD address*], postmarked no later than 30 days from the date of this letter.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), or because all or part of the applicant's income derives from any public assistance program. Department of Agriculture regulations provide that no agency, officer, or employee of the United States Department of Agriculture shall exclude from participation in, deny the benefits of, or subject to discrimination any person based on race, color, religion, sex, age, handicap, or national origin under any program or activity administered by such agency, officer, or employee. The Fair Housing Act prohibits discrimination in real estate-related transactions, or in the terms and conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin. If an applicant or borrower believes he or she has been discriminated against for any of these reasons, that person can write the Secretary of Agriculture, Washington,

D.C. 20250. Applicants also cannot be denied a loan because the applicant has in good faith exercised his or her rights under the Consumer Credit Protection Act. If an applicant believes he or she was denied a loan for this reason, the applicant should contact the Federal Trade Commission, Washington, D.C. 20580.

Sincerely,

_____
(Decision Maker)

_____
(Title)

Attachment – Appeal Rights

ATTACHMENT TO LETTER NOTIFYING CUSTOMERS OF AN ADVERSE DECISION THAT IS APPEALABLE

The decision described in the attached letter did not grant you the assistance you requested or will terminate or reduce the assistance you are currently receiving. If you believe this decision or the facts used in this case are in error, you may pursue any or all of the following three options.

Option 1 - Informal Review

If you have questions concerning this decision or the facts used making it and desire further explanation, you may write this office to request an informal review. **There is no cost for an informal review.** This written request must be received no later than 15 calendar days from the date of the attached letter. You must present any new information, evidence, and possible alternatives along with your request. You may also have a representative or legal counsel participate in the process, at your cost. The informal review may be conducted by telephone or in person, at the discretion of the Agency. Please include a daytime phone number in your request to arrange for the review. You may skip this step in the informal process and select one of the following two options. If you do, you will automatically waive your right to an informal review.

Option 2 - Mediation or Alternative Dispute Resolution (ADR)

You have the right to request mediation or other forms of alternative dispute resolution (ADR) for the issues that are available for mediation. **You will have to pay for at least 50 percent of the cost of mediation or ADR.** Rural Development will pay for the other 50 percent of the cost, provided the Agency has sufficient resources from its appropriated funds. If the Agency does not have sufficient resources, you will be advised how much, if any, the Agency can contribute to the cost of mediation or ADR. If you need the information to assist you in deciding whether to seek mediation or ADR, you may contact the Rural Development State Director listed below.

If you elect to seek mediation or ADR, your written request for this service must be sent to the Rural Development State Director listed below and must be postmarked no later than 30 days from the date of the attached letter. The Rural Development State Director will advise you of the estimated cost of mediation or ADR, the extent to which the Agency can contribute to the cost, and the process and procedures for this service. In States with a USDA-sponsored mediation program, you will generally be referred to such service. In States without a USDA-sponsored mediation program, you will be provided with the name or names of mediators. You will be advised directly by the mediation or ADR source if they can mediate your case. Once you request mediation or ADR, it stops the running of the 30-day period in which you may request an appeal (described in Option 3). If mediation or ADR does not result in resolution of these issues, you have the right to continue with a request for an appeal hearing as set forth in Option 3.

When mediation or ADR is concluded, you will be notified of the result and the number of days remaining to request an appeal, if applicable. If you request mediation or ADR prior to filing for an appeal, the number of days you will have to request an appeal will be 30 days from the adverse decision minus the number of days you took to request mediation. Mediation or ADR does not take the place of, or limit your rights to, an appeal to the National Appeals Division (NAD); however, a NAD appeal hearing would take place after mediation or ADR. You may skip mediation or ADR and request an appeal hearing. However, in doing so, you will automatically waive your rights to an informal meeting, mediation, or ADR.

[*Insert Rural Development State Director address*]

Option 3 - Request an Appeal

You may request an appeal hearing by the National Appeals Division (NAD) rather than an informal review, mediation, or ADR. **There is no cost for an appeal.** Your request for an appeal must be made no later than 30 days from the date you receive the attached letter. You must write the Assistant Director, NAD, for your region at the following address:

[*Insert NAD Assistant Director address*]

The request for a NAD hearing must state the reasons why you believe the decision is wrong, be personally signed by you, and must include a copy of the attached letter. A copy of your request must also be sent to the Rural Development State Director at the address specified above.

You have the right to an appeal hearing within 45 days of the receipt of your request. You or your representative or counsel may contact this office anytime during regular office hours in the 10 days following the receipt of your request for a hearing to examine or copy relevant non-confidential material in your file. Photocopies will be provided to you. Your representative or counsel should have your written authorization to represent you and review your file.

