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Rural Housing Service

7 CFR Part 3560

**Streamlining and Consolidation of the
Sections 514, 515, 516, and 521 Multi-
Family Housing (MFH) Programs;
Proposed Rule**

DEPARTMENT OF AGRICULTURE**Rural Housing Service****7 CFR Part 3560**

RIN 0575-AC13

Streamlining and Consolidation of the Sections 514, 515, 516, and 521 Multi-Family Housing (MFH) Programs

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Housing Service (RHS), formerly Rural Housing and Community Development Service (RHCDS), a successor Agency to the Farmers Home Administration (FmHA), proposes to streamline and reengineer its regulations and to utilize private sector process and techniques in the administration of the origination, management, servicing, and preservation of its Multi-Family Housing (MFH) programs. These programs include the section 515 Rural Rental Housing (RRH) loan program, the section 514/516 Farm Labor Housing loan and grant program, and the section 521 Rental Assistance (RA) program.

This action is to reduce regulations, assure quality housing for residents, improve customer service, and improve the Agency's ability to achieve effectiveness and flexibility in managing the MFH portfolio. This streamlining will result in a reduction to the Code of Federal Regulations (CFR) coverage of the MFH programs by 90 percent. To explain how this was accomplished, the rewrite of the 1930-C regulation is offered as an example. This regulation alone covers 366 pages of CFR. The extensive language currently describes in detail, the form and format for conducting internal MFH supervisory activities by Agency personnel. This regulation has been replaced in the proposed rule with a four-page chapter. This was accomplished by using the authority of the regulation to develop a new handbook, which will provide direction on conducting monitoring actions. The handbook will incorporate many ideas that were obtained from the streamlining process into the streamlining of Agency supervisory efforts and will clarify and standardize the monitoring requirements, thereby reducing burden on borrowers and management agents.

DATES: Written or e-mail comments on this proposed rule must be received on or before August 1, 2003.

ADDRESSES: Written comments may be submitted, in duplicate, to the Branch Chief, Regulations and Paperwork

Management Branch, Support Services Division, U.S. Department of Agriculture, Stop 0742, 1400 Independence Avenue SW., Washington, DC 20250-0742.

Comments may be submitted via the Internet by addressing them to "comments@rus.usda.gov" and must contain the word "Streamlining" in the subject. All comments will be available for public inspection at 3rd floor, 300 E Street, SW., Washington, DC 20546 during normal working hours.

FOR FURTHER INFORMATION CONTACT: Sue Harris-Green, Deputy Director, Multi-Family Housing Direct Loan Division, Rural Housing Service, U.S. Department of Agriculture, Room 1241, South Building, Stop 0781, 1400 Independence Avenue, SW., Washington, DC 20250-0781; Telephone: (202) 720-1660.

SUPPLEMENTARY INFORMATION:**Classification**

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order (E.O.) 12866.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of RHS that the proposed action does not constitute a major Federal action significantly affecting the quality of the environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

The proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The undersigned has determined and certified by signature on this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose a substantial direct compliance costs on state and local governments.

Therefore, consultation with the states is not required.

Civil Justice Reform

This proposed rule has been reviewed under E.O. 12988, Civil Justice Reform. If this proposed rule is adopted: (1) Unless otherwise specifically provided, all state and local laws that are in conflict with this rule will be preempted; (2) no retroactive effect will be given this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before bringing suit.

Unfunded Mandate Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, federal agencies generally must prepare a written statement, including cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such statement is needed for a rule, section 205 of the UMRA generally requires a federal Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the Agency will seek Office of Management and Budget (OMB) approval of the reporting and recordkeeping requirements contained in this proposed regulation.

Title: Direct Multi-Family Housing Loans and Grants.

Type of Request: New Information Collection.

Abstract: Through public and private partnerships, RHS enables limited profit and nonprofit sponsors to develop rental housing for low-, very low- and moderate-income rural residents across rural America. In addition, loans and grants are made to house farmworkers,

one of the most under-housed segments of our society. The \$11.8 million portfolio of 444,000 units and nearly 17,400 projects often provides the only decent, safe, and sanitary affordable rental housing available in rural areas.

The information collected is used by the Agency to manage, plan, evaluate, and account for Government resources. The reports are required to ensure the proper and judicious use of public funds.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.61 hours per response.

Respondents: Limited for profit and nonprofit developers, public bodies and rural tenant households.

Estimated Number of Respondents: 500,000.

Estimated Number of Responses per Respondent: 4.3.

Estimated Number of Responses: 2,166,709.

Estimated Total Annual Burden on Respondents: 1,318,434 hours.

Copies of this information collection can be obtained from Tracy Givelekian, Regulations and Paperwork Management Branch, at (202) 692-0039.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agencies, including whether the information will have practical utility; (b) the accuracy of the Agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized, included in the request for OMB approval, and will become a matter of public record. Comments should be submitted to Tracy Givelekian, Regulations and Paperwork Management Branch, Support Services Division, Rural Housing Service, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250-0742. A comment is best assured of having its full effect if it is received within 30 days of publication of this rule.

Programs Affected

The programs affected by this regulation are listed in the Catalog of

Federal Domestic Assistance under number 10.405—Farm Labor Housing Loans and Grants; 10.415—Rural Rental Housing Loans; and 10.427—Rural Rental Assistance Payments.

Intergovernmental Consultation

These loans are subject to the provisions of E.O. 12372 which require intergovernmental consultation with state and local officials. RHS conducts intergovernmental consultations for each loan in a manner delineated in RD Instruction 1940-J (available in any RD office and on the Internet at <http://rdinit.usda.gov/regs/>).

Background Information

An Overview

Most communities in rural America have a scarcity of decent rental housing affordable to very low-income families. In addition, migrant farm workers and farm laborers, whose incomes are extremely limited, face some of the worst housing conditions in the nation. Despite improvements in housing quality, especially in the number of rural units with complete plumbing facilities, there are about 2.7 million families who live in substandard housing. According to 1990 census data, rural renters were more than twice as likely to live in substandard housing as people who owned their own homes. With lower median incomes and higher poverty rates than homeowners, many renters are simply unable to find decent housing that is affordable. RHS's rental housing programs are some of the few resources that enable the very low-income renters in rural America to access decent, safe, sanitary and affordable housing. In many of America's rural communities, there are simply no other safe and sanitary alternatives for very low-income people.

Through public and private partnerships, RHS enables limited profit and nonprofit developers to build rental housing for low-income and very low-income tenants across rural America. The \$11.8 billion portfolio of 444,000 units and nearly 17,400 projects often provides the only decent, affordable rental housing available in rural areas. The program provides affordable rental housing to very low income and low-income rural families, to handicapped and to elderly residents. The average tenant has an adjusted income of \$8,105.

This direct loan program employs a public-private partnership by providing subsidized loans at an interest rate of 1 percent to developers to construct or renovate affordable rental complexes in rural areas. This 1 percent loan keeps

the debt service on the property sufficiently low to support below-market rents affordable to low-income tenants. Many of these projects also utilize low-income housing tax credit proceeds. This program is typically used in conjunction with RHS section 521 Rental Assistance, which provides project-based rental assistance payments to property owners to subsidize tenants' rents to an affordable level. With rental assistance, tenants pay 30 percent of income towards their rent (including utilities). Some 515 projects also utilize HUD's Section 8 project-based assistance, which enables additional very low-income families to be served.

Goals of the Regulatory Streamlining Process

This proposed rule is a result of RHS's pledge to make its programs more customer-friendly, streamline the processes, reduce costs to the taxpayer, and increase the Agency's level of customer service. This goal was accomplished through the input and commitment that resulted from numerous stakeholder meetings with recognized leaders in the multi-family industry. These leaders included borrowers, management agents identified by industry groups and tenant representatives. Representatives of state housing finance agencies, accounting firms and the USDA Office of Inspector General also participated. Through these meetings, we were able to draw a vast amount of expertise and knowledge to meet the following objectives of MFH streamlining and consolidation: Assure affordable safe, decent and sanitary housing for very low and low-income residents of rural America.

- Consolidate and simplify 13 regulations into one regulation for rural rental housing, farm labor housing and rental assistance.
- Develop an efficient loan application process that supports the creation of partnerships and leveraging with local, state and other federal entities.
- Clarify our existing policies and procedures to reflect the best practices within the Agency and within the multi-family field.
- Improve efficiency and service to our customers, correcting past problems and addressing concerns raised by our stakeholders so that particularly complex processes, such as preservation, work better.
- Make much of the farm labor housing review and approval processes the same as those for rural rental housing.
- Create a series of handbooks available to the field staff and to our

applicants, borrowers and partners that will give clear guidance on policies, such as project budget approvals, determining project feasibility, and servicing actions.

Streamlining and Consolidation

The Proposed Regulation

RHS has undertaken a major redevelopment and consolidation of Rural Development regulations affecting the sections 514, 515, 516, and 521 Multi-Family Housing (MFH) programs. The result of the streamlining and consolidation is a proposed rule that revises and consolidates Agency regulations affecting the section 514, 515, 516, and 521 Multi-Family Housing (MFH) Programs. This rule consolidates the policies outlined in 13 separate regulations and a number of administrative notices into one regulation and moves the procedural guidance to program handbooks. A list of the regulations being consolidated follows:

- 7 CFR part 1806, subpart A—Real Property Insurance.
- 7 CFR part 1930, subpart C—Management and Supervision of Multi-Family Housing Borrowers and Grant Recipients.
- 7 CFR part 1944, subpart D—Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations.
- 7 CFR part 1944, subpart E—Rural Rental and Rural Cooperative Housing Loan Policies, Procedures and Authorizations.
- 7 CFR part 1951, subpart D—Final Payment on Loans.
- 7 CFR part 1951, subpart K—Predetermined Amortization Schedule System (PASS) Account Servicing.
- 7 CFR part 1951, subpart N—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Multi Family-Housing.
- 7 CFR part 1955, subpart A—Liquidation of Loans Secured By Real Estate and Acquisition of Real and Chattel Property.
- 7 CFR part 1955, subpart B—Management of Property.
- 7 CFR part 1955, subpart C—Disposal of Inventory Property.
- 7 CFR part 1956, subpart B—Debt Settlement Farm Loan Programs and Multi-Family Housing.
- 7 CFR part 1965, subpart B—Security Servicing for Multiple Housing Loans.
- 7 CFR part 1965, subpart E—Prepayment and Displacement Prevention of Multi-Family Housing Loans.

These changes have two clear benefits. First, the consolidated

streamlined regulation makes information easier to access. Answers to policy questions are found in one document that has been shortened from over 1,500 pages to approximately 180 pages. Similarly, answers to process and implementation questions are found in three handbooks. These handbooks provide “how-to” guidance on loan origination, asset management, and loan servicing. Agency staff, property owners, property managers, and residents can look for most of their answers to day-to-day questions in the handbooks where they will find plain English explanations and examples. If the regulatory basis for a procedure is in question, that information can be easily found in the streamlined regulation. The increased ease of finding information should help improve public understanding of the rules and eliminate inconsistencies in interpretation.

Second, the division of policy and procedure gives the agency more flexibility to update and revise program procedures. For example, as automation changes the way program reporting occurs, relevant procedures can be updated in the handbooks without going through a complex process of changing the regulation. This will make the agency more responsive to changes in the business environment, an important initiative as the Federal Government strives to have more of its business conducted on-line and through electronic submissions.

The paperwork burden reduction resulting from the proposed rule would be approximately 25 percent. This estimate is derived from the Paperwork Burden Report that RHS prepared.

The Proposed Handbooks

As stated above, the Agency is developing three separate handbooks that will present the reader with the administrative guidance on matters. One handbook will be devoted entirely to General Requirements and Loan Origination Requirements. It will instruct the reader on procedures and provide information on matters such as what forms must be filed, where to submit loan requests and the agency’s internal processing procedures. The same principles will be followed in the publication of the Asset Management Handbook and the Project Servicing Handbook respectively. The handbooks will not be published in the **Federal Register** but will be available to the public at no cost.

RHS is currently developing the proposed Handbooks while aggressively analyzing all existing burden imposed upon the public to obtain and retain

MFH program assistance. The Handbooks will be available on RHS’s Web site at <http://www.rurdev.usda.gov/rhs/index.html>. Access to the Handbooks will also be available through the local RHS servicing office.

Current Regulations and Notices

Current regulations may be found on RHS’s Web site at <http://rdinit.usda.gov/regs/index.html> or in the Code of Federal Regulations.

Exhibits

Many of the exhibits that are part of the current regulations may be found in the three companion handbooks to 7 CFR part 3560: Loan Origination, Asset Management, and Project Servicing. The Loan Origination Handbook will provide RHS multifamily housing staff with the guidance needed to originate loans and grants efficiently and effectively. The Asset Management Handbook will provide RHS multifamily housing staff with guidance about the Agency’s procedures for overseeing borrowers’ performance in meeting their responsibilities under the program. The Project Servicing Handbook will provide Loan Servicers with guidance about the Agency’s procedures for servicing actions involving borrowers receiving loans or grants for multifamily housing projects. As an example, Exhibit A–13 of 7 CFR part 1944, subpart E will be found in Attachment 6–B to Chapter 6 of the Loan Origination Handbook and Exhibit B–1 of 7 CFR part 1930, subpart C will be found in Exhibit 3–1 of Chapter 3 of the Asset Management handbook.

Changes to the Rule With Significant Impact

Reserve Requirements for Project Improvements

This proposed rule will require an annual minimum of 1 percent of total development cost to be put in a reserve account, with a maximum reserve requirement up to the level needed to assure resources being available to maintain the housing at Agency standards.

Current regulations include standards for physical condition, maintenance, and reserve levels to address the physical condition of the property. However, projects are experiencing physical maintenance problems due to their average age. One of the sources of this problem is that project reserves are inadequate to cover ongoing capital needs. Current regulations require that borrowers contribute initially 1 percent annually of total development costs toward a reserve for project

improvements until a total of 10 percent is reached. While borrowers are permitted to request adjustments to their reserve contributions, there is no systematic provision for reevaluating reserves over the life of the project. A recent study found that while an average MFH project has accumulated \$5,000 in reserves per unit at the end of 10 years and maintained at that level thereafter, the full cost of rehabilitation is likely to be close to \$16,000 per unit. When rehabilitation is needed and the reserve is inadequate to meet the need, the project owner usually applies for a subsequent loan, which, if received, requires that rents be increased. In recent years, RHS has been experiencing a growing number of requests for subsequent loans and rent increases to cover costs of rehabilitation, while funding for such loans has been limited.

Increasing the reserve requirements would be appropriate to address the physical needs and the life expectancy of most MFH projects. It will help reduce the need for subsequent loans or servicing actions, and improve the long-term physical condition of projects and help protect the MFH portfolio from defaults. In existing projects where RHS is taking servicing actions, the proposed rule would help ensure that each project's physical needs are addressed in current servicing actions and, thus, reduce the need for attention at a later date. Such servicing actions include write-downs of existing loans. Thus, it is possible that the proposed rule would result in additional write-downs as a means of addressing the need for the project improvements. To date, RHS has written-down only a limited number of MFH loans. Further, the additional reserve requirement will be reflected in project costs, which means that rents will increase, and the amount of rental assistance payments needed to maintain existing contracts for such assistance will increase.

Investment Earnings on Reserve Account Funds

RHS has found that most project owners are putting their reserve funds in accounts that earn no or minimal income. The average reserve account has been earning only 2 percent interest annually. Project owners indicate that, under current regulations and tax rules, they have few options for investing these funds and face a strong disincentive for investing them in a manner that maximizes their return. The disincentive is due to Internal Revenue Service (IRS) rules that treat income earned on reserve accounts as investment income for the owner and,

thus, taxable, rather than project income.

The proposed rule makes two changes to address these limitations. First, it allows a greater number of investment options. These options include relatively conservative investment vehicles that are used by other public agencies and are not expected to pose a significant increased risk to the funds. This change would give owners more flexibility for investing their reserve funds and is expected to result in greater returns on these funds and thus more income to be put toward better project operations and capital improvements. The increase in interest income would lower the amount needed from tenant rents and rental assistance to meet project needs.

Second, the rule addresses the issue of "phantom income," the interest income earned on reserve accounts. This income is committed to the project but not accessible to the owner. To ease the burden of paying taxes on this "phantom income," the rule allows owners, with RHS' approval, to withdraw up to 25 percent of the annual interest income earned on the reserves to cover the tax expense. The 25 percent allowance was determined to be a reasonable estimate of the tax rate for the average investor. It was decided to use a single rate for all owners to simplify the administration of this feature. RHS also consulted with OIG and the American Institute of Certified Public Accountants (AICPA) in arriving at the 25 percent figure.

Prepayment Policies and Procedures

The agency, borrowers, and tenant advocates agreed that the prepayment request process is a difficult and confusing process. Agency staff in the National Office recognized that they were spending a great deal of time providing technical assistance to Field Offices in responding to prepayment requests. Borrowers commented that the process was unduly burdensome to borrowers who were within their rights to request prepayment. Tenant advocates pointed out that tenants are virtually excluded from the process because the process complexity makes it difficult for tenants to take action. Discussion of these concerns at the stakeholders meetings indicated that RHS needed to clarify many of the policies toward prepayment and where possible, make policy changes that would help simplify the process. Consequently, the proposed rule includes changes to agency policy regarding tenant notification and projects on the waiting list for incentives.

Tenant Notifications

Stakeholders suggested changes to the content and timing of tenant notifications to provide tenants with the information they need to participate in the prepayment process. The proposed rule replaces the requirement for one early tenant notification with a series of notifications aimed at keeping the tenants informed of the Agency's and the borrower's decisions throughout the process.