The NAD Hearing Officer will contact you regarding a time and place for the hearing. You may also request a teleconference hearing in lieu of the face-to-face hearing. At any time before the scheduled hearing you may also request that the Hearing Officer make a decision without a hearing. If you do, the Hearing Officer's decision will be based on the Rural Development file, any written statements or evidence you may provide and any additional information the Hearing Officer thinks necessary.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants based on race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), or because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit

Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Federal Trade Commission. If a person believes he or she was denied assistance in violation of this law, they should contact the Federal Trade Commission, Washington, D.C. 20580

The Fair Housing act prohibits discrimination in real estate related transactions, or in the terms and conditions of such a transaction because of race, color, religion, sex, disability, familiar status, or national origin. The federal agency that is responsible for enforcing this law is the U.S. Department of Housing and Urban Development. If a person believes that they have been discriminated against in violation of this law, they should contact the U.S. Department of Housing and Urban Development, Washington, D.C. 20410 or call (800) 669-9777.

Handbook Letter 102 (3560)

REFERENCE: HB-1-3560 Chapters 3, 4, 5 and 8

PURPOSE: Letter of Conditions, Loan Approval, or Obligation of Funds

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RURAL DEVELOPMENT
[*LOCATION*]

Date: [*insert today's date*]

SUBJECT: Loan Approval Conditions for [*insert name of applicant*]
[*insert name of project*]
[*insert number of units - Type (E or F) - number of RA units*]
[*insert location of project*]

TO: [*insert Owner/Managing General Partner*]
[*insert Address*]

Dear [*insert name of applicant*]:

This letter establishes conditions under which USDA – Rural Development will approve a Rural Rental Housing loan for the subject applicant in the amount of $[*insert amount*], in participation with funds provided by [*insert source of leveraged funds, such as State HFA*], subject to the following:

The conditions indicated in Part I must be met <u>before the start of construction or closing of the interim loan, whichever occurs first</u>. The conditions indicated in Part II must be met as indicated in the condition itself prior to project completion and closing of the USDA-Rural Development loan. In all cases, "the applicant" means [*insert name of applicant*].

<u>PART I - APPROVAL</u>:

(1) The applicant must contribute 5 percent towards the project as initial equity. The amount of the required contribution is $[*insert amount*] and must be in the form of cash and/or land.

The above contribution must be made at or before closing of the interim financing loan. This amount represents the applicant's initial investment on which the 8 percent return to owner will be allowed.

(2) This project will be funded utilizing interim financing for construction in accordance with 7 CFR 3560.71(b). The applicant will be advised of the procedure and furnished with the appropriate forms. No loan funds will be disbursed until the applicant's full required contribution has been expended.

(3) The applicant will provide a detailed list of all materials and equipment needed to be funded by the initial operating capital in accordance with 7 CFR 3560.64. The initial 2 percent operating capital of $[*insert amount*] plus any additional amount needed for the items above, must be provided in cash. Evidence of deposit to the general operating account must be furnished to the State Office prior to the start of construction.

(4) Organizational documents, including any amendments, must meet USDA–Rural Development requirements and be approved by the Office of General Counsel before the loan is closed.

(5) Competitive bidding for this project is waived in accordance with RD Instruction 1924-A, § 1924.13 (e) (1) (vii) (A).

(6) Authorization is hereby granted to pay debts for items of expense incurred after the application was filed pursuant to 7 CFR 3560.53.

(7) The applicant's final plans and specifications must be reviewed by the State Architect before final acceptance is made by the State Office. No work shall be authorized before final acceptance is made.

(8) The State Office will arrange a pre-construction conference before any work starts on the project.

(9) A 100 percent Performance Bond and 100 percent Payment Bond is required for this project, unless waived in writing by the interim lender. The applicant will submit either a copy of the bond or the waiver by the interim lender with each copy of the Construction Contract submitted for approval.

(10) Prior to the start of construction, the applicant, contractor and any subcontractor, material supplier or equipment lessor sharing an identity of interest must submit the accounting system that the applicant, contractor, subcontractor, material supplier or equipment lessor and/or the CPA or LPA proposes to set up and use in maintaining a running record of the actual cost. In order to be acceptable, it must allow for a trade-item basis comparison of the actual cost as compared to the estimated cost submitted in accordance with § 1924.13 (e) (1) (iv) of RD Instruction 1924-A, i.e., the accounting system trade-item basis must be consistent with *Form RD 1924-13, Estimate and Certificate of Actual Costs*.

(11) The Construction Contract with appropriate attachments (including the bonds or waiver) between the borrower and the contractor for development of a Rural

Rental Housing project must be approved by USDA-Rural Development before the start of construction. Four copies with original signatures must be submitted to the State Office for review.

(12) Construction Contracts of more than $10,000 will be subject to the provisions of RD Instruction 1901-E, § 1901.205, Nondiscrimination in Construction Financed with RD Loan. This will be discussed at the pre-construction conference. Contractors with 100 or more employees, and those with 50 or more employees should complete *Forms SF-100, Equal Employment Opportunity Employer Information Report EEO-1 or AD-425, Contractor's Affirmative Action Plan for Equal Employment Opportunity*, respectively, and attach same to the Construction Contract.

(13) A USDA- Rural Development official will sign *Form RD 400-3, Notice to Contractors and Applicants*, and provide copies at the pre-construction conference. USDA-Rural Development Officials will also make sure that the "Equal Employment Opportunity is the Law" sign is posted at the project site.

(14) The applicant's architect must mail a copy of the project inspection report to the USDA-Rural Development State Office immediately after each inspection.

(15) All construction will be in accordance with the conditions set forth in RD Instruction 1924-A.

(16) The applicant must provide USDA-Rural Development with evidence that they have met the Historic Preservation requirements. Favorable comments of the State Historic Preservation Officer must be obtained.

NOTE: If cultural resources are encountered during construction, construction will temporarily cease and the USDA-Rural Development State Office and the Division of Historic Preservation & Archeology will be notified.

(17) *Form RD 3560-34, Loan Agreement*, will be executed by the applicant. Three copies are enclosed with this memorandum. All three copies are to be dated and signed by the applicant as soon as possible. The original and one copy are to be returned to the USDA-Rural Development State Office after signing. These must be returned prior to the start of construction. **This loan is subject to restrictive-use provisions for the life of the loan. The restrictive-use provisions and prepayment restriction will be included in the Promissory Note and/or Deed of Trust at the time of the USDA-Rural Development loan closing.**

(18) The applicant will execute *Form RD 400-1, Equal Opportunity Agreement*, and *Form RD 400-4, Assurance Agreement*, as part of the pre-construction conference.

(19) The applicant and any Identity of Interest (IOI) entity principals must complete the IOI *Form RD 3560-30 and Form RD 3560-31* and submit to the USDA-Rural Development State Office.

(20) *Form SF 424.2, Application for Federal Assistance*, must be revised and initialed by the applicant to reflect the proper funding and development cost for the project (if necessary).

(21) *Form RD 1924-13, Estimate and Certificate of Actual Cost*, must be revised to reflect the proper development cost for the project (if necessary).

(22) *Form RD 3560-7, Multiple Family Housing Project Budget/Utility Allowance*, must be revised to reflect the correct debt repayment, interest rate, reserve requirement, and return to owner (if necessary).

(23) Applicant to provide USDA-Rural Development with a current financial statement, including a separate statement for any general partner and certificate of appropriate net worth for limited partners in accordance with 7 CFR 3560.55 and Chapter 4 of the Loan Origination Handbook.

(24) *Form HUD 935.2, Affirmative Fair Housing Marketing Plan*, must be completed in its entirety by the applicant and then, along with necessary attachments, be submitted to the USDA-Rural Development State Office for approval. When approved, the "Plan" must be posted in any and all rental offices serving the project. The participant must maintain records reflecting their efforts in fulfilling the requirements and objectives of the "Plan" and such records will be made available to USDA-Rural Development for review.

(25) Both the applicant and the general contractor must execute a "Certification for Contract, Grant and Loans" (separate certificates) per RD Instruction 1940-Q.

PART II - CLOSING CONDITIONS

(1) An updated American Land Title Association (ALTA) Preliminary Title Report must be provided by the applicant to the USDA-Rural Development State Office, prior to submission to OGC for closing instructions.

(2) Public liability and property damage insurance in a minimum amount recommended, in writing, by the applicant's attorney must be approved by the USDA-Rural Development State Office, prior to loan closing, and letter and evidence of coverage must be provided.

(3) Worker's Compensation: The applicant will be required to carry workers compensation insurance for all its employees in accordance with the applicable state laws.

(4) Fidelity Coverage: Any personnel entrusted with the receipt, custody, and disbursement of any project monies, securities, or property will be covered. The type of coverage policy and minimum amount of coverage will be in accordance with 7 CFR 3560.62(d) and 7 CFR 3560.105. Fidelity coverage must be obtained before any interim financing funds or loan funds are made available.