Waiting List

One of the most common complaints heard about the prepayment process is its open-ended nature. Borrowers who are approved for incentives and agree to stay in the program in exchange for incentives may have to wait years before the funds for the incentives become available. The current waiting list includes requests for incentives dating back to 1996. The proposed rule establishes a maximum time on the waiting list of 15 months and allows borrowers three choices at the end of that time: (1) Stay on the waiting list and continue waiting for the incentives, (2) withdraw from the list and continue operating the property for program purposes, or (3) offer to sell the property to a nonprofit organization. This last option may allow some properties, eventually to prepay if they complete the process involved in offering the project for sale and fail to receive a bona fide offer. However, this option responds to the reality that the agency may not always have the resources to keep borrowers in the program indefinitely and that costly legal battles are likely if they do not allow the borrowers other options. Currently, the prepayment waiting list contains approximately 15 properties that have exceeded the 15-month time period. However, this number would be expected to grow appreciably over the next few years without a significant increase in funding for incentives to accommodate the anticipated increase in number of projects meeting the 20-year statutory restrictions on use.

Further, it is believed that many borrowers have not applied for prepayment incentives and joined the waiting list because of the extended time period they must currently remain on the list. If the 15-month maximum time period is implemented, a greater number of these borrowers may seek prepayment with the expectation that they will be allowed to exercise one of the three options at the end of the 15-month time period. If borrowers do prepay and convert their apartment complexes to market rate units, RHS

will take measures to protect the tenants at these properties by providing them a letter of priority entitlement (LOPE) that gives them priority in agency-financed housing elsewhere. However, if alternative vacant RHS financed rental housing is not available in the market, the impacted tenants face displacement or rent overburden if they remain in place.

Incentives

The proposed rule clarifies the Agency's policy on incentives and adds several requirements to help ensure that the limited amount of funding available for incentives, as discussed in the overview section of this analysis, is used efficiently to benefit the program. For example, the proposed rule outlines the process a borrower must follow when requesting permission to prepay and be eligible to receive incentives.

In addition, the proposed rule clarifies that third-party equity loans are an option for borrowers who are seeking equity loans through the prepayment process. The use of third-party equity funding stretches RHS incentive funds by providing resources from alternative funding sources. However, it should be noted that debt costs from other sources might be higher than financing received under the Section 515 program. For example, Section 515 funding is lent at an effective 1 percent interest rate and amortized for 50 years, whereas, third-party funds may be lent at rates ranging from interest free to market rate depending upon the source of the funds, with amortization periods ranging from fully deferred to 30 years. All proposed third-party incentive loans must be underwritten and reviewed to the same standard as RHS Section 515 lending to ensure that no project is made financially unfeasible as a result of a third party loan.

Initial Operating Capital

Under current regulations, borrowers are required to pay the equivalent of 2 percent of the cost of developing a project into an account for initial operating costs. They earn no interest on this account, which also receives funds from other sources including rental income. If, within 2 years, the project is operating successfully and there is sufficient capital in the operating account to maintain the financial soundness of the account, the borrower may take out up to the full amount of his /her contribution. While on deposit in the operating account, the borrower receives no return on investment for the funds. After 2 years, any portion of the contribution that is still in the account

must remain there for meeting ongoing operating capital needs.

During the stakeholder meetings, borrowers expressed concern that the current regulation does not allow them sufficient time to recover their contribution, even when a project is functioning well and no longer needs the additional capital. RHS determined that the 2-year limit was originally due to difficulties in tracking the funds within the projects overall budget, and that its new ADP system, MFIS III, has the capacity to provide better tracking and disclosure of these funds. Therefore, RHS has included a provision in the proposed rule that would extend the time limit for the recovery of initial operating capital from 2 to 7 years. In selecting 7 years for the new limit, RHS received input from field staff and industry groups indicating that the prospects for recovery after 7 years were minimal, either because financial soundness could not be established or the owner was willing to leave his/her contribution in the account.

This change would allow more borrowers to fully recover the payments they made to initial operating capital accounts. It is uncertain how many borrowers would benefit from the change and how many dollars these borrowers would be allowed to recover from these accounts. Because of the limitation on recovery from only financially sound accounts, it is unlikely that there would be immediate, negative impacts on the performance of the MFH programs. However, it should be noted that by allowing borrowers to recover funds from initial operating capital accounts, these funds would not be available for ongoing capital needs. The potential withdrawal of initial operating capital is not considered to have significant impacts on rents and, thus, costs to the Government and tenants. While it would tend to make it more difficult to avoid rent increases, it is far outweighed by other changes in the proposed rule, specifically, the raising of reserve requirements and additional earnings on reserve accounts.

Other Changes to the Rule

Conventional Rents for Comparable Units

RHS has developed the concept "Conventional Rents for Comparable Units" (CRCU). This is one of the most comprehensive policy issues that 7 CFR part 3560 will introduce. The concept is applicable to loan origination, budgets, loan servicing, replacement reserve set-asides, preservation, and other program areas. In essence, rents will be capped

at conventional rents for comparable units in the area where the housing is located. Comparable units would be those equivalent to RHS financed units in terms of quality and amenities. If no such units are located in the same community, units from a similar community could be used for comparison. Comparable units also means that the units the Agency finances would meet a standard of economical development, *i.e.*, modest in size, facilities and design, yet compatible with the community.

RHS will continue to require that rents be based on the project's operating costs. However, under the proposed rule, RHS would not approve project proposals, servicing actions, or prepayment incentives that involve rents above the CRCU, except in exceptional circumstances, where such rents are determined to be in the best interest of the Government and the tenants of the project.

By placing an upper limit on rents, RHS expects to protect the Government from investing in projects that may be wasteful or fraudulent, and to ensure that projects are competitive so that vacancy and other market-driven problems can be avoided. In this way, the CRCU should improve the long-term viability of MFH projects, limit the costs of RA, and reduce the risk of defaults.

However, the proposed rule maintains flexibility for serving areas where MFH projects provide the only decent, safe and sanitary rental housing in a local housing market, or where a significant amount of the substandard housing rents for less than the cost of operating an MFH project. In such cases, RHS may base the CRCU on rents outside the local community. It may also grant an exemption for exceptional circumstances.

CRCU will create a definitive underwriting standard. It will apply to leveraging other low-interest loan funds or paying for additional owner contributions (up to 3 percent return on investment (ROI) over required contribution); improving project design and amenities (within the definition of economical development); and adjusting reserves or other serving actions. In areas where rents are below CRCU, Rental Assistance (RA) costs and loan levels may increase. However, it will also ensure "marketable units" should the Agency lose RA.

The Agency is asking public input on whether exclusions to CRCU may be needed in certain areas of the country where conventional rents may not be adequate to fund operation and maintenance, debt service and replacement reserve expenses plus an

aged upon owner's return on investment.

Cost Reasonableness Basis for Evaluation of Project Proposals

The proposed rule also includes changes related to evaluating the cost reasonableness of project proposals. Under current regulations, the agency has applied a policy of cost containment when evaluating whether the costs of the proposed design for new projects are reasonable. While this policy has effectively held down construction costs for new projects, agency field staff and borrowers report that lower-cost project design features are not always cost-effective over the long term. They report that while certain design features reduce initial construction costs, they actually cost more over the life of the project because the components used require higher levels of maintenance and more frequent replacement.

Projects with these design features experience higher routine maintenance costs, higher expenditures of project reserves, and a greater need for subsequent financing for rehabilitation. The result is an upward pressure on project rents and increased use of rental assistance payment assistance. To the extent a project cannot support the rent increases needed to cover these costs, the project faces an increased risk of financial failure or compliance violations due to physical deficiencies.

Currently, RHS has no process for conducting life cycle analyses. The proposed requirement for a life cycle cost analysis will be used for new and existing facilities. The requirement is intended to assure quality construction as well as long-term viability of complexes. Reserve levels would be set based on life cycle costs to provide necessary resources when needed to replace essential building components. Existing loan agreements are to be modified as needed by an addendum properly executed by the borrower. Under the proposed rule, the agency would change its policy for evaluating project proposals to consider the life cycle costs of proposed project designs. Under this policy, the agency may approve a proposed project design that is not the lowest cost if a life cycle cost analysis prepared by the project architect reveals that the design achieves the lowest overall cost over the life of the project. Industry standards will be used for the analysis. To assure that new projects are affordable and appropriate to the local housing market, the proposed rule restricts the agency from approving project designs that would cause rents to exceed the market standard (except in exceptional

circumstances where such costs are determined to be in the best interest of the Government and the tenants). Examples of two design features that may cost more initially but decrease operating expenses over the life of the project are brick exteriors and increased thermal standards. In the past, many projects were built using a popular exterior plywood siding. These buildings are now requiring replacement of the original siding. Similar buildings that utilized brick as an exterior finish or partial finish are not having similar expenses, therefore, decreasing demands on the reserve accounts. Thermal standards in RHS financed projects often exceed local codes. By building RHS projects more energy efficient, tenant and owner utility expenses are kept lower, thereby, decreasing the need for rent increases or tenant utility allowance increases. By avoiding the additional rent and utility allowance increases, tenant rent overburden is avoided, as is additional drain on scarce rental assistance resources.

Because this change will allow for more costly designs, the agency expects the size of initial loans and initial rents to grow slightly. However, higher up-front costs would be offset by lower long-term costs. The agency expects that new projects receiving funding under this policy will have lower maintenance and rehabilitation needs, leading to lower project rents and lower use of agency rental assistance over the life of the project. Lower maintenance expenses, resulting in rents essentially the same as projects built under cost containment guidelines, would offset the increased debt service due to higher construction costs. This change will also lower demand for subsequent loans from the agency in a time when additional loan funds are increasingly scarce.

Management Certification

Under current regulations, RHS must approve the management agreement between the borrower and the management entity for a project. This approval is designed to ensure that the management agent is also accountable for meeting program requirements. However, the agency has found that this policy results in a time-consuming approval process because these agreements frequently include complex contractual language that is difficult to evaluate. Further, OIG has found that many management agreements and plans lack the specificity to accurately describe how project and management agency costs are prorated between

expenses paid by the project and those that are paid by the management fee.

The proposed rule eliminates agency approval of management agreements and requires borrowers to submit a management certification in an agency-approved format. In submitting this document, borrowers certify that their agreement with the management entity for the project obligates that entity to comply with program requirements, establishes sanctions for failure to comply with these requirements, including termination of the agent, and specifies penalties for false certifications. This change eliminates the administrative burden on RHS for approving management agreements, while strengthening the agency's ability to hold borrowers and their agents accountable for their management responsibilities. In addition, revisions to management fee policy, discussed below, allow for a more definitive method to differentiate between project and management agent expenses.

Management Plan

Under current regulations, borrowers are also required to obtain RHS' approval of the management plans for their projects. The purpose of this policy is to provide the agency assurance that the borrower and management entities have adequate systems in place to comply with program requirements. However, experience has shown that these plans are time consuming to process. The requirement to obtain agency approval for updates only adds to the burden for agency staff and borrowers. This policy also leaves the agency in an awkward position when borrowers with sound projects have changed their operations, but not updated their management plan. OIG has reported audit findings where borrowers and management agents have not been operating the properties in conformance with the executed management plan. While this is true, when examined, it has been found that the practice the agent and owner have engaged in is not improper, just not documented correctly in the management plan. The OIG has agreed that had the practice been correctly disclosed in the management plan, the practice would not have been listed as an audit finding. OIG has worked with the RHS during the stakeholder process and subsequently to eliminate this particular area of confusion. The result of the change will be that RHS will not be required to micromanage borrower and management agent business practices when the practice is one that is beneficial to the tenants and the project. Additionally, fewer OIG

findings will result, requiring less OIG and RHS staff time to resolve.

The proposed rule eliminates agency approval of project management plans and requires instead that borrowers submit a management plan that addresses a specified list of operational areas. RHS staff would review the plan to see if the required areas have been covered in the plan but will not approve the plan. The plan will be used to monitor project performance, but discrepancies between project operations and the plan will not constitute a violation of program requirements unless the discrepancies affect program performance. This change reduces the administrative burden on RHS staff and borrowers. It also provides borrowers with greater flexibility to make sound changes in project operations without creating a performance concern.

Management Fees

Current program regulations require that management fees for projects be reasonable and competitive. However, OIG staff found that the management fees approved for projects varied significantly, ranging from as low as \$25 per unit per month to \$55 per unit per month across States. This led OIG to question whether the higher fees found in some instances was reasonable. As with management plans, the OIG expressed concern that current regulations were neither clear nor consistent concerning what services were to be included in the management fee. In some States, many of the maintenance services provided by management company staff were included in the management fees and in other States, the charges were not. Another example is that in some States, insurance and tax costs for project employees were included in management fees while in other States the costs were billed directly to the project. Comments by agency staff at stakeholder meetings revealed that the variations were often due to differences in field office interpretations about the bundle of services covered by the management fee. They noted that services not covered by the fee were paid for as a line item on the budget. When management fees plus other fees for services were accounted for, management compensation was consistent.

Together with representatives of the property management industry and OIG, RHS developed the bundle of management services that is a part of this regulatory change. By moving to a standardized grouping of services that is to be included in the management fee,

RHS and OIG believe that the change will greatly improve consistency between areas of the country and RHS offices. As stated in the previous paragraph, as these services were all being provided previously but charged to the project on different lines of the operating budget, the grouping of these expenses in a different manner would neither increase nor decrease the overall cost to the project or the rents being charged.

The proposed rule and accompanying handbooks address the inconsistencies in fees by establishing a standard bundle of services covered by the management fee and a framework for setting standard adjustments for project characteristics that warrant slightly higher fees, such as for a new management agent taking over a troubled property. However, the proposed rule should improve RHS' ability to document that the management fees for projects are reasonable. It should also ensure consistency between RHS field offices in interpretation of services included in fees. Additionally, the number of OIG findings should be reduced, requiring less OIG and RHS staff time to resolve.

Standards for Physical Conditions at Projects

Current regulations establish the borrower's responsibility to maintain their projects in decent, safe, and sanitary condition. However, the OIG raised concerns about consistency in the implementation of this standard.

Therefore, the proposed rule establishes specific standards for physical conditions that clarify the conditions that constitute decent, safe, sanitary housing. These standards do not represent a change in agency policy. Rather, they make agency expectations explicit and thus improve the agency's ability to enforce physical standards, thereby improving the quality of living conditions for tenants and better preserving the security for agency loans.

Recertifications of Tenant Eligibility

Recertifications are used to document a tenant's income for the purpose of determining eligibility to live in an MFH unit and qualify for rental assistance payments. Current regulations require both an annual recertification and an interim recertification whenever the tenant's income changes. Stakeholders indicated that the recertification process is time consuming for tenants, borrowers, and the agency.

The proposed rule simplifies the process by eliminating the requirements for an interim recertification for tenant

income changes that have an impact on the rent of \$25 or less. RHS arrived at the \$25 threshold by comparing the cost of re-certifying a tenant with the benefit either the Government or the tenant would receive as a result of increased or decreased rent. Based on consultation with industry groups and OIG, RHS determined that the cost to re-certify a tenant was about \$150. Assuming that any change would apply for only 6 months of the year, the \$150 figure was converted to a monthly figure of \$25, which became the threshold. The regulations allow a tenant to request a recertification any time their income decreases. This provision was included in order not to negatively impact tenants with the lowest income for which the \$25 per month figure may constitute a significant portion of income for which the \$25 per month figure may constitute a significant portion of income.

While a detailed analysis of how the impact of the \$25 threshold might be distributed between the Government and tenants was not completed, recent OIG audits have indicated the current recertification process produces approximately the same amount of rent increases as rent decreases, and thus results in little or any overall change in rental assistance payments.

The proposed rule also adds a requirement for electronic reporting of information, including tenants' income. The faster transmission of this information provides RHS with more time for analyzing the information. Consequently, the proposed rule extends by 10 days the period for submitting recertifications, giving borrowers more time to comply with agency requirements, thus improving customer service while maintaining program performance.

Lease Protection

The proposed rule would require that leases for rental units that receive rental assistance include a clause that specifies that the tenant's contribution to rent will not increase if rental assistance is terminated due to actions by the borrower/owner. This requirement is not contained in current regulations. RHS estimates that there have been two to four incidents a year in which a borrower/owner has attempted to make up for the loss of rental assistance payments due to a default on his/her part, by raising tenants' rents. Such action usually occurs in a contentious situation, with the borrower/owner already in default and uncooperative. Consequently, requiring that the lease include a clause specifically prohibiting such action may not resolve all cases. However, it would provide tenants with

a regulatory and lease citation that could be used in bringing court proceeding against an abusive borrower/owner. Further, it would provide RHS with an additional instance of non-compliance with regulations that could be used against the owner in a liquidation action or criminal or civil court case. However, it is uncertain whether cases could be resolved more quickly at less cost to the Government.

While the proposed rule offers some additional protection to tenants and imposes some additional responsibility on borrower/owners, it is difficult to place a monetary value on these impacts. Each case is likely to be different, and the resolutions uncertain. The low incidence, however, suggests that the impacts would not be significant in value.

Application Process for Rental Subsidies

Rental subsidies provide critical funds for housing very low-income tenants. Projects that receive RHS' rental assistance, including interest subsidy and rental assistance payments, depend on the continued availability of these subsidies to maintain in-place tenants in their units.

Under the current regulations, borrowers must complete full rental assistance requests to renew expiring subsidies. Stakeholders noted that the agency gathers sufficient information through the budget approval process to assess project needs for rental assistance.

Therefore, the proposed rule states that expiring subsidies will be renewed, at the existing number of units; to the extent sufficient funds are available. To indicate that rental assistance units are needed, the borrower must fill in a single check box on the project budget form (which must be filed annually) instead of completing a separate form as currently required. These changes relieve borrowers of the burden of applying and the agency the burden of reviewing the requests. The review can instead be accomplished as part of the budget approval process. The change has no effect on project or program budgets, as it does not change the agency determination about rental subsidies, it simply streamlines the process.