(5) Fire insurance, including extended coverage, on buildings included as security for the loan will be required in an amount not less than the "Total Estimated Reproduction Cost New of Improvements" on page 5 of *RD Form 1922-7, Appraisal Report for Multi-Unit Housing*. Evidence of the first year paid premium must be provided to USDA-Rural Development prior to or at closing.

(6) The loan is to be closed in accordance with RD Instruction 1927-B and supplemental instructions issued by the Regional Attorney. An ALTA Loan Policy of Title Insurance will be required.

(7) A Mortgage or Deed of Trust will be taken on the security property. Exceptions to the Preliminary Title Report will be handled in accordance with RD Instruction 1927-B.

(8) A Financing Statement and Security Agreement will also be taken as security for the loan in accordance with 7 CFR 3560.61. OGC will provide necessary forms and instructions as part of their issuance of loan closing instructions.

(9) When it has been determined that loan closing conditions can be met, the following actions will be taken:

a. The State Office will prepare *Form RD 1927-15, Loan Closing Instructions and Statement,* and *Form RD 3560-52, Promissory Note,* for this loan prior to submission to OGC for closing instructions, if needed.

To facilitate review by the Regional Attorney, the following items should be filed at the top of their respective positions:

Position 2: *Forms RD 3560-51, Multi-Family Housing Obligation and Fund Analysis,* and *RD 3560-52, Promissory Note* (A separate Promissory Note is required for the initial and each subsequent loan.)

Position 5: Current Preliminary Title Report, Executed *RD Form 3560-33 or 3560-34, Loan Agreement,* and the organizational documents. Any changes previously required in the organizational documents by USDA-Rural Development must be completed. Certified copies of the amendments must be provided by the applicant.

b. The State Office will proceed to order a loan check so that it is available when the loan is ready for closing.

c. Before closing, USDA-Rural Development will be provided with *Form RD 1924-9, Certificate of Contractor's Release,* and *Form 1924-10, Release by Claimants,* executed by all persons who furnished materials or labor in connection with the contract. If such statements cannot be obtained, the loan may be closed in accordance with § 1924.6(a) (12) (vi) (C) of RD Instruction 1924-A.

(10) The USDA-Rural Development State Office will schedule a pre-occupancy conference with the applicant to discuss advertisement of available units, affirmative marketing practices, management and tenancy documents and requirements after occupancy, in accordance with 7 CFR part 3560, subpart C. The steps necessary to close the USDA-Rural Development loan (pre-closing conference) will also be discussed at the time of the pre-occupancy conference.

(11) The following materials will be given to and discussed with the borrower and management agent (if applicable) at the pre-occupancy conference:

(a) Asset Management Handbook.
(b) Booklets entitled, *Audit Program* and *Audit Program Addendum No. 1*.
(c) Forms and FMI's: 3560-7, 3560-10, 3560-29, 3560-8.
(d) Fair Housing and "….and Justice for All" Posters

(12) The applicant will provide USDA-Rural Development with an initial operating budget indicating the interim year of operation and first full year of operation prior to occupancy. The budget must show enough income to pay all expenses and deposit the required amount in reserve, and must be approved by the State Office.

(13) Initial rents cannot exceed those shown in the approved budget required in preceding paragraph.

(14) *Form RD 3560-7, Multiple Family Housing Project Budget/Utility Allowance* must be completed and executed in duplicate by the applicant, or agent, and submitted to the USDA-Rural Development State Office for approval. This should be done at least 60-90 days prior to occupancy and must include the required backup data.

(15) The applicant's tenant lease, application for admission, management agreement, if applicable, and statement of policy regarding occupancy and tenant selection must be acceptable to USDA-Rural Development prior to rent-up. The Management Plan is required prior to the start of construction or loan closing, whichever first occurs. Written approval by the USDA-Rural Development Servicing Official is required. These documents must fully meet the requirements of 7 CFR part 3560, subparts C and D, and be approved by the State Office prior to any rent-up activity.

(16) When the project is nearing completion, the applicant will provide the State Office with the original certification of actual cost of construction prepared by a Licensed Public Accountant or Certified Public Accountant. Forms and instructions may be obtained from the USDA-Rural Development State Office. These should be requested in time for the pre-occupancy conference.

(17) The applicant's architect shall certify that the contractor has completed the work in accordance with USDA-Rural Development approved plans, specifications, and special or general conditions. This certification shall be issued at time of final inspection.

(18) The *Form RD 1924-19, Builder's Warranty*, must be executed by the contractor and owner at time of final inspection. Occupancy is not permitted prior to the USDA-Rural Development final inspection.

(19) *Form RD 3560-9, Interest Credit and Rental Assistance Agreement*, will be prepared and executed at loan closing. Interest Credit Plan II will be used for this project. When the closing information is input into the AMAS system, the M4Z, “Daily Interest Subsidy” will also be entered.

(20) *Form RD 3560-27, Rental Assistance Agreement*, must be completed, dated and executed in triplicate at the same time as *Form RD 3560-9*.

(21) It is recommended that the site manager be duly certified by an acceptable certification program. A copy of the site manager's certificate may be provided for inclusion in the USDA-Rural Development servicing file.

(22) Evidence of Affirmative Fair Housing Marketing activity must be provided to and found acceptable by the MFH Loan Specialist.

(23) A satisfactory laundry lease, if applicable, is to be provided to the State Office.

(24) Applicant must certify as to the availability or non-availability of other government assistance immediately prior to loan closing. If other government assistance becomes available prior to loan closing, the loan amount will be decreased.

(25) At loan closing, the USDA-Rural Development State Office will send the final terms of funding to the state housing finance agency or other tax credit allocating agency, and request a copy of *Form(s) IRS 8609, Low-Income Housing Credit Allocation Certification*.

(26) Prior to closing, each loan approval and closing condition will be initialed and dated upon completion. Under no circumstances will USDA-Rural Development close this loan if any approval or closing condition is not fully satisfied or you have not received a written waiver of that requirement from the State Office. Immediately after closing, we will conduct a post-closing review to verify that the loan has been properly closed in accordance with the escrow instructions given the title company. This includes the proper completion, recordation and disbursement of forms.

[*insert name of MFH Specialist*]
MFH Specialist

Loan Closing Certification
Date Closed: [*insert date closed*]

Name and Address of Title Company

_____

_____

_____

_____
Signature of MFH Specialist

Handbook Letter 103 (3560)

REFERENCE: HB-1-3560 Chapter 4

PURPOSE: Cover Letter to the Initial Application Package

RURAL RENTAL HOUSING INITIAL LOAN APPLICATION PACKAGE

Date: [*insert today's date*]

TO: RURAL DEVELOPMENT
[*INSERT ADDRESS*]

RE: [*insert name of applicant*]
[*insert name of project*]
[*insert location*]

The following checked items, assembled in the order shown, are submitted for [*insert name of applicant*] for the purpose of obtaining a rural housing loan for the purpose of [*insert constructing or rehabilitating/repairing*] multi-family rental housing located at [*insert location/address*].

Forms to be Included

- ☐ *Form SF 424, Application for Federal Assistance,* (include for construction) provides summary information about the project and the applicant, when completed.
- ☐ *Form RD 1924-13, Estimate and Certificate of Actual Costs,* provides detailed cost estimates that the Loan Originator will review to judge reasonableness.
- ☐ *Form RD 1940-20, Request for Environmental Information,* requests the applicant to provide specific environmental information about the proposed project. Instructions to the applicant are part of the form. The form will be used by the Agency to complete an environmental review of the proposed project.

- *Form RD 3560-7, Multiple Family Housing Project Budget/Utility Allowance,* provides a schedule of proposed rents and utilities and anticipated operating and maintenance costs. The form will be used by the Loan Originator to conduct the project feasibility analysis and to determine whether the utility allowance is accurate.
- *Form RD 3560-25, Initial Request for Rental Assistance or Operating Assistance,* must be completed by the applicant if rental assistance is required for the project.
- *Form RD 1944-37, Previous Participation Certification,* describes an applicant's prior involvement with Federal assistance.
- *Form RD 410-9, Statement Required by the Privacy Act, (*for individuals only), and *Form RD 410-7, Notification to Applicant on Use of Financial Information from Financial Institution* (for individuals only), will allow the Agency to verify information provided by the loan Applicant.

Required Applicant/Project Information

I. To establish applicant eligibility:

A. Current (within 6 months) financial statements with the following paragraph certified by someone with the legal authority to do so:

"I/we certify the above is a true and accurate reflection of my/our financial condition as of the date stated herein. This statement is given for the purpose of inducing the United States of America to make a loan or to enable the United States of America to make a determination of continued eligibility of the applicant for a loan as requested in the loan application of which this statement is a part."