Budget Approval

RHS requires its borrowers to submit an annual budget, which is used in setting rents. Approximately 92 percent of these budgets arrive for approval at the same time because most owners operate on a calendar year basis and their schedules for developing budgets

is about the same. Budget approval is a time-consuming process that taxes RHS staff resources in times of high volume and forces borrowers to operate for extended periods of time with unapproved budgets while the review process is underway. Current regulations require that all budgets be reviewed in the same way, regardless of whether they represent no real change from the previous year or contain significant and potentially controversial changes. The proposed rule establishes an expedited review for those budgets that are within a certain threshold requiring little or no increase in rents. The threshold will be based on data to be obtained from the MFIS III ADP system on area-wide norms for projects within RHS' MFH portfolio as well as commercially-available family income and expense surveys. Details on how the threshold will be computed will be contained in a handbook rather than the proposed rule. This will facilitate making any necessary adjustments in the threshold to meet changing conditions.

The new process could improve program performance by allowing RHS to focus its review on those budgets that contain significant changes while expediting approval of those with little or no change. However, it is unlikely that the new process would have measurable budget impacts, such as reduced rental assistance costs or fewer defaults, because the decisions RHS makes on whether or not to approve a budget will most likely be the same under the new process as under the existing system. Those decisions will, however, be reached in a more efficient manner.

Annual Financial Reporting

Under the current regulations, the agency requires that for all projects of 25 units or more, the owner contract with a CPA perform an audit in accordance with generally accepted government auditing standards (GAGAS). Because a large percentage of the Agency's portfolio consists of projects with between 16 and 24 units, audited financial statements have not been prepared for a substantial number of projects financed by the Agency. In addition, the current audit guide currently does not require the auditor to provide information that is of specific importance to the agency, such as information on Identity-of-Interest transactions.

Under the proposed regulation, large MFH projects, defined as projects with 16 or more units, will be required to submit a GAGAS audit prepared by an independent CPA. The audit guide,

which is currently being revised, will provide specific instructions on how the auditor should handle compliance issues. The audit must be completed using "agreed upon procedures" that help meet certain performance standards. It must be initiated by the borrower using an engagement letter, which will either:

- Reference the Audit guide, which will specify the program compliance issues that the Agency wants the CPA to address, and guidelines for testing compliance; or
- State the list of compliance issues that the Agency wants the CPA to address.

Small projects, defined as projects with fewer than 16 units, must submit annual financial statements that are prepared in a manner consistent with the agency's audit guide and that is accompanied by a certification signed by the borrower. The annual financial statements may be prepared by a CPA or other individual with the training and experience to prepare the report. The information presented in the annual financial statements must be prepared in a manner consistent with the requirements of the audit guide.

In response to OIG concerns, the agency is proposing to implement these changes to the annual financial reporting system to ensure that a higher percentage of projects are prepared by CPAs, that GAGAS principles are followed in the preparation of these audits, and that the auditors are made aware of specific concerns of the agency, to ensure that project funds are spent appropriately.

Special Servicing, Enforcement, Liquidation, and Other Actions

In response to stakeholder, OIG and agency staff comments, the agency made a number of changes to strengthen agency servicing. None of the changes to the regulation on servicing constitute changes in policy; rather they address a lack of clarity in existing rules and incorporate policies that previously existed only in administrative notices. As such, the changes are not anticipated to have either a negative or positive budget impact.

For example, the proposed rule clarifies the definition of "default" by spelling out specific actions that an owner may take or fail to take that would cause the agency to determine that the loan is at risk. The proposed rule also simplifies the submission requirements for transfers of project ownership. Other changes serve to simplify servicing actions in an effort to enhance the agency's flexibility to address servicing issues.

These changes would allow swifter and more consistent action to address troubled projects. For example, focusing action for the agency and the borrower. This would help to avert more serious problems in the long term and allow agency staff to concentrate their efforts on other portfolio management issues.

Management and Disposition of Real Estate Owned Properties

The proposed rule consolidates current regulations regarding real estate owned (REO) property and clarifies the specific requirements that apply to multifamily housing properties. Current regulations address many different types of REO properties acquired by USDA, including MFH properties. Often, the guidance provided is generic or relates to non-MFH properties. The proposed rule would provide specific guidance to MFH properties, taking into consideration the physical condition of the property, occupancy status of the property by eligible program tenants, and determinations of whether the property is still needed under the program.

The proposed rule also adds flexibility to the agency's requirements for selling the property. The change allows the sale to be conducted taking into account local market conditions. It also provides the field offices several options in selling REO properties, giving them authority that previously rested with the national office. With more options and flexibility, processing and sales times will be reduced.

Farm Labor Housing

The proposed regulation consolidates separate program regulations for the Farm Labor Housing Program along with separate regulations for the other MFH programs. It does, however, maintain separate subparts for off-farm labor housing and on-farm labor housing. This was necessary to preserve the distinction between off-farm labor housing consisting of multi-unit housing operated by nonprofit corporations or public bodies who receive loans or both loans and grants under the 514 and 516 programs, and on-farm labor housing consisting of single or small multi-family housing operated by farm operators who receive only loans. Several statutory changes to the Farm Labor Housing Program have been made over the past 4 years. The current regulations have been modified to incorporate those changes prior to the drafting of this proposed rule. As those changes are currently in place, they are not addressed again in this analysis. No further program changes other than regulation consolidation are included.

Office of Rental Housing Preservation

Recent changes to the 1949 Housing Act required the establishment of an Office of Rental Housing Preservation within RHS for handling matters relating to the preservation on the agency's MFH portfolio. RHS recently established this office within its Multi-Family Housing Portfolio Management Division. The office has a Director of the Office and a Senior Loan Specialist. Additional positions within the office are to be filled.

The Office of Rental Housing Preservation has already taken steps to enhance the agency's consistency in the review of prepayment requests and the offer of incentives by making a single entity responsible for coordinating all preservation actions. The proposed rule recognizes the establishment of this office and defines its responsibility to coordinate, direct and monitor the RHS' multifamily housing preservation activities. This addition to the rule complies with the statute and clarifies the role of the national office in the preservation process.

Unauthorized Assistance

When tenants receive unauthorized assistance through their own error, the agency has a duty to try to recapture the assistance. Under current regulations, much of this responsibility is put on project owners. The process is both time consuming and burdensome. Furthermore, project owners as well as RHS, have only limited ability to collect unauthorized assistance and, in many cases, the cost of pursuing unauthorized assistance has outweighed the funds collected.

Recognizing these circumstances, the proposed rule relieves project owners of the responsibility of recovering unauthorized assistance due to tenant error once the tenant has moved out. It also provides for RHS to determine whether or not unauthorized assistance should be pursued. These changes give the agency greater flexibility to apply resources cost effectively toward cases that most deserve to be pursued, and relieve project owners of the burden of pursuing tenants who no longer live in their projects. The proposed rule also brings RHS into compliance with the Debt Collection Improvement Act by allowing the use of collection agencies and offsets to collect unauthorized assistance from project owners and tenants.

Changes in Definitions

Basic Rent

Under the current regulations, basic rent is determined on the basis of

operating the project with payments of principal and interest on a loan to be repaid over a 30-year or longer period at 1 percent per annum and covering budgeted project expenses. Basic rent also means basic occupancy charge. This definition does not take into consideration conventional rents for comparable units, and in effect, does not put any limitation on operating costs and rents.

The definition under the proposed regulation is similar to the definition shown above. However, it also takes into consideration, if appropriate, a return on the borrower's equity in a project. Further, the proposed definition states that basic rent must not exceed conventional rents for comparable units at the time the rent is established. This will prevent project rents from becoming excessively high and will cap the amount of RA that the agency is required to provide.

Disability

Agency regulations currently have separate definitions for the terms "Individual with disability" and "Individual with handicap." The definition of the term "Individual with disability" is, in large part, taken from section 501(b) of the Housing Act of 1949. The definition of the term "Individual with handicaps" is taken from the Fair Housing Act. Other civil rights laws, such as the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, utilized the term "disability" rather than handicap; however, they define it in the same manner as the Fair Housing Act defines handicap.

Rather than having two separate terms, the Agency will only use the term "Disability" and it will be considered equivalent to the term "Handicap." If a person meets either the Housing Act of 1949's definition of handicap or the Fair Housing Act's definition of handicap, they will be considered to be disabled.

Participation With Other Funding or Financing Sources

7 CFR 3560.66 encourages participation from public and private sources. The section 515 policy of restricting rental assistance to basic rents that do not exceed what they would have been had the Agency provided full financing is still maintained. Because the Agency is delivering financing at 1 percent, this provision would be difficult for an applicant to meet under the most aggressive leveraging or other low-interest loan funds financing package. Therefore, the Agency is inviting comment as to whether it would serve

the public to expand the underwriting standard of CRCU to guide the Agency in determining basic rent guidelines for Rental Assistance.

30-Year Term and 50-Year Amortization Period

Though not a new issue or policy, the reform regulations require that new loans have a 30-year term with a 50-year amortization schedule. The new regulation will make clear that, at end of 30 years, the borrower has the option to pay-off the residual balloon with no restrictive use on the property, and the Agency has the option to refinance (or not) for the facility's remaining economic life. In effect, loans will have a 30-year use restriction, versus the current 50-year, with additional use restrictions only should the Agency refinance.

Conforming Household Income Calculation to Industry Standards

By changing the calculation of tenant household income and assets to be consistent with other funding sources in the MFH industry, RHS has made a significant contribution to reducing paperwork burden to the public. No longer will a separate calculation have to be made for a MFH loan when a separate calculation was already executed for Low-Income Housing Tax Credit (LIHTC) or another affordable housing program. Tenant income and assets will be calculated in accordance with 24 CFR 813.106 and 24 CFR 813.102, which are regulations published by the U.S. Department of Housing and Urban Development.

Electronic Submission of Certifications/Recertifications

The proposed rule adds a requirement for electronic reporting of information, including tenants' income. The faster transmission of this information provides RHS with more time for analyzing the information. Consequently, the proposed rule extends by 10 days the period for submitting recertifications, giving borrowers more time to comply with agency requirements, thus improving customer service while maintaining program performance.

Regulatory Crosswalk

The following is a crosswalk that shows where the content of the 13 regulations that are being consolidated can be found in 7 CFR part 3560.

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TOPIC	CURRENT LOCATION	LOCATION IN 7 CFR 3560
General Provisions and Definitions	Numerous instructions	Subpart A
Civil rights	7 CFR part 1901, subpart E	§ 3560.2
State, local, or tribal laws	7 CFR 1930.105(b)(6); 7 CFR 1944.53(c)(1); 7 CFR 1944.164(e)(2)(ii); 7 CFR 1944.169(c)(3); 7 CFR 1944.224(d)	§ 3560.5
Borrower responsibility and requirements	7 CFR 1944.211(b); 7 CFR 1930.101; 7 CFR part 1930, subpart C, Exhibit B, Paragraph III.	§ 3560.6
Administrator's exception authority	7 CFR 1930.144	§ 3560.8
Definitions	Numerous instructions	§ 3560.11
Direct Loan and Grant Origination	7 CFR part 1944, subpart E	Subpart B
Eligible use of funds	7 CFR 1944.212	§ 3560.53
Processing section 515 housing proposals	7 CFR 1944.231	§ 3560.56
Initial operating capital contribution	7 CFR 1944.211(a)(6)	§ 3560.64
Reserve account	7 CFR part 1944, subpart E, Exhibit A-9, Paragraph 9.b.	§ 3560.65
Participation with other funding or financing sources	7 CFR 1944.233	§ 3560.66
Rates and terms	7 CFR 1944.214	§ 3560.67
Permitted return on investment (ROI)	7 CFR 1944.215(n)	§ 3560.68
Supplemental requirements for congregate housing and group homes	7 CFR 1944.224	§ 3560.69
Subsequent loans	7 CFR 1944.237	§ 3560.73
Borrower Management and Operations Responsibilities	7 CFR part 1930, subpart C, Exhibit B	Subpart C
Housing project management	7 CFR part 1930, subpart C, Exhibit B, Paragraph V.	§ 3560.102
Maintaining housing projects	7 CFR part 1930, subpart C, Exhibit B, Paragraph X.	§ 3560.103

TOPIC	CURRENT LOCATION	LOCATION IN 7 CFR 3560
Fair housing	7 CFR 1930.103 and 104, 7 CFR part 1930, subpart C, Exhibit B, Paragraph VI.	§ 3560.104
Insurance and taxes	7 CFR part 1930, subpart C, Exhibit B, Paragraph XV.	§ 3560.105
Multi-Family Housing Occupancy	7 CFR part 1930, subpart C, Exhibit B	Subpart D
Tenant eligibility	7 CFR part 1930, subpart C, Exhibit B, Paragraph VI.	§ 3560.152
Calculation of household income and assets	7 CFR part 1930, subpart C, Exhibit B, Paragraph VII.	§ 3560.153
Tenant selection	7 CFR part 1930, subpart C, Exhibit B, Paragraph VI.	§ 3560.154
Assignment of rental units and occupancy policies	7 CFR part 1930, subpart C, Exhibit B, Paragraph VI.	§ 3560.155
Lease requirements	7 CFR part 1930, subpart C, Exhibit B, Paragraph VIII.	§ 3560.156
Occupancy rules	7 CFR part 1930, subpart C, Exhibit B, Paragraph VIII.	§ 3560.157
Changes in tenant eligibility	7 CFR part 1930, subpart C, Exhibit B, Paragraph VI.	§ 3560.158
Termination of occupancy	7 CFR part 1930, subpart C, Exhibit B, Paragraph XIV.	§ 3560.159
Tenant grievances	7 CFR part 1944, subpart L	§ 3560.160
Rents	7 CFR part 1930, subparts B and C	Subpart E
Establishing rents and utility allowances	7 CFR part 1930, subpart C, Exhibit C	§ 3560.202
Tenant contributions	7 CFR part 1930, subpart C, Exhibit B, Paragraph II.	§ 3560.203
Security deposits and membership fees	7 CFR part 1930, subpart C, Exhibit B, Paragraph VIII.H	§ 3560.204
Rent and utility allowance changes	7 CFR part 1930, subpart C, Exhibit C	§ 3560.205
Rents during eviction or failure to recertify	7 CFR part 1930, subpart C, Exhibit B, Paragraph XIV.A	§ 3560.208
Special servicing note rate rents	7 CFR part 1930, subpart C, Exhibit C, Paragraph IX.	§ 3560.210
Rental Assistance	7 CFR part 1930, subpart C, Exhibit E	Subpart F
Authorized rental subsidies	7 CFR part 1930, subpart C, Exhibit E, Paragraph II.	§ 3560.252
Eligibility for rental assistance	7 CFR part 1930, subpart C, Exhibit E, Paragraph II. A.	§ 3560.254
Rental assistance payments	7 CFR part 1930, subpart C, Exhibit E, Paragraph X.	§ 3560.256
Assigning rental assistance	7 CFR part 1930, subpart C, Exhibit E, Paragraph XI.	§ 3560.257
Rental subsidies from non-Agency sources	7 CFR part 1930, subpart C, Exhibit B, Paragraphs IV.	§ 3560.260

TOPIC	CURRENT LOCATION	LOCATION IN 7 CFR 3560
	C, D, and E	
Financial Management	7 CFR part 1930, subpart C, Exhibit B	Subpart G
Accounting, bookkeeping, budgeting, and financial management systems	7 CFR 1930.122, 7 CFR part 1930, subpart C, Exhibit B, Paragraph XIII.	§ 3560.302
Housing project budgets	7 CFR part 1930, subpart C, Exhibit B, Paragraph XII.A.	§ 3560.303
Initial operating capital	7 CFR part 1930, subpart C, Exhibit B, Paragraph XIII. B.2.(a)(1)	§ 3560.304
Return on investment	7 CFR part 1930, subpart C, Exhibit B, Paragraph XII.B. 2.(c)	§ 3560.305
Reserve account	7 CFR part 1930, subpart C, Exhibit B, Paragraph XIII. B.2.(c)	§ 3560.306
Annual financial reports	7 CFR 1930.122(b)(4); 7 CFR part 1930, subpart C, Exhibit A-1	§ 3560.308
Agency Monitoring	7 CFR part 1930, subpart C	Subpart H
Agency monitoring scope, purpose, and borrower responsibilities	7 CFR 1930.109, 110, 113, 117	§ 3560.352
Scheduling of on-site monitoring reviews	7 CFR 1930.119(d)	§ 3560.353
Borrower response to monitoring review notifications	7 CFR 1930.119(f)	§ 3560.354
Servicing	7 CFR part 1951, subpart A and 7 CFR part 1965, subpart B	Subpart I
Account servicing	7 CFR part 1951, subpart A	§ 3560.403
Final loan payments	7 CFR part 1951, subpart D	§ 3560.404
Borrower organizational structure or ownership interest changes	7 CFR 1965.63	§ 3560.405
Multi-family housing ownership transfers or sales	7 CFR 1965.65	§ 3560.406
Subordinations or junior liens against security property	7 CFR 1965.83	§ 3560.409
Consolidation	7 CFR 1965.58	§ 3560.410
Special Servicing, Enforcement, Liquidation, and Other Actions	Numerous Instructions	Subpart J
Monetary and non-monetary defaults	7 CFR 1955.15(d)(2)	§ 3560.452
Workout agreements	7 CFR part 1965, subpart B, Exhibit B	§ 3560.453
Special servicing actions related to housing operations	7 CFR part 1930, subpart C, Exhibit C, Paragraph IX.	§ 3560.454
Special servicing actions related to loan accounts	7 CFR 1965.85	§ 3560.455
Liquidation	7 CFR part 1955, subpart A	§ 3560.456