B. Check for $28 from individual applicants and $40 from organizational applicants made out to United States Department of Agriculture. This will be used to pay for credit reports obtained by the Agency.

C. Statements signed by applicants that they will pay any cost overruns.

D. Proposed limited partnership agreement and certificates of limited partners, if applicable. (Agency requirements should be contained in one section of the agreement and their location identified by the applicants or their attorney in a cover sheet.)

E. If a nonprofit organization:

1. Tax-exempt ruling from the IRS designating them as a 501(c)(3) or 501(c)(4) organization. If the designation is pending, a copy of the designation request must be submitted.

2. Purpose statement, including the provision of low income housing.

3. Evidence of organization under state and local law, or copies of pending applications.

4. List of Board of Directors.

F. If a limited liability company, proposed operating agreement and the authorized agent who has the authority to complete the loan application and loan closing documents.

G. If a trust, organizational documents and attorney opinion letter that the trust is validly formed and identifying the authorized representative to act on the trust's behalf.

II. To establish project feasibility:

A. Market feasibility documentation: Either a market study or a market survey, as appropriate.

B. Type of project and structures proposed (total number of units by bedroom size, size of each unit type, size and type of other facilities).

C. Schematic drawings:

1. Site plan, including contour lines;

2. Floor plan of each living unit type and other spaces, such as laundry facilities, community rooms, stairwells, etc.;

3. Building exterior elevations;

4. Typical building exterior wall section; and

5. Plot plan.

D. Description and justification of related facilities, schedule of separate charges for related facilities.

E. Type and method of construction (owner builder, negotiated bid, or contractor method).

F. Estimated costs (loan applicant completes *Form 1924-13*.

G. Statement of proposed management.

H. Congregate services package/plan (if applicable).

I. Statement of support from other Government services providers to the project (congregate only).

J. Response to the Uniform Relocation Assistance Act (if applicable).

III. To establish project financing:

A. Statement of budget and cash flow (applicant completes *Form RD 3560-7*), including type of utilities and utility allowance, if applicable and contribution to reserves.

B. Life cycle cost analysis.

C. Congregate services charges (if applicable).

D. Status of efforts to obtain leveraged funds.

E. Proposed construction financing (interim or multiple advance; if interim financing, letter of interest from intended lender).

IV. To understand environmental and site information:

A. Environmental information (applicant completes *Form RD 1940-20).*

B. Evidence of compliance with Executive Order 12372 (if applicable) *Form SF 424* is sent to a clearinghouse for intergovernmental review.

C. Phase I due diligence (Environmental Site Assessment; see Chapter 3).

D. Map showing location of support services.

E. Evidence of submission of project description to SHPO with request for comments.

Comments regarding relevant offsite conditions:

[*insert any pertinent comments*]

Handbook Letter 104 (3560)

REFERENCE: HB-1-3560 Chapter 5

PURPOSE: Letter To Interim Lender

RURAL DEVELOPMENT
[*LOCATION*]

[*insert name of interim lender*]
[*insert address of interim lender*]

Dear [*insert name of interim lender*]:

[*use this paragraph for organizations*]

Reference is made to a request from the [*insert applicant name*] through [*insert name of general partner or principal, and title*] for interim financing from your firm to construct a housing facility at the interest rate, terms, and conditions agreed upon as reflected in the attached letter.

[*use this paragraph for individuals*]

Reference is made to a request from [*insert name of individual*] for interim financing from your firm to construct a rental housing facility at the interest rate, terms, and conditions agreed upon as reflected in the attached letter.

This letter will confirm certain understandings on behalf of the Rural Development.

Final drawings, specifications, and all other contract documents have been prepared and approved, and the applicant is prepared to start construction. The applicant and Rural Development have determined that the conditions of loan closing can be met. Rural Development funds have been obligated for the project.

Rural Development has required the applicant to deposit $[*insert amount*] with your firm to be used before any interim loan funds or other loan or grant funds. You may first advance the applicant funds on deposit, and then advance the proceeds of the interim loan or other loan and grant funds in accordance with the terms and conditions stated in your attached letter, to pay for construction and other authorized and legally eligible expenses incurred by the applicant. It is understood, however, that advances of both the applicant's funds and the interim loan funds will be made only upon presentation of proper

statements and partial payment estimates proposed by the builder and approved for payment by the consulting architect, applicant, and Rural Development official.

We have scheduled the Rural Development loan to be closed when construction is substantially complete in accordance with the Rural Development-approved contract documents, drawings, and specifications, and the applicant provides evidence and a signed certification indicating that there are no unpaid obligations outstanding in connection with the project. At that time, funds not exceeding the Rural Development loan amount will be available to pay off the loan advances your lending institution has made for authorized approved purposes, including accrued interest on the Rural Development loan to the date of closing.