TOPIC	CURRENT LOCATION	LOCATION IN 7 CFR 3560
Negotiated debt settlement	7 CFR 1956.57(c)	§ 3560.457
Management and Disposition of Real Estate Owned (REO) Properties	7 CFR part 1955, subparts B and C	Subpart K
General	7 CFR 1955.1 and 2	§ 3560.501
Conversion of single family type REO property to multi-family housing use	7 CFR 1955.114(c)	§ 3560.506
Off-Farm Labor Housing	7 CFR part 1944, subpart D	Subpart L
Eligibility requirements for off-farm labor housing loans and grants	7 CFR 1944.157	§ 3560.555
Design and construction requirements	7 CFR part 1944, subpart D, Exhibit A-3	§ 3560.559
Loan and grant limits	7 CFR 1944.164	§ 3560.562
Participation with other funding or financing sources	7 CFR 1944.163	§ 3560.565
Loan and grant rates and terms	7 CFR 1944.159	§ 3560.566
Supplemental requirements for off-farm labor housing	7 CFR 1944.163(e)	§ 3560.568
Rental assistance	7 CFR 1944.182	§ 3560.573
Occupancy restrictions	7 CFR 1944.154	§ 3560.575
Tenant priorities for off-farm labor housing	7 CFR 1944.154	§ 3560.576
On-Farm Labor Housing	7 CFR part 1944, subpart D	Subpart M
Eligibility requirements	7 CFR 1944.157	§ 3560.605
Site and construction requirements	7 CFR part 1944, subpart D, Exhibit A-3	§ 3560.608
Loan limits	7 CFR 1944.164	§ 3560.612
Reserve accounts	7 CFR part 1944, subpart E, Exhibit A-9, Paragraph 9.b	§ 3560.614
Participation with other funding sources	7 CFR 1944.163	§ 3560.615
Rates and terms	7 CFR 1944.159	§ 3560.616
Supplemental requirements for on-farm labor housing	7 CFR 1944.163(e)	§ 3560.618
Housing management and operations	7 CFR part 1944, subpart D, Exhibit B	§ 3560.623
Occupancy restrictions	7 CFR 1944.154	§ 3560.624
Housing Preservation	7 CFR part 1965, subpart E	Subpart N
Prepayment and restrictive-use categories	7 CFR 1965.208 and 209	§ 3560.652
Prepayment requests	7 CFR 1965.205	§ 3560.653
Tenant notification requirements	7 CFR 1965.206(b)(5) and (b)(6); 7 CFR 1965.215(e)(3) and (f)(2)	§ 3560.654
Agency requested extension	7 CFR 1965.215(f)(2)	§ 3560.655
Incentive offers	7 CFR 1965.213	§ 3560.656
Processing and closing incentive offers	7 CFR 1965.214	§ 3560.657
Borrower rejection of incentive offer	7 CFR 1965.214(b)	§ 3560.658
Sale or transfer to nonprofit organizations and public		

TOPIC	CURRENT LOCATION	LOCATION IN 7 CFR 3560
bodies	7 CFR 1965.217	§ 3560.659
Acceptance of prepayment	7 CFR 1965.215	§ 3560.660
Unauthorized Assistance	7 CFR part 1951, subpart N	Subpart O
General	7 CFR 1951.653	§ 3560.701
Identification of unauthorized assistance	7 CFR 1951.656	§ 3560.703
Unauthorized assistance determination notice	7 CFR 1951.657	§ 3560.704
Recapture of unauthorized assistance	7 CFR 1951.658	§ 3560.705
Program participation and corrective actions	7 CFR 1951.658(b)	§ 3560.707
Unauthorized assistance received by tenants	7 CFR 1951.661(a)(3)	§ 3560.708
Demand letter	7 CFR 1951.658(c)	§ 3560.709
Appraisals	7 CFR part 1922, subpart B	Subpart P
Appraisal use, request, release, and review	7 CFR 1922.52	§ 3560.752
Agency appraisal standards and requirements	7 CFR part 1922, subpart B, Exhibit A	§ 3560.753
Non-completion of appraisal assignment	7 CFR 1922.52(f)	§ 3560.754

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List of Subjects in 7 CFR Part 3560

Accounting, Accounting servicing, Administrative practice and procedure, Aged, Farm labor housing, Foreclosure, Grant programs—Housing and community development, Government acquired property, Government property management, Handicapped, Insurance, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Low and moderate income housing—Rental, Migrant labor, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Rural areas, Rural housing, Sale of government acquired property, Surplus government property.

Therefore, chapter XXXV, title 7, Code of Federal Regulations is proposed to be amended as follows:

CHAPTER XXXV—RURAL HOUSING SERVICE, DEPARTMENT OF AGRICULTURE

1. Part 3560, consisting of subparts A through P, is added to read as follows:

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Authority: 42 U.S.C. 1480

Subpart A—General Provisions and Definitions

§ 3560.1 Applicability and purpose.

(a) This part sets forth requirements, policies, and procedures for multi-family housing 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.

§ 3560.2 Civil rights.

(a) All actions taken by recipients of loans and grants will be conducted without regard to race, color, religion, sex, familial status, marital 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 RHS assistance. It is unlawful for a borrower or grantee or an agent of a borrower or grantee:

(1) To refuse to make 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) Any tenant or prospective tenant seeking occupancy in or use of a multi-family housing project or related facility for which a loan or grant has been provided by the Rural Housing Service and who believes they are being discriminated against because of race, color, religion, sex, familial status,

marital status, national origin, age, or disability may complain to the Secretary of Agriculture, U.S. Department of Agriculture, Washington, DC 20250, or the Secretary of Housing and Urban Development, U.S. Department of Housing and Urban Development, Washington, DC 20410.

(c) Borrowers or grantees that fail to comply with the requirements of title VIII of the Civil Rights Act are subject to sanctions authorized by law.

§ 3560.3 Environmental requirements.

The Rural Housing Service (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.

§ 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 1940–J, 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.

(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.

(e) *Lead-based paint requirements.* The provisions of 7 CFR part 1924, subpart A.

§ 3560.5 State, local or tribal laws.

Applicants 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 Rural Housing Service Administrator may delegate, on an individual or other basis, any decision-making responsibility for RHS 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 or other action is consistent with the applicable statute and is in the best financial interest of the Federal government. Exception requests presented to the RHS Administrator must have the concurrence of a Rural Development State Office or a Deputy Administrator in the RHS National Office.

§ 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 (RHS) 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.

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.

Basic rent. The rent necessary to cover expenses in a housing project's approved budget and the required loan payment set in the borrower's promissory note reduced by the interest credit agreement.

Borrower. An individual, partnership, cooperative, trust, public agency, private or public corporation, or other entity which has received a loan from the Agency.

Caretaker. An individual employed by a borrower or a management agent to handle routine interior and exterior maintenance and upkeep of a multi-family housing 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.

Consumer cooperative. A corporation organized under the cooperative laws of a State or Federally recognized Indian tribe which 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 non-government assisted conventional housing in the same geographic area as the RHS project.

Current appraisal. An appraisal of a multi-family housing project's value which 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 monetary or non-monetary obligations or terms of a loan, grant, or other agreement with the Agency within 30 days of the date such obligation is due

or required to be paid or performed, or within time periods specified in notices of compliance violations.

Delinquent account. An account with a payment more than 10 days past due from the payment due date under the terms of a note or loan agreement.

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; or

(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.

Domestic farm laborer. An individual or an immediate family member residing with an individual who, consistent with the requirements in § 3560.575(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 residence.

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 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.

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.

Engagement. An Agency defined financial review of a housing project's financial status which a borrower will contract with a certified public accountant to perform. An engagement will result in annual financial reports for use by the Agency as described in § 3560.308.

Familial status. A classification granted to an individual who has not attained the age of 18 years domiciled with persons having legal custody of such individual or with persons having the written permission of the persons having legal custody. The protection against discrimination afforded by 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 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 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.

Farmer. A person involved in day to day on-site operations of a farm as defined in 7 CFR 1941.4, and who devotes a substantial amount of personal time to operation of a "family farm," as defined in 7 CFR 1941.4.

Farm owner. An individual who meets the requirements as defined in 7 CFR part 1941, subpart A.

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. Include 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; 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.

Home base state. The state which a farm laborer claims as their domicile.

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, of the United States, which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638) or under Chapter 67 of Title 31 prior to repeal of such chapter.

Interest credit. A form of assistance available to eligible borrowers that reduces the effective interest rate of the loan.

Land lease. A written agreement between a land owner and a borrower stipulating the terms for possession and use of land for a specified period of time.

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.

Leveraged participation loan. A loan made in conjunction with an Agency loan by a lender other than the Agency to finance a multifamily housing project.

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.

(1) 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:

(i) To conduct a cost efficiency comparison between products,

(ii) For developing component replacement time tables, and

(iii) For estimating future component replacement costs.

(2) Life cycle cost analysis can be accomplished through various methods, such as: insurance actuary tables or Agency documentation of a component's life expectancy.

(3) 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:

(i) Drives and parking,

(ii) Roofing system and roofing material,

(iii) Exterior finishes, and

(iv) Energy source items.

Limited Liability Company (L.L.C.).

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 capitol contributions.

Loan agreement. A written agreement between the Agency and the borrower which 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 multi-family housing project.

Maximum debt limit. The maximum amount that the Agency will lend or grant for a multi-family housing 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 laborers. Individuals performing agriculture work and their family dependents who establish a temporary residence 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. A legal document pledging a described property for repayment of a loan under certain terms or conditions.

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 multi-family housing project being constructed to be occupied for the first time.

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.

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 neither controlled by, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization although a nonprofit organization may be sponsored or created by a for-profit entity provided—
 - (i) The for-profit entity is not an entity whose primary purpose is the development or management of housing, such as a builder, developer, or real estate management firm,
 - (ii) The for-profit entity does not have the right to appoint more than one-third of the membership of the organization's governing body,
 - (iii) The board members appointed by the for-profit entity are not permitted to appoint the remaining two-thirds of the board members, and
 - (iv) The local nonprofit organization is free to contract for goods and services from vendors of its own choosing;

(4) Has documentation of tax exempt status under section 501(c)(3) or (4) of

the Internal Revenue Code of 1986, from the Internal Revenue Service;

(5) Does not include a public body as one of its members; although a state or local government chartered organization may qualify as a local nonprofit organization;

(6) Has standards of financial accountability that conform to 24 CFR 84.21;

(7) Has among its purposes the provision of decent housing that is affordable to very-low, low, and moderate-income persons, as evidenced in its charter, articles of incorporation, resolutions or by-laws;

(8) Maintains accountability to low-income community residents by—

(i) Maintaining at least one-third of its Board of Director's membership for residents of low-income neighborhoods, other low-income community residents, or elected representative of low-income neighborhood organizations, and

(ii) Providing a formal process for low-income program beneficiaries to advise the organization in its decisions regarding the design, siting, development, and management of affordable housing;

(9) Has a capacity for developing and operating affordable rural housing as demonstrated by hiring experienced key staff members who have successfully completed similar projects, or by contracting with a consultant with housing experience and a plan to train appropriate key staff members of the organization; and

(10) Has a history of serving the community within which housing to be assisted is to be located as demonstrated by being able to show 1 year of the organization's service in the community or 1 year of service to the community by members of the organization's governing board, prior to receiving an Agency loan or grant or by demonstrating that its parent organization has at least 1 year of service to the community.

Nonprofit organization of farm workers. A nonprofit organization which is incorporated with the State, Puerto Rico, or the Virgin Islands, which has local representation in the membership and whose membership is composed of at least 51 percent farm workers.

Note. The rent necessary to cover expenses in a housing project's approved budget and the required loan payment set in the borrower's promissory note.

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.

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 Inspector General (OIG). The USDA Office of Inspector General.

Overage. That portion of a tenant's net rent contribution that exceeds basic rent up to note rate rent. Full overage is an amount equal to the difference between the note rate rent for a unit and the basic rent.

Patronage capital refund. Amounts received by a cooperative in excess of operating costs and expenses which have been assigned to members' patronage capital accounts each year of membership in the cooperative.

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 maturity date.

Program requirements. All provisions related to multi-family housing 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 court action.

Related facilities. Facilities in a multi-family housing 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).

Renovation. Renovation 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. Examples: changing the use of a building, replacing wall or floor system members, altering a building that has shifted due to settlement, remodeling an entire property that includes new roofing and siding.

Rent. The amount established as a charge for occupancy in a rental unit of Agency-financed multi-family housing. The following terms are used to describe rents for various program purposes.

(1) **Note rate 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.

Rental assistance obligation. The number of rental assistance units and dollar amounts of rental assistance specified in a rental assistance agreement between the Agency and a borrower for a multi-family housing project.

Rental assistance units. Dwelling units in a multi-family housing 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 multi-family housing 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 multi-family housing project provided as an incentive to avert

prepayment of a loan or as part of a debt forgiveness package.

Repair and replacement. Repair and replacement is the restoration of minor building materials, elements, components, equipment and fixtures. Examples: 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 or domestic farm laborer with a farm labor-related disability. 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 or an individual with a disability as separately defined in this paragraph and who was a domestic farm laborer prior to becoming disabled.

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. (1) 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:

- (i) Has a population not in excess of 2,500 inhabitants, or
- (ii) Has a population in excess of 2,500 but not in excess of 10,000 if it is rural in character, or
- (iii) 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.

(2) For purposes of this part, any area classified as "rural" or a "rural area" prior to October 1, 1990, and determined not to be "rural" or in a "rural area" as a result of data received from or after the 1990 decennial census shall continue to be so classified until the receipt of data from the decennial census in the year 2000, 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 paragraph, the city of Plainview, Texas, shall be considered a rural area for purposes of this part, and the city of Altus, Oklahoma, shall be considered a rural area for purposes of this part 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 multi-family housing 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 multi-family housing 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 multi-family housing 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 multi-family housing project.

Servicing 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.

Shelter costs. Basic or note rate 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 multi-family housing project to ensure that the Agency is not providing excess assistance.

Tenant or co-tenant. An individual who signs a lease and occupies or will occupy a rental unit in a multi-family housing 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 net or gross amount due from a tenant to pay for occupancy of a rental unit in a multi-family housing project.

(1) Net tenant contribution equals the amount of rent paid by a tenant from the tenant's own resources.

(2) Gross tenant contribution equals the amount of rent plus the utility allowance paid by tenants from their own resources.

Total development cost (TDC). The cost of constructing, purchasing, improving, altering, or repairing multi-family housing 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 for purposes of tax credit calculations basis, 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. [Reserved]

Subpart B—Direct Loan and Grant Origination

§ 3560.51 General.

This subpart contains the Agency's loan origination requirements for multi-family housing 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 for Off-Farm Labor Housing and subpart M 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 multi-family housing 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 multi-family housing.

(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 multi-family housing 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 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 multi-family housing 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 multi-family housing 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 multi-family housing 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 multi-family housing 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 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 multi-family housing project, including appraisals, environmental documentation, and due diligence reports.

(n) *Permit and application fees.* Funds may be used for required multi-family housing 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 costs that are reasonable and typical for the area, 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, of:

(1) Development and packaging of a loan application and a multi-family housing proposal, and

(2) Legal, technical, and professional fees incurred in the formation of the loan application and multi-family housing 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 multi-family housing 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 RHS 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 multi-family housing 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 multi-family housing 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 American 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 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 Civil Rights Act of 1964 and all 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 include as part of its 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 its members, founders, or contributors.

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

(5) The applicant's membership should be composed of:

(i) At least one-third representatives of the low-income community.

(ii) No more than one-third representatives of the public sector.

(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 equity 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 for Off-Farm and subpart M 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 multi-family housing proposals, including expansion of existing multi-family housing in designated places selected in accordance with § 3560.57.

(2) To be eligible for funding consideration, multi-family housing 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) Multi-family housing 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 which 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 which 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 multi-family housing.

(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 multi-family housing 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; and

(6) A review of Civil Rights Impact Analysis in accordance with 7 CFR part 2006, subpart P.

(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. 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 Notice of Funding Availability (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;

(3) Demonstrated need for multi-family housing 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 multi-family housing, 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 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 multi-family housing proposal in the designated place for processing.

(ii) A previously funded Agency, HUD, low-income housing tax credit or other similar assisted multi-family housing in the designated place has not been completed or has not reached projected occupancy levels.

(iii) Existing assisted multi-family housing in the designated place is experiencing high vacancy levels.

(iv) A special note rate 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 multi-family housing is insufficient or unavailable for their needs; or

(ii) There is a compelling need for additional multi-family housing, 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 multi-family housing 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 multi-family housing 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, are not 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 found as unacceptable if any of the above concerns 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 multi-family housing 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 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 multi-family housing 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 multi-family housing and single family housing originally financed through section 502 of the Housing Act of 1949 may be converted to multi-family housing. Maintenance requirements are listed in § 3560.103(a)(3).

(b) *Residential design.* All multi-family housing 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.

(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 analysis 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 multi-family housing, 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), as defined in 36 CFR part 1190, will be followed. 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 sizes of fully accessible units will be comparable to the variety of bedroom sizes 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 size. In addition, accessible units should be distributed throughout the complex so not to segregate the units in one location.

(4) All multi-family housing 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 based on a value-in-use appraisal consistent with the requirements of subpart P of this part.

(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 multi-family housing 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. Use of leased land for MFH projects is limited to loan applicants who are nonprofit bodies, states, political subdivisions, public bodies, public agencies, and American Indian tribes where land is not available for purchase. 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 market 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 value as determined by a value-in-use 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 value-in-use appraisal shall 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 multi-family housing 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 current value of the property when appraised as conventional unsubsidized multi-family housing and all current unpaid balances.

(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 maximum debt limit to be exceeded and the cost increases were caused by:

- (i) Unforeseen factors 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 which meets requirements of § 3560.306. At a minimum, the borrower must agree to make monthly contributions to the reserve account in amounts that will equal an annual contribution of 1 percent of the multi-family housing's 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 multi-family housing, 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 low-income housing tax credit (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 multi-family housing 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 multi-family housing 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 part 1924, subparts A and C. Agency loan funds may only be used for common facilities such as those described in § 3560.53(g). If housing includes common facilities other than those listed in § 3560.53(g), 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 for Off-Farm and subpart M 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 multi-family housing 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 multi-family housing 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 value. A return may not be allowed on the amount above the equity contribution required by § 3560.63(c) if the value as determined by the Agency, when added to the loan and grant amounts from all sources, exceeds the security value of the multi-family housing 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.

§ 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 manufacturers 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 securitization 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.

§ 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;

(3) Provide evidence that construction financing arrangements are adequate;

(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. The construction costs must also be audited in accordance with Governmental Auditing Standards, by a CPA. In some cases, the Agency will contract directly with a CPA for the cost certification. Funds which 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 (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 multi-family housing 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) The improvements involve materials or systems that have an impact on the health and safety of the occupants.

(3) When required by state law.

(4) When the Agency determines that the work being performed 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 multi-family housing than to build another property in the same location; or

(2) The multi-family housing 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. [Reserved]

Subpart C—Borrower Management and Operations Responsibilities

§ 3560.101 General.

This subpart sets forth borrower obligations regarding management and operations of multi-family housing

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.

(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;

(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; and

(xi) Procedures for applicant and tenant appeals.

(xii) Describe how management will make known to tenants and applicants

that management will provide reasonable accommodations under the Americans with Disabilities Act and regulations implemented thereunder 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.

(3) If the Agency determines that a proposed management plan does not address the items in paragraph (b)(1) of this section in sufficient detail or contains policies that would violate Agency requirements, loan or grant agreements, or applicable local, state and Federal laws and ordinances, the Agency will provide written notice to the applicant indicating the deficiencies and a time period for submitting an acceptable plan. Approval of the management plan does not indicate that the Agency has determined the plan complies with state or local requirements.

(c) *Management plan effective period.* A management plan approved by the Agency 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; or

(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.

(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 multi-family housing.

(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 multi-family housing 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, if not a self-management situation, will require the borrower to immediately terminate the contract with the management agent.

(5) With Agency consent, borrowers may self-manage housing on a 30-day temporary basis or may enter into a 30-day temporary agreement with a management agent if management services are needed to ensure proper operation of a housing complex prior to completion of the Agency management agent approval process. Such 30 day temporary agreements may be renewable for additional 30-day periods with Agency approval.

(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).

(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, OIG, 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.

(2) Management fees may consist of a base per occupied unit fee, add-on fees for specific housing project characteristics, and incentive fees to encourage superior performance. 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 and publish for public comment 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 and publish for public comment the amount and qualifications

to receive add-on fees and incentive fees. The final set of qualifications will be made available to all borrowers.

(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 Agency-approved 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 identity-of-interest 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.

§ 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.

(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 or 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 graffiti.

(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 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 common areas: "Justice for All" poster, equal housing opportunity poster, 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.

(xiv) *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.

(xv) *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.

(xvi) *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.

(xvii) *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) Borrowers must correct or repair any conditions that do not meet these standards, including any deficiencies identified by the Agency as a result of monitoring activities. Failure to make such corrections or repairs constitutes a non-monetary default under § 3560.452(c).

(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) Borrowers must prepare and submit a capital needs assessment to reflect anticipated "life-cycle" 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) Borrowers must also prepare and submit capital needs assessment to the Agency for approval as a part of a request to:

- (i) Transfer ownership of a housing project;
- (ii) Reamortize an Agency loan;
- (iii) Write-down an Agency loan;
- (iv) Substantially rehabilitate a housing project;
- (v) Significantly change housing project operations; or
- (vi) Receive a preservation incentive.

(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 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 should 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 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 borrower's expense unless doing so would cause an undue financial or administrative burden. 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. 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 and must maintain such evidence throughout the life of the loan or terms of the grant.

(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 borrower must maintain insurance in accordance with requirements of their loan or grant documents and this section until the loan is repaid or the terms of the grant expire.

(5) The Agency must be named as co-payee on all property insurance policies.

(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 and all costs associated with procurement of the

required insurance 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;

(2) Be deemed reputable and financially sound as determined by the Agency; and

(3) Not have any identity-of-interest relationships with the borrower, management agent, or partners, directors or officers of the borrower entity.

(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, windstorms, hail, earthquake, 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 which insures dwellings under construction.

(iv) *Elevators, boiler, and machinery coverage.* This coverage is required for properties that operate elevators, steam boilers, turbines, engines, or other pressure vessels.

(2) 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."

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7) 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.

(8) Deductible clause amounts must be accounted for in the reserve account unless the deductible amount does not exceed:

(i) \$1,000 on any housing project with an insurable value under \$200,000; or

(ii) One-half of one percent (0.0050) of the insurable value, up to \$5,000 on housing project with insurance values over \$200,000.

(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. The fidelity insurance policy, at a minimum, must include an insuring agreement that covers employee dishonesty.

(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 multi-family housing 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 portion of the premium covering the employee must be reflected in the management plan.

(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. Annually, borrowers must certify to the Agency that all taxes are current.

(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. [Reserved]

Subpart D—Multi-Family Housing Occupancy

§ 3560.151 General.

This subpart contains borrower and tenant requirements and Agency responsibilities related to occupancy of Agency-financed multi-family housing projects. Occupancy eligibility requirements apply to the following:

(a) Family housing projects, including farm labor housing;

(b) Elderly housing projects;

(c) Mixed housing projects for both family and elderly households; and

(d) Congregate housing or group homes for persons with special needs.

§ 3560.152 Tenant eligibility.

(a) *General requirements.* Except as specified in paragraph (b) of this section, households eligible for occupancy in Agency-financed housing must either:

(1) Be a United States citizen or legal or qualified alien as defined in § 3560.11, and either.

(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 HUD Section 8 assistance or LIHTCs, when a household 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 meet the requirements of paragraph (a) of this section and must be able to demonstrate a need for the special services provided by the group home.

(iii) Tenants cannot be required to be a part of 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 1 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, and other places where persons seeking rental housing would likely make contact; holding open houses, making appropriate contacts with public housing agencies and organizations, Chambers of Commerce, and real estate agencies.

(3) The borrower agrees to publish a notice in the local newspaper to inform the public of the borrower's intent to temporarily rent apartments to all persons without regard to age or income restrictions.

(4) The borrower agrees to continue with aggressive efforts to locate eligible tenants and submit monthly reports of their marketing efforts to the Agency.

(5) The borrower is temporarily unable to achieve or maintain a level of occupancy sufficient to prevent financial default and foreclosure and the Agency's approval of the waiver will be for a limited duration.

(6) That 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.

(7) Tenants residing in RRH units who are ineligible because their adjusted annual income exceeds the maximum for the RRH project will be charged the RHS approved note rate rental rate for the size of unit occupied in a Plan II RRH project. In projects operated under Plan I, ineligible tenants will be charged rental surcharge of 25 percent of the approved note rate rental rate.

(8) Tenants residing in off-farm LH units who are ineligible because their adjusted annual income exceeds the maximum for the area will be charged the lesser of the LH project's note rate rent or the prevailing market rent rate for the project. For on-farm tenants, rent determination may be subject to local discretion within limitations contained in subpart L of this part. Excess rent shall be remitted to the Agency for credit to the Rural Housing Insurance Fund.

(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 status

results in a net tenant contribution change that is greater than \$25 per month. Borrowers must make modifications to tenant certifications for changes with a \$25 or less impact on the net tenant contribution, 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 net 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 part 5.

(b) Adjusted income will be calculated in accordance with 24 CFR part 5.

(c) Net assets will be calculated in accordance with 24 CFR part 5.

§ 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 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 ages;

(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 legal or qualified alien as defined in § 3560.11; and

(8) Signature of the applicant and date.

(9) Race, ethnicity, and sex designation. This designation shall be placed on the application form beneath the signature and date section. The following disclosure notice shall be used (verbatim) and the race, ethnicity, and sex designation shall be collected in the following manner on the application form:

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.

Please identify your ethnicity, your race and your sex as follows:

List the Race and Ethnicity Categories as Found on the Agency Tenant Certification Form

(10) Taxpayer identification 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).

(c) *Application submission.* Borrowers must establish and maintain a specific place and time when tenant 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.* Applicants may be determined ineligible for occupancy based on selection criteria other than Agency requirements only if such criteria is contained in the borrower's Agency approved 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.

(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)(8) 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) Selections from 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(d).

(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 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.

(j) *Criminal activity.* Borrowers may deny admission for criminal activity or alcohol abuse by household members in accordance with the provisions of 24 CFR 884.216(b).

§ 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:

(1) The accessible unit has been marketed as an accessible unit,

(2) Outreach has been made to organizations representing the disabled, and

(3) 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. The borrower's occupancy policies must establish a minimum threshold of one person per bedroom for each rental unit. 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; and

(2) The order in which eligible applicants and existing tenants will be housed or rehoused.

(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 concurrence.* 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 must include the following clauses:

(i) A requirement that tenants move out of the housing project within 30 days of being notified by the borrower that they are no longer eligible for occupancy unless the conditions cited in § 3560.158(c) exist;

(ii) A requirement that tenants notify borrowers regarding changes in their income or assets, their qualifications for adjustments to income, their citizenship status, or the number of persons living in the unit;

(iii) A requirement that tenants notify borrowers of extended tenant absences, typically four weeks or more;

(iv) A requirement that tenants make restitution when unauthorized assistance is received and a statement advising tenants that submission of false information could result in legal action.

(v) A requirement that tenants agree to fulfill the tenant income verification and certification requirements established under § 3560.152; and

(vi) A requirement that, during acceleration and foreclosure proceedings, the tenant contribution will remain as if any interest credit and rental subsidy in effect prior to acceleration were still in place and available and the terms of the lease remain in effect until the date the acceleration or foreclosure action is resolved.

(2) Leases for tenants who hold a 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.

(3) 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.

(4) Leases must specify that no change in the tenant contribution will occur due to monetary or non-monetary default, loan prepayment, or when rental assistance or interest credit, other than Federal assistance, is suspended, canceled, or terminated due to the borrower's fault.

(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;

(iv) The Age Discrimination Act of 1975; and

(v) The Americans with Disabilities Act.

(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 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.

(11) Leases for tenants living in Plan II interest credit rental units must include provisions establishing the net monthly tenant contribution.

(12) 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.

(13) 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.

(14) 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.

(15) 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 net 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 net contribution 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, typically four consecutive weeks or more;

(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 (*e.g.*, when a tenant is required to move to another location for employment or due to a job loss, severe illness, death of spouse, or other reasons customary or mandatory in the community, or when a tenant has received notification that a borrower will be prepaying an Agency loan); 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 bring suit against the tenant without notice;

(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 attorney 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.

(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; and

(10) When a guest becomes a member of the tenant household.

(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.* 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 companion 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 Agency requirements 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 and shall be required to move within 30 days of the housing project's receipt of a tenant application requiring accessibility features; and

(iii) 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. Such terminations 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 which are substantial and repeated;

(ii) Non-payment or repeated late payment of rent or other financial obligations due under the lease or occupancy rules beyond agreed to grace periods; 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, 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; or

(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.

(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.

(3) A statement detailing the nature and frequency of the violations with adequate information to allow the tenant to respond with contrary evidence or with a corrective action plan;

(4) A statement specifying where and when, prior to the lease termination date, a tenant may meet with the borrower to present contrary evidence or to develop a corrective action agreement; and

(5) 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 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 884.216(b).

§ 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 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 or prospective tenant seeking occupancy in or use of a housing project for which a loan or grant has been provided by the Agency and who believes they are being discriminated against because of age, race, color, religion, sex, marital status, familial status, disability, sexual preference or national origin may complain to the Secretary of Agriculture, U.S. Department of Agriculture, Washington, DC 20250 or the Secretary of Housing and Urban Development, U. S. Department of Housing and Urban Development, Washington, DC 20410.

(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.

(d) *Reasons for grievance.* Tenants or prospective tenants may file a grievance 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. 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." 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 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 five 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. 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.

(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 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 another 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 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 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 days to allow time for an Agency review as specified in paragraph (i)(3) of this section.

(3) The hearing officer or hearing panel must send a copy of the decision to the tenant, 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. [Reserved]

Subpart E—Rents

§ 3560.201 General.

This subpart sets forth the requirements for establishing and collecting rents charged to occupants of multi-family housing 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 and management 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.* The borrower must establish a note rent 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.* The borrower must establish a basic rent to cover expenses

in the housing project's approved budget and the required loan payment set in the promissory note reduced by the interest credit agreement.

(3) *HUD contract rents.* For housing receiving project-based Section 8 rental subsidies, the HUD contract rent will be established in accordance with 24 CFR part 880 or part 884, as applicable, available at any Agency servicing office.

(4) *Low-income housing tax credit (LIHTC) rents.* 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 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.

(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.

(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.

§ 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) *Gross tenant contributions.* Borrowers must set gross 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) *Net tenant contributions.*

Borrowers must set net tenant contributions to rent at an amount equal to the gross tenant contribution less any utility allowance assigned to the rental unit occupied by the tenant.

(3) *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 net tenant contribution.* Borrowers must adjust gross 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 net tenant contribution amount.

(c) *Overage.* If a tenant's net 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)(15)(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 pets is allowed where a service animal is necessary for the normal function of a household member.

(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 routine turnover expenses a normal operating expense 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 borrower or 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.

(3) Within 5 calendar days following the end of the 20-day tenant comment period, the borrower must send the Agency a summary of the tenant comments received by the borrower along with any changes the borrower proposes to make to the initial request for a rent change.

(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 housing operating costs in the proposed budget exceed reasonable 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.

(4) Basic rents in Plan II housing or note rate rents in Plan I or full profit housing would exceed conventional rents for comparable units in the area or a similar area.

(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.* Tenants being evicted for lease violation must pay the rent established in their lease until their lease is terminated. If the tenant is appealing the 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.

(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) Eviction proceedings are being initiated;

(2) Rental assistance and interest credit benefits being suspended; and

(3) The tenant will be charged note rent until their 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 servicing note rate rents (SNRs).

When a Plan II housing project is experiencing severe vacancies due to market conditions, the Agency may allow the borrower to charge a servicing note rent (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 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. [Reserved]

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 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.*

(1) Rental subsidies may be in the form of:

(i) Agency rental assistance;

(ii) HUD section 8 assistance, including project-based, vouchers, and certificates;

(iii) Private rental subsidies; or,

(iv) State or local government rental subsidies.

(c) *Multiple rent subsidies.*

(1) Multiple types of rent subsidies may be used in the same multi-family housing 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 or certificate.

(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 multi-family housing 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 multi-family housing projects.

(3) *Servicing units.* Additional RA may be provided to operational multi-family housing projects as a part of the Agency's general loan servicing or preservation activities.

§ 3560.253 Allocation and prioritization of Agency rental assistance.

(a) *Allocation of rental assistance.* The Agency will establish priorities for

use, allocation and distribution of rental assistance in 7 CFR part 1940, subpart L.

(b) *Priorities for rental assistance.* In the absence of priorities under 7 CFR part 1940, subpart L, the Agency will allocate its rental assistance according to the following priorities:

- (1) Renewal units;
- (2) New construction units; and
- (3) Servicing units.

§ 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.

(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 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 multi-family housing;

(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 United States 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 multi-family housing 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 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 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 for a 5 year obligation period.

§ 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) When some or all rental assistance units have not been used for a 4-month period; and,
- (5) Due to an unclosable loan.

(b) *Transferring rental assistance for displaced tenants.* The Agency may transfer rental assistance from one housing project to another eligible housing project to which a tenant is moving due to displacement as a result of prepayment, liquidation, or a natural disaster for that tenant's use. 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 and certificates.* When tenants receive rental subsidies through section 8 vouchers or certifications issued by the U.S. Department of Housing and Urban

Development (HUD), borrowers operating under Plan II must set rental unit rents as follows.

(1) *HUD certificates*. For tenants with HUD certificates, the borrower must set the rental unit rent at the basic rent or the net tenant contribution, whichever is higher. The public housing authority distributing the section 8 subsidy may set the utility allowance.

(2) *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 higher. The value of the voucher exceeding basic rent up to the note rent will be remitted to the Agency. 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 at least 5 years 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. [Reserved]

Subpart G—Financial Management

§ 3560.301 General.

This subpart contains requirements for the financial management of Agency-financed multi-family housing 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 audit or 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.

(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. Accounts are to be funded in the following priority order, except that paragraphs (c)(3)(iv) and (v)

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 and management plan regulations. Use of funds for non-program purposes may constitute 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.

(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 deposits*. 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 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 three years after the issuance of the audit or engagement and financial reports. Upon request, these materials will immediately be made available to the Agency, its representatives, the USDA Office of Inspector General (OIG), or the General Accounting 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 8½ 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 evidence 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.*

(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.

(ii) With prior Agency approval, cooperatives and nonprofit organizations may use housing project funds to 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 RHS annual operating budgets, including proposed repair and replacement outlays and accruals.

(C) Board of Director review and approval of capital expenditures, audited 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 by title V of the Housing Act of 1949, section 543(a), 42 U.S.C.

(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, evictions, and building codes.

(c) *Priorities.* The priority order of planned and actual budget expenditures will be:

(1) Critical operating and maintenance expenses, including taxes and insurance;

(2) Agency debt payments;

(3) Reserve account requirements;

(4) Other authorized expenditures; and

(5) 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 increase is requested, borrowers must submit budget documents for Agency approval 60 calendar days prior to the start of the housing project's fiscal year.