Rural Development cannot provide you with an unconditional letter of commitment guaranteeing Rural Development loan closing. Factors such as noncompletion, default, unacceptable workmanship, and marked deviation from approved drawings and specifications could prevent the Rural Development loan from being closed.

These problems can be minimized by making a thorough review of the contract documents and drawings and specifications, evaluating the qualifications and past performance of the builder, and obtaining an adequate corporate surety bond guaranteeing both payment and performance. If the builder is unable to provide a surety bond, we suggest that you consider making advances for partial payments to the builder based upon no less than 60 percent and no more than 90 percent of the value of acceptable work in place, less the aggregate of previous payments.

The following are additional safeguards to help ensure Rural Development loan closing:

1. We invite you or your representatives to accompany Rural Development personnel during construction inspections so that at least three or four joint inspections can be made at critical points during construction, including the final inspection, to help ensure that construction is proceeding in accordance with the Rural Development-approved drawings and specifications.
2. Rural Development will maintain its commitment in the amount of the obligated loan funds for a reasonable period of time after the expiration of any specified completion dates, provided work on the project is progressing satisfactorily and any identified problems have been resolved.
3. Rural Development will not arbitrarily abandon your lending institution in the event of default. If the contractor defaults, Rural Development will attempt to provide financial assistance to the applicant in accordance with our administrative procedures and lending requirements if a new contractor can complete the project for a total cost within the security value of the project. If this is not possible, or if the Rural Development loan applicant becomes unable or unwilling to continue with the project, Rural Development will attempt to provide financial assistance to any eligible applicant to purchase the completed project from your lending institution (subject to the availability of funds, our administrative procedures, and our lending requirements).

4. Rural Development is aware that circumstances such as subsurface ground conditions and change orders necessitated by required changes in the work to be performed may cause cost increases after Rural Development loan approval and the obligation of Rural Development loan funds. When justified, Rural Development may make subsequent loans to help cover the eligible costs, provided additional loan funds are available, the change orders were approved by Rural Development, the increased costs are legitimate and are for authorized loan purposes, and the total cost of the project is within its security value.

Your assistance to the applicant is appreciated.

Sincerely,

_____
State Director

Handbook Letter 105 (3560)

REFERENCE: HB-1-3560 Chapter 7

PURPOSE: Notice To Proceed

[*insert date*]

[*insert name of borrower*]
[*insert address of borrower*]

RE: [*insert name of project*]
[*insert location of project*]

Dear [*insert name of borrower*]:

Pursuant to the terms of the Contract Documents and Loan Commitment dated [*insert date*], you are hereby authorized to commence work necessary to complete the project. Accordingly, this letter will serve as your formal "Notice to Proceed."

It is expected that construction shall be completed within [*insert the number of days*] consecutive calendar days**.** The construction period shall commence on [*insert start date*] and will conclude on [*insert finish date*]. It is the responsibility of the Contractor to meet the schedule as set forth and in accordance with the terms and conditions of the Contract.

[*Insert name of agency official*] will serve as the Agency's Contract Representative for this project. Please return this "Notice to Proceed" signed and dated where indicated, by an authorized official of your organization.

If clarification is required, do not hesitate to contact [*name of contact*] by phone at [*insert phone number*].

Sincerely,

[*insert name of Agency Official*]

RECEIPT IS ACKNOWLEDGED:

By Borrower: _____ _____
[*signature of authorized official*] [*date*]

By Contractor: _____ _____
[*signature of authorized official*] [*date*]

Handbook Letter 106 (3560)

REFERENCE: HB-1-3560 Chapters 4 and 12

PURPOSE: Notice of Pre-application Review Action

RURAL DEVELOPMENT
[*LOCATION*]

Date: [*insert today's date*]

[*Insert Applicant's Name*]
[*Insert Applicant's Address*]

SUBJECT: Notice of Pre-application Review Action [*Proposal Name, Location*]

We reviewed your pre-application for Section 515 Rural Rental Housing assistance and determined that your proposal is eligible for funding by this agency. Your proposal received [*insert number of priority points*] priority points and was selected for further processing under the National NOFA.

Therefore, a formal application, meeting the requirements of Chapter 5 of the HB-1-3560, must be filed with our office by [*insert date 30 days from date of this notice*]. A "Rural Rental Housing Application Package" is enclosed to assist you in this effort. The loan request may not exceed $[*insert request limit*] and [*insert limit of number of units*] Rental Assistance units.

Please see the attachment to this notice for conditions under which further processing will continue.

Within one week of receiving this notice, you are instructed to contact [*the individual named below*] to set up a meeting. At this meeting, you will be given additional guidance and copies of appropriate exhibits and forms that are needed in order to complete the final application process. Any outstanding issues will also be addressed at this time. The Agency may, at its discretion, choose to hold a telephone conference for this purpose as a substitute for an in-person meeting.

You may contact me by telephone at [*insert telephone number*] with any questions concerning this notice or the application process.

[*insert name of MFH Loan Specialist*]
Attachment

ATTACHMENT TO NOTICE OF PRE-APPLICATION REVIEW INVITING A FORMAL APPLICATION

1) The action taken herein is based upon representations made in your pre-application. Any changes therein, including but not limited to changes in complex cost, size, or scope of complex, rental rates or subsidy costs to USDA-Rural Development, affect this decision and must be reported to and approved by Rural Development in writing. Any changes not approved by Rural Development will be cause for Rural Development to discontinue processing your request for services. All applicants requesting changes will be required to give full justification for each change and, if Rural Development approval is not given, written reasons will be given with a 30-day negotiation period to resolve the differences.

2) This action should not be misconstrued as a reservation of funds, the availability of those funds, or loan approval.

3) Loan processing will continue based upon a loan not to exceed the amount specified in this notice.

4) If a complete application has not been submitted to Rural Development by the date specified in this notice, we reserve the right to discontinue processing your loan request with 30 days written notice. If a longer timeframe to develop your application is necessary, you should submit a request in writing with specific reasons why a longer timeframe is required with a projected date to accomplish such action. Failure to submit a complete application, or request a longer timeframe, will be considered a lack of interest on your part and a request to withdraw the pre-application.

5) You are advised against taking any actions or incurring any obligations that would either limit the range of alternatives to be considered or have an adverse affect on the environment. Satisfactory completion of the environmental review process must occur prior to loan approval. The issuance of this review action does not constitute site approval.

Handbook Letter 107 (3560)

REFERENCE: HB-1-3560 Chapters 4 and 12

PURPOSE: A Letter Informing the Applicant of the Lack of Funds

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RURAL DEVELOPMENT
[*LOCATION*]

Date: [*insert today's date*]

[*Insert Applicant's Name*]
[*Insert Applicant's Address*]

Your application for Rural Development services as been favorably considered by the [*insert office location*] Loan Committee. This favorable consideration does not necessarily mean a loan will be made to you. You are cautioned not to make purchases, option real estate, or make commitments in anticipation of receiving a loan because of this favorable action.

Funds for making [*insert type of loan*] are temporarily exhausted. Your application will be held for consideration until funds are available. You will be notified by letter at that time.

Please advise us promptly if there are sufficient changes that would affect your eligibility or if you are no longer interested in obtaining the assistance for which you originally applied.

Sincerely,

[*Name of decision maker*]
[*Title*]

Handbook Letter 108 (3560)

REFERENCE: HB-1-3560 Chapters 4 and 12

PURPOSE: Letter Denying Funding due to Ineligibility

[*insert date*]

[*insert name of applicant*]
[*insert address of applicant*]

Dear [*insert name of applicant*]:

Thank you for your interest in the Rural Rental Housing Loan program. After a thorough review of your [*insert either initial or final*] application, it has been determined that your proposal does not meet the criteria of the National NOFA and therefore, is ineligible for the Rural Development Housing loan for which you have applied. Our determination is based on the following:

[*insert list of specific reason(s) for the ineligibility*]

Should you have any questions or wish to further discuss this matter, you may contact [*insert name of Specialist*] by phone at [*insert phone number of Specialist*].

Sincerely,

[*insert name of MFH Program Director*]

Handbook Letter 109 (3560)

REFERENCE: HB-1-3560 Chapter 4

PURPOSE: Letter Informing of National Office Review

[*insert date*]

[*insert name of applicant*]
[*insert address of applicant*]

SUBJECT: Notice of National Office Review
[*insert proposal name and location*]

Dear [*insert name of applicant*]:

This letter is to inform you that your initial application has been submitted to the National Office for comprehensive review due to special circumstances involving your project type. We are currently awaiting a response from the National Office. Once the National Office has completed its review, you will be advised of the results.

You may contact me at [*insert phone number of Specialist*] with any questions concerning this notice or the application process.

Sincerely,

[*insert name of MFH Loan Specialist*]