(i) The Agency will notify borrowers if the budget submission is incomplete.

(ii) The Agency will notify the borrower if the budget does not meet the requirements of paragraphs (a), (b), or (c) of this section.

(3) If a rent increase is requested, the borrower must submit budget documents to the Agency and notify

tenants of the requested rent increase at least 105 calendar days prior to the start of the housing project's fiscal year.

(i) The Agency will notify borrowers if the budget submission is incomplete.

(ii) The Agency will notify the borrower if the budget does not meet the requirements of paragraphs (a), (b), or (c) of this section or if the rent and utility allowance request has been denied in accordance with § 3560.205(f).

(iii) The rent increase is not approved until the Agency issues a written approval.

(4) If the Agency denies the budget approval, the Agency will notify the borrower in writing and indicate the deficiencies in the budget submission.

(5) Upon notification of the deficiencies, borrowers will have 10 calendar days to submit additional documentation. The Agency will notify the borrower if the budget has been accepted or rejected.

(6) 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, 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 13th 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 immediately 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)(2) 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 any previous year 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 monthly 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. Borrowers must continue these payments until the account reaches the total amount specified in the 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 10 percent of the operating and maintenance expenses, including debt service to the Agency,

transfers to reserves, and a return to the borrower, including repayment of the borrower's contribution to initial operating capital, if it has not been repaid. If the borrower is escrowing taxes and insurance premiums, include the amount that should be escrowed by year end and subtract such tax and insurance premiums from operating and maintenance expenses used to calculate 10 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 may require the borrower to reduce rents in the following year, use the surplus funds to address capital needs, reduce the debt service on the borrower's loan, or make a deposit in the housing project's reserve account, if the reserve account is not fully funded.

(3) At the end of the borrower's fiscal year, if the borrower is required to transfer surplus funds in the general operating account to the reserve account, the transfer does not change the required contributions to the reserve account in the following year. Funds transferred to the reserve in this manner may be counted towards the required contribution for the following year or years depending on the amount of the required transfer of surplus funds.

(e) *Resumption of payments.* When the account balance falls below the total amount specified in the loan or grant documents, borrowers must resume making monthly payments to the reserve account and continue until the required balance has been restored.

(f) *Account requirements.* Borrowers must establish and maintain the reserve account according to § 3560.64, § 3560.302(c)(6), and the following requirements.

(1) Reserve accounts must be deposited in interest-bearing accounts or securities with rates equal to or greater than passbook savings or checking accounts.

(2) Reserve accounts must be supervised accounts that require Agency countersignatures on all withdrawals.

(g) *Funds invested in securities.* In addition to the requirements specified in § 3560.305(f), the following requirements apply when reserve funds are invested in securities.

(1) Any securities in which reserves are invested must be backed by the federal or state government, or an Agency of the federal or state government, or be triple A rated tax-exempt bonds.

(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) Investors must be knowledgeable about industry practices and consider the impact of typical fees and charges for purchases, 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.

(h) *Use of the reserve account.*

(1) Borrowers must request Agency approval of reserve account withdrawals prior to the withdrawal.

(2) Borrowers must inform the Agency of planned uses of reserve accounts in their annual capital budget if known at budget planning time.

(3) The Agency will indicate any conditions governing withdrawals from a reserve account at the time it approves the withdrawal.

(4) In emergency situations, the Agency may specify special procedures to provide an expedited approval process for the use of the reserve account.

(5) The Agency may "post-approve" the use of reserve funds only under extraordinary circumstances and only if the funds were used for authorized purposes and their expenditure would have been approved by the Agency had a request been submitted prior to the withdrawal.

(6) 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.

(i) *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 (h)(6) 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.

(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 amounts 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.

(j) *Records.* Borrowers must maintain records documenting all expenses which were paid by withdrawals from the reserve account.

(k) *Changes to reserve requirements.*

(1) At a borrower's request, the Agency may permit the loan agreement or loan resolution to be amended to adjust the required funding of the reserve account to meet anticipated "life-cycle" capital needs, including equipment and facility replacement costs. Such a request may be based on a capital needs assessment performed in response to § 3560.103(c)(2).

(2) Borrowers may use an Agency approved capital needs assessment as the basis for requesting adjustments to the reserve account.

(3) 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.

(l) *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, to:

(1) Pay for expenses specified in a long-term capital plan;

(2) Make payments on 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.

(m) *Procurement.* The requirements of § 3560.102(c), (d) and (i), 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 (c) 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 Agency-approved formats and certify that the housing meets the performance standards established in paragraph (d) of this section. Borrowers may use a CPA to prepare this report.

(b) *Housing projects with common management.* In housing projects managed by a common management entity, operate under a common accounting system and procedures, and have a common managing general partner, the Agency may designate a sample of the housing projects for annual financial reports that meet the requirements of paragraph (a)(1) of this section. For the housing projects not included in the sample, the borrower must submit annual financial reports that meet the requirements of paragraph (a)(2) of this section.

(c) *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 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 (d) 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 Certified Public Accountant (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.

(d) *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) 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.

(e) *Other financial reports.*

(1) Nonprofit and public borrower entities must submit audits in accordance with 7 CFR part 3052.

(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 for review.

(f) *Full audit expense approval.* For 2 years from the effective date of these regulations, the Agency will approve as a housing project expense, additional reasonable costs of obtaining a full audit.

§§ 3560.309–3560.349 [Reserved]

§ 3560.350 OMB control number. [Reserved]

Subpart H—Agency Monitoring

§ 3560.351 General.

This subpart contains policies for Agency monitoring of operations and management at multi-family housing 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 multi-family housing 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 costs;

(4) Verify compliance with Affirmative Fair Housing Marketing requirements, title VI of the Civil Rights Act of 1964, the Civil Rights Act of 1968, as amended, section 504 of the Rehabilitation Act of 1973, the Fair Housing Amendments Act of 1988, the Age Discrimination Act of 1975, Americans with Disabilities Act, 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, the Civil Rights Act of 1968, as amended; section 504 of the Rehabilitation Act of 1973, the Fair Housing Amendments Act of 1988, the

Age Discrimination Act of 1975, Americans with Disabilities Act, 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 violation. 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. [Reserved]

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 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 are more than 30 days past due, 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 Predetermined Amortization Schedule System (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 net 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 § 3560.73.

(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.

(1) 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.

(2) Persons who exercise substantial influence over the oversight or operations of a multi-family housing project, regardless of their ownership status have a controlling interest in the housing project.

(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 § 3560.307 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 Multi-family housing 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 not exceed conventional rents for comparable units in the area.

(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.

(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 value of the housing 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 "as-improved" value-in-use 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 value of the housing project must be determined through an "as-improved" value-in-use 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) The reserve requirements for the housing project will be reviewed by the Agency and adjusted, if necessary, to adequately cover the capital needs of the property based on a life cycle cost analysis provided the requirements of § 3560.303 are met.

(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) 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.

(10) A transferee must comply with insurance and bonding requirements established in subpart C of this part at the time of the transfer.

(11) A transferee must agree to submit financial reports to the Agency according to subpart G of this part.

(12) 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.

(e) *Equity payments.* The Agency will withhold any equity payment due to the borrower, as part of a 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.* 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 to the borrower, the transferee must certify that equity payments due to the borrower will be paid from sources other than housing project 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(b) or (c). 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 in conjunction with an ownership transfer or sale of a housing project.

(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; or,

(iii) The Agency note rate on the day the transfer is closed.

(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 market value of the housing project determined according to § 3560.406(d)(3)(i).

(1) The Agency may reamortize a loan assumed through an ownership transfer or sale over a period not to exceed the remaining economic life of the housing or 50 years, whichever is less.

(2) The Agency may extend the term of the loan to a period not to exceed 30 years or the remaining economic life of the housing, whichever is less.

(3) When loans assumed through an ownership transfer or sale are amortized on an annual payment basis, the loans will be converted, at the 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) The balance of Agency indebtedness assumed will be scheduled for repayment for no more than 15 years.

(4) 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.* The Agency will handle mineral leases according to the requirements of 7 CFR part 3550.

§ 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.

(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. [Reserved]

Subpart J—Special Servicing, Enforcement, Liquidation, and Other Actions

§ 3560.451 General.

This subpart contains special servicing, enforcement, liquidation, and other actions which 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 under a promissory note, loan or grant agreement, workout agreement, or other agreement is past due.

(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 § 3560.456 or liquidation as described in § 3560.457. 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 approved 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) Health and safety violations;
- (2) Critical operating needs, such as utilities, taxes, and insurance;
- (3) Debt service payments to the Agency;
- (4) Reserve account requirements;
- (5) Other authorized expenditures; and
- (6) Return on owner investment.

(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.

§ 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 compliance violation or curing a default.

(d) *Servicing Note Rate (SNR) 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 rate rent to attract and keep tenants whose incomes, according to the formula in § 3560.203, would require them to pay the note rate rent. The reduced rent is called a Servicing Note Rent (SNR) and, as noted in § 3560.210, approval of a SNR may affect approvals of loan proposals submitted to the Agency for the market area where the SNR is in effect.

(1) A 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 a 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 a 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.

(1) *Loan payment deferrals.* 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.

(2) *Loan restructuring.* Methods of restructuring a loan may include reamortizations or writedowns. If a loan restructuring results in a larger principal balance from the inclusion of cost items or interest, borrowers must execute a restrictive-use agreement, in accordance with § 3560.662, regardless of whether the restructuring is with or without revised rates and terms.

(b) *Loan reamortizations.* A loan reamortization is a restructuring of loan terms and conditions over a period of time which 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) When the reamortization will extend the term of the repayment period more than 5 years beyond the scheduled final payment date, the borrower must obtain an "as-is" value-in-use appraisal of the housing project conducted in accordance with subpart P of this part. The Agency will not approve a reamortization unless the appraisal indicates the security is adequate for the principal and interest being reamortized.

(3) The Agency may approve reamortization of a loan at the existing note rate, or the current interest rate at the time of reamortization closing or approval, whichever is less.

(4) 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;

(v) Bring a delinquent account current in the case of a loan transfer and assumption when all equity available has been used to pay delinquent amounts and a delinquency balance remains; or,

(vi) 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 unsound management practices are proposed for correction in accordance with an Agency approved workout agreement;

(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; and

(iii) There are no previous writedowns of indebtedness associated with the housing project.

(2) Prior to Agency approval for a loan writedown, the borrower must obtain an "as-is" value-in-use appraisal of the housing project 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) 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) *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 immediately following the issuance of an acceleration notice.

(3) The Agency will not accept partial payment of an accelerated loan unless required by state law.

(b) *Voluntary liquidation.* After acceleration, borrowers may voluntarily liquidate through either of the following mechanisms:

(1) The Agency will accept a deed in lieu of foreclosure to the security property when it is in the best interest of the Federal Government.

(2) Prior to an acceptance of a deed in lieu of foreclosure, the borrower must satisfy all junior liens on the property and pay all real estate taxes or assessments which are or will become a lien on the property. If the borrower provides the Agency with evidence that borrower has insufficient funds to satisfy the junior liens and pay taxes and assessments, the Agency will pay what cannot be paid by the borrower if it is in the best interest of the Federal Government.

(3) If a junior lienholder makes an offer in the amount of at least the net recovery value, the Agency may assign the note and mortgage to such lienholder after all appeal rights have expired.

(4) The borrower is responsible for all expenses associated with liquidation and acquisition and will not be released from liability until the account is satisfied in full.

(c) 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 as an unauthorized transfer.

(d) 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 be 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 liquidation 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) *Rejected offers.* Offers that are rejected will be returned to the borrower with Agency comments on potential points of negotiation and may be resubmitted to the Agency at any time.

(f) *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.

(g) *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 security 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 and the title has been transferred to the Agency.

(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; and

(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. 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) The status of the health of the borrowers and the members of the borrowers' family or key members of the borrower organization, if applicable;

(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 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.

§§ 3560.460–3560.499 [Reserved]

§ 3560.500 OMB control number. [Reserved]

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 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, 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 LOPE as specified in § 3560.159(c).

§ 3560.503 Disposition of REO property.

Preference will be given to purchase offers that allow REO property designated to be sold as program property to remain in the program under which the property was operating when the property came into the Agency's REO property inventory. 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.

§ 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) All sealed bids meeting the terms and conditions set forth in the sale notice will be part of the drawing. Award will be made to the first offer drawn. Offers drawn after the first bid will be considered back-up offers. Bidders who do not want their bids held as back-up offers must notify the Agency prior to the drawing. The Agency will notify all bidders of the public drawing outcome in writing.

(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 property.

(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 multi-family housing 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 is 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 multi-family housing use.

Single family type REO property may be sold for conversion to multi-family housing 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 multi-family housing program use. When the Agency finances the sale of single family-type REO property for conversion to rural rental housing program use (*i.e.*, multi-family housing 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 multi-family housing 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. [Reserved]

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, O, and P of this part will apply in addition to the requirements in this subpart.

§ 3560.552 Program objectives.

In addition to the objectives stated in § 3560.52, off-farm labor housing loan and grant funds will be used to increase:

(a) The supply of affordable housing for farm labor; and

(b) The ability of communities to attract farm labor by providing housing which is affordable, decent, safe and sanitary.

§ 3560.553 Loan and grant purposes.

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 use with appropriate furnishings and equipment.

§ 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 local nonprofit organization, a nonprofit organization of farmworkers, federally recognized Indian tribe, or an agency or political subdivision of State or local government, and must meet the requirements of § 3560.55(a) and (b), except that the board of a nonprofit organization which is an association of farm workers is not required to reflect the demographics of the community. Instead, a nonprofit association of farmworkers must have representation on the board 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; or

(2) A limited partnership with a nonprofit 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 § 3560.55(a), excluding subparagraph (6);

(2) Meet the requirements of § 3560.55(b) if the grant applicant has an outstanding Agency loan or grant;

(3) Meet the requirements in § 3560.55(c) with the exception specified for off-farm labor housing loan applicants specified in paragraph (a)(1) of this section;

(4) 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.

(5) 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, will 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, the design of off-farm labor housing must incorporate exterior washing facilities as necessary to protect the resident and the asset from excess dirt and chemical exposure.

(c) *Davis-Bacon wage requirements.* For housing developed with grant funds, the borrower must not pay less than the wages prevailing in the locality as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276(a)–276(a)(b)), to all laborers and mechanics employed in the development of any part of the housing.

§ 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 loans or combination loans and grants.

(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 90 percent of security value, whichever is less; 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.

(a) *General.* The requirements established in § 3560.66 apply to all applications for off-farm labor housing loans and grants.

(b) *Additional requirements.* In addition to the requirements established in § 3560.66, the following policies will also apply.

(1) Where Agency rental assistance is requested, Agency financial participation must equal or exceed 10 percent of the total development cost with a minimum of 5 percent of the total development cost in the form of off-farm labor housing loan.

(2) When the combined debt service for housing financed by the Agency and other sources is equal to or less than what the debt service would be for a 95 percent loan for total development cost of the entire housing provided solely by the Agency, the Agency will provide 100 percent rental assistance to an off-farm labor housing project.

(3) When the combined debt service for housing financed by the Agency and other sources exceeds what the debt service would be for a 100 percent loan for total development cost of the entire housing provided solely by the Agency, the Agency will provide less than 100 percent rental assistance as specified in § 3560.66.

§ 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

50 years from the date of signature of all the parties.

§ 3560.567 Establishing the profit base on initial investment.

The requirements established under § 3560.67 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) If the Agency is providing grant only assistance, the Agency will provide grant funds as part of the take out of construction financing.

(b) 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, 3, and 5)).

(c) 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 from the Agency.

§ 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) For loans, a nonprofit organization will 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.

(b) For grants, an Agency approved grant agreement, must be executed by the applicant on the date of grant closing. Also, a nonprofit organization will have its Board of Directors adopt a

resolution containing provisions authorizing the Agency to prescribe requirements regarding housing and related facilities' operations and other provisions including the following provisions.

(1) The rents charged domestic farm labor must not exceed the rents approved by the Agency after considering the income of the occupants, Agency and non-Agency rental assistance available and the necessary costs of operation, debt service, and adequate maintenance of the housing.

(2) The housing must be maintained at all times in a safe and sanitary condition in accordance with standards prescribed by state and local law, and Agency requirements.

(3) When making occupancy decisions, domestic farm labor applicants will always receive priority.

(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) All off-farm labor housing loans and grants are subject to the restrictive use provisions established by subpart N of this part. Such restrictions must be included in the mortgage, deed of trust or grant agreement. The term of the restricted use provision for the off-farm labor housing grants is 50 years with or without a loan.

§ 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 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.

§ 3560.575 Occupancy restrictions.

(a) *Restrictions on conditions of occupancy.*

(1) No nonprofit organizational borrower, other than an association of farmers or family farm corporation or partnership, 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 § 3560.576.

(3) No borrower 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, handicap, marital or 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, a domestic farm laborer with a farm labor-related disability, or must be a surviving household of a deceased 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 and public or private nonprofit organizations 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 published by the Agency. 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 published annual income limits.

(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) *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.

(d) *Non-farm laborer tenants.* When there are no persons or families in the above categories in need of housing, 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. 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.

§ 3560.576 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

based upon percent of total earnings from farm labor in the following ranked categories: 71–100 percent; 51–70 percent; 26–50 percent; and less than 25 percent.

(1) For off-farm labor housing units without rental assistance, occupancy priority within each ranking category is according to the household's income with first priority going to very low-income households, next priority to low-income households, and last priority to moderate-income households.

(2) For off-farm labor housing units with rental assistance, tenant occupancy priority is given to all eligible very low-income farm worker households by ranked category, then to low-income farm worker households by ranked category as listed in paragraph (a) of this section. Moderate-income farm workers may be served without rental assistance, when there are no very low- or low-income eligible farm workers on the waiting lists, again by ranked category.

(b) Second priority is given to retired domestic farm laborer households or to a household with a domestic farm laborer with a farm-labor related disability and the domestic farm laborer was in the local farm market area at the time of retirement or disability. Occupancy priority will be by paragraph (a)(1) or (2) of this section without the application of the ranking category.

(c) Third priority is to be given to retired domestic farm laborer households or a household with a domestic farm laborer with a farm labor related disability that was not in the local area at the time of retirement or disability. Occupancy priority will be by paragraph (a)(1) or (2) of this section without the application of the ranking category.

(d) Fourth priority is to be given to surviving households of a deceased domestic farm laborer.

(1) The surviving member may continue to occupy the unit after the death of the original tenant and be eligible with respect to income and either the co-tenant or member of the household will have legal capacity to sign and assume the lease; or

(2) The surviving member occupied the unit at the time that the original tenant died, and will be able to meet tenant eligibility requirements of a domestic farm laborer.

§ 3560.577 Financial management of labor housing.

The requirements established in subpart G of this part will apply to all off-farm labor housing.

§ 3560.578 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.

§§ 3560.579–3560.599 [Reserved]

§ 3560.600 OMB control number. [Reserved]

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, and O 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 § 3560.554 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)(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 resources necessary to provide for on-farm labor housing from assets unrelated to the farming operation.

(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.

§ 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 shall be planned and constructed in accordance with 7 CFR part 1924, subparts A and C.

(2) Sites must provide access to road frontage, 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) Housing must be suitable to allow for conversion to full-year occupancy if the need for migrant farmworkers in the area declines.

(3) Seasonal housing will be constructed in accordance with Exhibit I of 7 CFR part 1924, subpart A.

§ 3560.609 [Reserved]

§ 3560.610 Security.

(a) Security instruments must meet the requirements established under § 3560.560.

(b) The on-farm labor housing must 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 first lien on the tract of land where the on-farm labor housing is located.

(c) The Agency will determine the value of the security for the loan if the entire 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 five 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 an individual unit.

§ 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 loan funds must execute an Agency-approved loan agreement.

§ 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) Occupancy of on-farm labor housing is restricted to employees of the borrower unless otherwise approved by the Agency.

§ 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 by 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 non-profit 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; and

(g) Compliance with Agency requirements for affordable, decent, safe, and sanitary housing.

§§ 3560.632–3560.649 [Reserved]

§ 3560.650 OMB control number. [Reserved]

Subpart N—Housing Preservation

§ 3560.651 General.

(a) This subpart contains the Rural Housing Service's housing preservation requirements as related to prepayment requests and restrictive-use provisions. The requirements of this subpart support the Rural Housing Service's commitment to the preservation of decent, safe, sanitary, and affordable multi-family housing for very-low, low, and moderate-income households.

(b) The Rural Housing Service will coordinate, direct, and monitor the Rural Housing Service's multi-family housing preservation activities from the National Office level.

§ 3560.652 Prepayment and restrictive-use categories.

(a) Loans with prepayment prohibitions include:

(1) Initial 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; or,

(2) Subsequent loans made on or after December 15, 1989, for purposes other than additional rental units.

(3) Loans subsequently restricted by servicing actions including transfers and reamortizations.

(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 subject to the preservation provisions of this subpart.

(d) Loans may be prepaid if another loan or grant from the Rural Housing Service imposes the same or more stringent restrictive-use provisions on the housing project covered by the loan being prepaid.

§ 3560.653 Prepayment requests.

(a) Borrowers seeking to prepay a Rural Housing Service loan must submit a written prepayment request to the Rural Housing Service at least 180 days in advance of the anticipated prepayment date and must obtain Rural Housing Service approval before the Rural Housing Service 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 (e.g., Department of Housing and Urban Development (HUD) prepayment procedures or requirements, HUD or state housing authorities that provide rental subsidy) which may relate to the prepayment request and a statement of actions needed to assure such compliance.

(4) A copy of the housing project's waiting list and a current signed multi-family housing balance sheet.

(5) 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 housing project has submitted a prepayment request to the Rural Housing Service and explaining the potential affect of the request on the lease.

(6) A certification that the borrower has notified all governmental entities and all nonprofit and public bodies other than the Rural Housing Service involved in providing affordable

housing and financial assistance to tenants in the project, of the prepayment request and a statement specifying how long financial assistance from such parties will be provided to tenants after prepayment.

(7) A certification that the housing project covered by the loan being prepaid will continue to be administered in accordance with the Fair Housing Act.

(8) A description of the proposed use of the property after prepayment with documentation supporting the feasibility of the proposed use and a budget showing anticipated costs and resources available to cover costs of transition to and operation of the property as proposed for 3 years.

(9) A market study that addresses assisted and conventional housing, community demographics, and economic activity in the market area where the housing project covered by the loan being prepaid is located and the feasibility of the proposed use of the housing project in the market.

(c) If a prepayment request lacks full and complete information on any item, the Rural Housing Service will return the prepayment request to the borrower with a letter citing the deficiencies in the prepayment request. The Rural Housing Service will offer borrowers an opportunity, within 30 days following the date of the return, to address the reasons given by the Rural Housing Service for the return of the prepayment request and will allow the borrower to submit a revised prepayment request.

(d) The Rural Housing Service will review complete requests to determine if:

(1) The loan is eligible for prepayment;

(2) The borrower has the ability to prepay;

(3) The borrower has complied or has the ability to comply with applicable federal, state, and local laws related to the prepayment request;

(4) The borrower's proposed use of the property after prepayment is likely to be achieved; and,

(5) The proposed use of the property after prepayment will allow for compliance with any restrictive-use provisions, which may apply to the property after prepayment.

(e) If the Rural Housing Service determines that the prepayment request appropriately satisfies all the conditions listed in paragraph (d) of this section, the Rural Housing Service 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. If the Rural Housing Service determines

that a loan is ineligible for prepayment or the borrower does not have the ability to prepay, to convert the housing to the proposed use, or to comply with any applicable restrictive-use provisions, the Rural Housing Service will return the prepayment request to the borrower with a written explanation of the Rural Housing Service's determinations.

§ 3560.654 Tenant notification requirements.

(a) Within 30 calendar days of receiving a complete prepayment request, the Rural Housing Service will send a prepayment request notice to each tenant in the housing project. Borrowers must post the Rural Housing Service'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 Rural Housing Service 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 Rural Housing Service 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 Rural Housing Service 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 Rural Housing Service 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 Rural Housing Service agrees to accept prepayment on a loan, the Rural Housing Service 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 Rural Housing Service'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 Rural Housing Service does not agree to accept a prepayment request or the borrower withdraws the prepayment request, the Rural Housing Service 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 Rural Housing Service will notify each tenant, in writing, of the agreement and 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 Rural Housing Service 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 adverse impact if any. Borrowers must post copies of the Rural Housing Service'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 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 Rural Housing Service 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 Rural Housing Service's notice in public areas throughout the housing project for a period of 60 days following the date of the notice. 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 Rural Housing Service or the borrower prior to the tenant's occupancy in the housing project.

§ 3560.655 Rural Housing Service requested extension.

Before accepting an offer to prepay from a borrower with a restricted loan, the Rural Housing Service 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 not less than 15 years for loans without interest credit and 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 provision and restrictive-use agreement, the Rural Housing Service should document this fact in writing and proceed to take the actions described in § 3560.658.

§ 3560.656 Incentive offers.

(a) The Rural Housing Service 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 Rural Housing Service determines that the prepayment will result in an adverse impact on the availability and affordability of housing for program-eligible households.

(2) For loan agreements approved after December 21, 1979, but prior to December 15, 1989, the restrictive-use period has expired.

(b) Specific incentives offered will be based on the Rural Housing Service's assessment of:

(1) The value of the housing project as determined by Rural Housing Service obtained "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; and

(4) An incentive amount that will be the least costly alternative for the Federal Government while being consistent with the Rural Housing Service's commitment to the preservation of housing for very-low, low, and moderate income households in rural areas.

(c) The Rural Housing Service may offer the following incentives.

(1) The Rural Housing Service may increase the borrower's annual return on investment by one of the following two methods. The actual withdrawal of the return remains subject to conditions specified in subpart G of this part.

(i) The Rural Housing Service may recognize the borrower's current equity in the housing project. The equity will be determined using a Rural Housing Service accepted appraisal based on the housing project's value as unsubsidized conventional housing.

(ii) The Rural Housing Service may recognize the borrower's current equity in the housing project at the higher of the original rate of return or the current 30-year Treasury bond rate plus 2 percent rounded to the nearest one-quarter percent. The equity will be determined using the most recent Rural Housing Service accepted appraisal, which will include a determination of long-term repair or deferred maintenance, of the housing project prior to receiving the prepayment request.

(2) The Rural Housing Service 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 Rural Housing Service may offer additional rental assistance, or an increase in assistance provided under existing contracts under sections 521(a)(2), 521(a)(5) or section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

(4) The Rural Housing Service may make an equity loan to the borrower. The equity loan must not adversely affect the borrower's ability to repay other Rural Housing Service 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) If 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 Rural Housing Service 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 Rural Housing Service 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 Rural Housing Service may permit the borrower to receive rents in excess of the amounts determined necessary by the Rural Housing Service to defray the cost of long-term repair or maintenance of such a project.

(d) The Rural Housing Service will 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 the incentive is developed, the Rural Housing Service 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). 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. Deferred maintenance or any deficiencies identified in project compliance with section 504 of the Rehabilitation Act of 1973 must be addressed prior to the receipt of any incentive.

(f) Existing loans must be consolidated, provided consolidation retains the Rural Housing Service's lien position, and reamortized in accordance with subparts I and J of this part, unless consolidation is not necessary to maintain feasibility of the housing for the tenants or to reduce 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 Rural Housing Service may void the prepayment request.

(h) If the borrower accepts the incentive offer, procedures outlined in § 3560.657 must be followed.

(i) 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 Rural Housing Service's offer of incentives, the borrower must complete the actions listed below. The Rural Housing Service will not negotiate an incentive offer once it has been accepted.

(1) The borrower must insert the restrictive-use language specified in

§ 3560.662 into the housing project's loan documents, deeds, and rental assistance agreements.

(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) *Notification.* The Rural Housing Service will notify each tenant, in writing, of the restrictive-use agreement in accordance with § 3560.654(e).

(c) *Waiting lists.* If funds for components of incentive offers are limited, the Rural Housing Service will establish a waiting list of accepted incentive offers for funding in the date order that the complete prepayment request was received.

(d) *Unfunded incentive offers.* If the borrower accepts the incentive offer but the Rural Housing Service 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 Rural Housing Service 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 continue operating the housing project for program purposes and in accordance with Rural Housing Service requirements. If the borrower chooses this option, the borrower may resubmit an updated prepayment request, at any time, and repeat the prepayment process in accordance with this subpart.

§ 3560.658 Borrower rejection of the incentive offer.

(a) If a borrower rejects the incentive package offered by the Rural Housing Service or a Rural Housing Service request to extended restrictive-use provisions, made in accordance with § 3560.662, the loan will only be prepaid if the borrower agrees 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 restrictive-use provisions are in place, the borrower will agree to sign the restrictive-use provisions, as determined by the Rural Housing Service, 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 restrictive-use provisions are not in place prior to prepayment, the borrower will offer to sell the housing to a qualified nonprofit organization or public body in accordance with § 3560.659, or

(b) The Rural Housing Service 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. If the Rural Housing Service 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 Rural Housing Service, to protect tenants at the time of prepayment.

(c) If the borrower agrees to the restrictive-use provisions, as determined by the Rural Housing Service, the applicable language must be included in the release documents and the borrower must execute a restrictive-use agreement acceptable to the Rural Housing Service and a deed restriction.

(d) If the borrower will not agree to applicable restrictive-use provisions, as determined by the Rural Housing Service, the borrower must offer to sell to a nonprofit or public body in accordance with § 3560.659.

§ 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 to sell a housing project to a nonprofit organization or public body, two independent "as is" market value appraisals will be completed, in accordance with subpart P of this part.

(1) The Rural Housing Service will also prepare the appropriate level of environmental review under the

National Environmental Policy Act to be completed in accordance with 7 CFR part 1940, subpart G prior to Rural Housing Service approval of a sale or transfer.

(2) 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.

(3) If the two appraisers fail to agree on the fair market value, the Rural Housing Service and the borrower will jointly select an appraiser whose appraisal will be binding on the Rural Housing Service and the borrower. The Rural Housing Service 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 borrower must contact all nonprofit organizations and public bodies on a list maintained by the Rural Housing Service and may contact other 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 borrower may not accept an offer from other than local nonprofit organizations or public bodies during the first 60 days that the property is advertised. If no offer from a local nonprofit organization or public body is received in the first 60 days, 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 or have requested prepayment. 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 Rural Housing Service 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 Rural Housing Service that no identity-of-interest relationships exist 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 a Rural Housing Service MFH loan.

(5) The purchaser must complete a Rural Housing Service approved application and obtain Rural Housing Service approval in accordance with subpart B of this part.

(6) The purchaser must make a bona fide 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 Rural Housing Service or other sources to nonprofit organizations and public bodies.* Rural Housing Service loans to nonprofit organizations or public bodies may be made for the purposes described in paragraphs (g)(1) and (2) of this section. Rural Housing Service loans will be processed in accordance with subpart B of this part. Loans from other sources will be approved by the Rural Housing Service in accordance with subpart I of this part.

(1) Rural Housing Service 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, a Rural Housing Service 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. A Rural Housing Service 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 Rural Housing Service may make advances, in accordance with section 502(c)(5)(c)(i), not in excess of \$20,000 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.

§ 3560.660 Acceptance of prepayments.

(a) The Rural Housing Service may accept prepayment if any of the following circumstances exist:

(1) Prepayment will be accepted if the Rural Housing Service determines that prepayment will not have an adverse impact on minorities; adequate, safe, decent and affordable housing is available; and tenants in the housing project will not experience a negative impact such as a change in rent or use, which results in increased net tenant contributions, displacements, or involuntary relocations.

(2) Prepayment may be accepted if the Rural Housing Service determines that prepayment will have an adverse impact on the tenants in the housing project, but:

(i) The borrower agreed to comply with restrictive-use provisions, as determined by the Rural Housing Service, after prepayment; or,

(ii) The borrower agreed to offer the housing project for sale to a nonprofit organization or public body in accordance with § 3560.659 and no bona fide offer was received within 180 days from the date that the housing project was advertised for sale to a nonprofit organization or public body, or a bona fide 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.

(b) When the Rural Housing Service agrees to accept prepayment, the Rural Housing Service will notify borrowers, in writing, of the conditions under which the Rural Housing Service 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 Rural Housing Service'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 Rural Housing Service has not agreed to an alternative date based on a written request from the borrower, the Rural Housing Service may cancel the prepayment acceptance agreement.

(c) Tenants will be notified of the prepayment acceptance agreement in accordance with § 3560.654(c).

(d) 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 30 days of the prepayment acceptance notice date.

§ 3560.661 Sale or transfers.

(a) If a sale or transfer is to take place simultaneously with the Rural Housing Service incentive offer, the sale or transfer must comply with the 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 Rural Housing Service may make an offer of incentives contingent on the successful transfer of the housing to an acceptable purchaser. The Rural Housing Service 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.

(a) *Clauses required for active borrowers with housing projects subject to restrictive-use provisions as a result of a loan making or servicing actions.* The restrictive-use provisions must be contained in the loan documents or security instruments. The restrictions are applicable for a term of 20 years. All loans or servicing actions meeting the criteria described in paragraphs (a)(1), (2), and (3) of this section, must include the following clause in loan documents.

The borrower and any successors in interest agree to use the housing project for the purpose of housing people eligible for occupancy as provided in section 514 or section 515 of title V of the Housing Act of 1949, and Rural Housing Service regulations then in existence during this 20-year period beginning (the date the last loan on the housing project is obligated or the date the housing project was last made subject to the prepayment restrictive-use provisions as a result of servicing actions or an incentive agreement, authorized under this subpart). Until (date), no eligible person occupying the housing project shall be required to vacate, or any eligible person wishing to occupy shall be denied occupancy without cause. The borrower will be released from these obligations before that date only when the Rural Housing Service determines that there is no longer a need for such housing or that such other financial assistance provided the residents of such housing will no longer be provided due to no fault, action, or lack of action on the part of the borrower. A tenant or individual wishing to occupy the housing, as well as the Rural Housing Service, may seek enforcement of this provision.

(1) All loans approved after December 21, 1979, but prior to December 15, 1989.

(2) Subsequent loans not made to build or acquire new units approved on or after December 15, 1989.

(3) Any loan approved prior to December 21, 1979, and subsequently made subject to restrictive-use provisions due to a servicing action in accordance with in subparts I and J of this part, or an incentive to accept restrictive-use provisions in accordance with in this subpart.

(b) *Clauses required for active borrowers with housing projects subject to restrictive-use provisions as a result of a loan making or servicing actions when the loan is transferred to a limited partnership.* The restrictive-use provisions must be contained in the loan documents or security instruments. The restrictions are applicable for a term of 30 years. All loans or servicing actions meeting the criteria described in paragraphs (b)(1), (2), and (3) of this section, must include the following clause in loan documents.

The borrower and any successors in interest agree to use the housing project for the purpose of housing people eligible for occupancy as provided in section 514 or section 515 of title V of the Housing Act of 1949, and Rural Housing Service regulations then in existence during this 30-year period beginning (the date the last loan on the housing project is obligated or the date the housing project was last made subject to the prepayment restrictive-use provisions as a result of servicing actions or an incentive agreement, authorized under this subpart). Until (date), no eligible person occupying the housing project shall be required to vacate, or any eligible person wishing to occupy shall be denied occupancy without cause. The borrower will be released from these obligations before that date only when the Rural Housing Service determines that there is no longer a need for such housing or that such other financial assistance provided the residents of such housing will no longer be provided due to no fault, action, or lack of action on the part of the borrower. A tenant or individual wishing to occupy the housing, as well as the Rural Housing Service, may seek enforcement of this provision.

(1) All loans approved after December 21, 1979, but prior to December 15, 1989.

(2) Subsequent loans not made to build or acquire new units approved on or after December 15, 1989.

(3) Any loans approved prior to December 21, 1979, and subsequently made subject to restrictive-use provisions due to a servicing action in accordance with in subparts I and J of this part, or an incentive to accept restrictive-use provisions in accordance with in this subpart.

(c) *Clauses required for housing projects made subject to restrictive-use provisions when a loan is transferred to a nonprofit organization or public body.*

(1) For housing projects being made subject to restrictive-use provisions because of a transfer to a nonprofit or public body, in accordance with in § 3560.659, the following clause must be inserted in the deed, conveyance instrument, loan resolution and assumption agreement, as applicable.

The borrower and any successors in interest agree to use the housing project for the purpose of housing very low- and low-income people eligible for occupancy as provided in Rural Housing Service regulations then in existence during the remaining useful life of the housing project. A tenant or person wishing to occupy the housing project, as well as the Rural Housing Service, may seek enforcement of this provision. Throughout the remaining useful life of this housing project, no eligible person occupying or wishing to occupy the housing project shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be set to meet these conditions. The borrower will be released during such period from these obligations only when the Rural Housing Service determines that there is no longer a need for such housing. Further, the borrower will be released if other financial assistance provided to the residents of such housing will no longer be provided due to no fault, action or lack of action on the part of the borrower.

(2) The restrictions are intended to protect only very low- and low-income people for the remaining useful life of the project, unless the Rural Housing Service subsidy is removed without cause or it is determined there is no longer a need for the housing. These restrictions will not be superceded by new restrictions imposed by subsequent transfers. Eligible moderate-income tenants living at the project at the time of prepayment will not be required to move as a result of the restrictions. Moderate-income applicants for the housing will continue to retain priority over ineligible applicants for the housing.

(d) *Clauses and agreement required for prepaid projects, which were subject to restrictive-use provisions prior to the prepayment.* (1) Housing projects may only be prepaid if the title to the real property is made subject to the following restrictive-use provisions and incorporated in the security releases. The following Multi-Family Housing projects are subject to restrictive-use provisions herein contained:

(i) Any loan on the project obligated between December 21, 1979, and December 15, 1989, or subsequent loan not made to build or acquire new units approved on or after December 15, 1989.

(ii) Any loan made subject to restrictive-use provisions as a result of a transfer or reamortization as contained in this subpart.

(iii) Any loan made subject to restrictive-use provisions as a result of accepting an incentive to not prepay as contained in this subpart.

The provisions provide protections to the same categories of tenants who were protected while the loan was in effect, to the same extent that the tenants were protected prior to the prepayment and for the length of time remaining under the restrictions prior to the prepayment.

(*Borrower Name*), herein referred to as owner, and any successors in interest agree that the (*Project Name*), herein referred to as housing, will be used only as authorized under sections 514 and 515 of title V of the Housing Act of 1949, and Rural Housing Service regulations then in existence until (*insert date shown on existing restrictive-use provisions*) for the purpose of housing low- and moderate-income people eligible for occupancy. A tenant or applicant for occupancy, as well as the Rural Housing Service, may seek enforcement of this provision. During the restricted period, no eligible person occupying or wishing to occupy the housing shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be set to meet these conditions. The owner also agrees to keep a notice posted at the project, and in a visible place available for tenant inspection, for the remainder of the restrictive-use period, stating that the project is to be used in accordance with sections 514 and 515 of title V of the Housing Act of 1949, and that management practices and rental rates will be consistent with those necessary to maintain the project for (*insert "low- and moderate-income" or "very low- and low-income" as shown on existing restrictive-use provisions*) tenants for the remainder of the restrictive-use period.

Furthermore, the owner agrees to be bound by the applicable provisions of Rural Housing Service regulations specific to tenant rights and relations for the duration of the restrictive-use period. The owner agrees to be responsible for ensuring that rental procedures, verification, and occupancy charges, and termination and eviction remain consistent with the 7 CFR part 1930, subpart C, and to adhere to applicable local, state, and Federal laws. The owner agrees to obtain Rural Housing Service concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of prepayment, prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations. Documentation, including annual income recertifications, shall be maintained to evidence compliance in the event there is a future complaint or audit. The owner must be able to document that acceptable waiting lists were maintained, units were rented to appropriate tenants, and rents were established at appropriate levels. The owner agrees to make the documentation available for Rural Housing Service inspection upon request. The owner and any successors in interest agree to provide the following signed and dated certification to the applicable Rural

Housing Service Servicing Office or other designated office within 30 days of the beginning of each calendar year until (*Date restrictive-use period ends*):

(*Name of Owner*) certifies that (*Name of Project*) is being operated in compliance with the restrictive-use provisions contained in (*Applicable release document*) and the Restrictive Use Agreement, herewith, which sets forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable Rural Housing Service regulations. (*Name of Owner*) understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the Rural Housing Service to seek enforcement of the provisions.

Date: _____
Owner: _____
By: _____
(Title)

(e) *Clauses and Agreement required for prepaid housing projects, which became subject to restrictive-use provisions at the time of prepayment.* Multi-Family Housing projects that were not subject to restrictive-use provisions prior to prepayment may, generally, only be prepaid if the title to the real property is made subject to one of the following restrictive-use provisions and the provisions are filed with the security releases. The restrictive-use provisions apply to all loans made prior to December 21, 1979 that were not subsequently made subject to restrictive-use provision as a result of servicing actions after December 21, 1979. The restrictions will also be used for sales of projects at foreclosure for projects not previously subject to restrictive-use provisions, provided the project is to remain in the section 514 or section 515 program. The conditions for which restrictive-use provisions are not required are contained in § 3560.658. These provisions are used when the owner agrees to restrictive-use provisions for a minimum of a 20-year period, and agrees to offer to sell the assisted housing and related facilities to a qualified nonprofit organization or public Rural Housing Service in accordance with Rural Housing Service regulations upon termination of the 20-year period. The period is calculated from the date on which the last loan for the project was obligated or applicable servicing action taken. The borrower will also be required to execute the Restrictive-Use Agreement herein contained.

(*Owner Name*), herein referred to as owner, and any successors in interest agree to use the (*Project Name*), herein referred to as housing, as required in 7 CFR 3560, subpart N and other regulations then in existence during the 20 year period beginning (*date of last loan or servicing action*) for the purpose

of housing low- and moderate-income people eligible for occupancy. A tenant or applicant for occupancy, as well as the Rural Housing Service may seek enforcement of this provision. Prior to (*date period ends*) no eligible person occupying or wishing to occupy the housing project shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be established to meet these conditions such that the effect will not differ from what would have been, had the housing remained in the Government program. The owner also agrees to keep a notice posted at the housing project for the remainder of the restrictive-use period, in a visible place available for tenant inspection, stating that the housing project is to be used in accordance with sections 514 and 515 of title V of the Housing Act of 1949, and that management practices and rental rates will be consistent with those necessary to maintain the housing project for the protected population for the remainder of the restrictive-use period. At the expiration of this period ending (*date*), the housing project will be offered for sale to a qualified nonprofit organization or public body, as determined by the Rural Housing Service.

Furthermore, the owner agrees to be bound by the applicable provisions of 7 CFR part 1930, subpart C, and specific to tenant rights and relations for the duration of the restrictive-use period. The owner agrees to be responsible for ensuring that rental procedures, verification and certification of income or employment, lease agreements, rent or occupancy charges, and termination and eviction remain consistent with the provisions contained in 7 CFR part 1930, subpart C, and to adhere to applicable local, state, and Federal laws. The owner agrees to obtain Rural Housing Service concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of prepayment, prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations. Documentation, including annual income recertifications, shall be maintained to evidence compliance in the event there is a future complaint or audit. The owner must be able to document that acceptable waiting lists were maintained, units were rented to appropriate tenants, and rents were established at appropriate levels. The owner agrees to make the documentation available for Rural Housing Service inspection upon request. The owner and any successors in interest agree to provide the following signed and dated certification to the applicable Rural Housing Service Servicing Office or other designated office within 30 days of the beginning of each calendar year until (*insert date restrictive-use period ends*):

(*Name of Owner*) certifies that (*Name of Project*) is being operated in compliance with the restrictive-use provisions contained in (*applicable release document*) and the Restrictive-Use Agreement which sets forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable RHS regulations. (*Name of Owner*) understands that failure to operate the project

in conformance with the restrictive-use provisions may cause a tenant or the United States to seek enforcement of the provisions.

Date: _____
 Owner: _____
 By: _____
 (Title)

(f) *Clauses and Agreement required for housing projects subject to restrictive-use provisions at the borrower's election to allow prepayment.* These provisions are used after the owner rejects incentives or declines an additional restrictive-use period, or when the owner agrees to restrictive-use provisions for a minimum of a 10-year period, and agrees to offer to sell the assisted housing and related facilities to a qualified nonprofit organization or public Rural Housing Service in accordance with Rural Housing Service regulations upon termination of the 10-year period. The period is calculated from the date on which the last loan for the project was obligated or applicable servicing action taken. The borrower will also be required to execute the Restrictive-Use Agreement herein contained.

(*Owner Name*), herein referred to as owner, and any successors in interest agree to use the (*Project Name*), herein referred to as housing, as required in 7 CFR 3560, subpart N and other regulations then in existence during the 10 year period beginning (*date of last loan or servicing action*) for the purpose of housing low- and moderate-income people eligible for occupancy. A tenant or applicant for occupancy, as well as the Rural Housing Service, may seek enforcement of this provision. Prior to (*date period ends*) no eligible person occupying or wishing to occupy the housing project shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be established to meet these conditions such that the effect will not differ from what would have been, had the housing remained in the Rural Housing Service program. The owner also agrees to keep a notice posted at the housing project for the remainder of the restrictive-use period, in a visible place available for tenant inspection, stating that the housing project is to be used in accordance with section 514 and 515 of title V of the Housing Act of 1949, and that management practices and rental rates will be consistent with those necessary to maintain the housing project for the protected population for the remainder of the restrictive-use period. At the expiration of this period ending (*date*), the housing project will be offered for sale to a qualified nonprofit organization or public body, as determined by the Rural Housing Service.

Furthermore, the owner agrees to be bound by the applicable provisions of 7 CFR part 1930, subpart C, and specific to tenant rights and relations for the duration of the restrictive-use period. The owner agrees to be responsible for ensuring that rental procedures, verification and certification of

income or employment, lease agreements, rent or occupancy charges, and termination and eviction remain consistent with the provisions contained in 7 CFR part 1930, subpart C, and to adhere to applicable local, state, and Federal laws. The owner agrees to obtain Rural Housing Service concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of prepayment, prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations. Documentation, including annual income recertifications, shall be maintained to evidence compliance in the event there is a future complaint or audit. The owner must be able to document that acceptable waiting lists were maintained, units were rented to appropriate tenants, and rents were established at appropriate levels. The owner agrees to make the documentation available for Rural Housing Service inspection upon request. The owner and any successors in interest agree to provide the following signed and dated certification to the applicable Rural Housing Service Servicing Office or other designated office within 30 days of the beginning of each calendar year until (insert date restrictive-use period ends):

(Name of Owner) certifies that (Name of Project) is being operated in compliance with the restrictive-use provisions contained in (applicable release document) and the Restrictive-Use Agreement which sets forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable RHS regulations. (Name of Owner) understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the United States to seek enforcement of the provisions.

Date: _____
 Owner: _____
 By: _____
 (Title)

(g) *Loans with current restrictive-use provisions (all loans were obligated and applicable servicing actions took place for the project over 20 years prior to prepayment).* These provisions are used when the loan is currently under restrictive-use provisions and the owner enters into an agreement to immediately attempt to offer the project for sale to a nonprofit organization or public Rural Housing Service in accordance with § 3560.659. The borrower will also be required to execute the Restrictive-Use Agreement herein contained. The owners and any successors in interest agree to immediately offer to sell the housing and related facilities to a qualified nonprofit organization or public Rural Housing Service, as determined by the Rural Housing Service.

(Name of Borrower), herein referred to as owner, and any successors in interest agree to immediately attempt to sell the (Name of Project), herein referred to as housing and related facilities to a qualified nonprofit

organization or public Rural Housing Service, as determined by the Rural Housing Service, in accordance with the provisions of 7 CFR part 3560, subpart N. The owner agrees to use the housing as required in 7 CFR, part 3560, subpart N, or other regulations then in existence during the sales period for the purpose of housing low- and moderate-income people eligible for occupancy. A tenant or applicant for housing may seek enforcement of this provision, as well as the United States. Prior to a sale to a nonprofit organization or public Rural Housing Service, no eligible person occupying or wishing to occupy the housing shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be established to meet these conditions such that the effect will not differ from what would have been had the project remained in the RHS program. The owner also agrees to keep a notice posted at the housing project in a place available for tenant inspection, for the remainder of the sales period, stating that the housing project is to be used in accordance with sections 514 and 515 of title V of the Housing Act of 1949, and that management practices and rental rates for tenants as of the date of the prepayment will be consistent with those necessary to maintain the housing project for low- and moderate-income tenants. A tenant, as well as the Rural Housing Service, may seek enforcement of this provision.

Furthermore, the owner agrees to be bound by the applicable provisions of 7 CFR part 3560, subpart N, and specific to tenant rights and relations for the duration of the sales period. The owner agrees to be responsible for ensuring that rental procedures, verification and certification of income and employment, lease agreements, rent or occupancy charges, and termination and eviction remain consistent with the provisions contained in 7 CFR part 1930, subpart C, and to adhere to applicable local, state, and Federal laws. The owner agrees to obtain Rural Housing Service concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of prepayment, prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations. Documentation, including annual income recertifications, shall be maintained to evidence compliance in the event there is a future complaint or audit. The owner must be able to document that acceptable waiting lists were maintained, units were rented to appropriate tenants, and rents were established at appropriate levels. The owner agrees to make the documentation available for Rural Housing Service inspection upon request. The owner and any successors in interest agree to provide the following signed and dated certification to the applicable RHS Servicing Office or other designated office within 30 days of the beginning of each calendar year until a sale to nonprofit organization or public Rural Housing Service takes place:

(Name of Owner) certifies that (Name of Project) is being operated in compliance with the restrictive-use provisions contained in (applicable release document) and the

Restrictive-Use Agreement which sets forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable Rural Housing Service regulations. (Name of Owner) understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the United States to seek enforcement of the provisions.

Date: _____
 Owner: _____
 By: _____
 (Title)

(h) *Current Tenants Restrictive-Use Provisions.* These provisions are used when the owner enters into an agreement that no current tenants will be displaced due to a change in the use of the housing or an increase in rental or other charges, as a result of prepayment, for as long as the current tenants wish to remain at the project. The provisions may only be used if it is determined by the Rural Housing Service that the conditions specified in this subpart, addressing the effect of prepayment on minorities, handicapped individuals, and families with children in the project and market area, can be met, allowing an exception from the requirement to offer the project to sale to a nonprofit organization or public body. The borrower will also be required to execute the Restrictive-Use Agreement herein contained.

(Name of Borrower), herein referred to as owner, and any successors in interest agree to use the (Name of Project), herein referred to as housing, for the purpose of housing low- and moderate-income people occupying the project at the time the prepayment was accepted, as required in 7 CFR part 3560, subpart N, and other applicable Rural Housing Service regulations then in existence. No eligible person occupying the housing shall be required to vacate prior to the end of the remaining useful life of the project without cause. Rents, other charges, and conditions of occupancy will be established to meet these conditions for these tenants such the effect will not differ from what would have been, had the project remained in the Rural Housing Service program. Existing tenants are protected to ensure that none experience new or increased rent overburden as a result of owner actions until each voluntarily moves from the project. The owner also agrees to keep a notice posted at the project in a visible place available for tenant inspection, for the remaining useful life of the project or until the last existing tenant voluntarily vacates. The notice will state that the project is to be used in accordance with sections 514 and 515 of title V of the Housing Act of 1949, and that management practices and rental rates will be consistent with those necessary to maintain the project for low- and moderate-income tenants. A tenant may seek enforcement of this provision, as well as the United States.

Furthermore, the owner agrees to be bound by the applicable provisions of 7 CFR part 1930, subpart C, specific to tenant rights and relations for the remaining useful life of the project or until the last existing tenant voluntarily vacates the project. The owner agrees to be responsible for ensuring that rental procedures, verification and certification of income and employment, lease agreements, rents or occupancy charges, and termination and eviction remain consistent with the provisions contained in 7 CFR part 1930, subpart C, and to adhere to applicable local, state, and Federal laws. The owner agrees to obtain Rural Housing Service concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of prepayment, prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations. Documentation, including annual income recertifications, shall be maintained to evidence compliance in the event there is a future complaint or audit. The owner must be able to document that rents are established at appropriate levels. The owner agrees to make the documentation available for Rural Housing Service inspection upon request. The owner and any successors in interest agree to provide the following signed and dated certification to the applicable Rural Housing Service Servicing Office or other designated office within 30 days of the beginning of each calendar year until the last existing tenant voluntarily vacates the project:

(Name of Owner) certifies that (Name of Project) is being operated in compliance with the restrictive-use provisions and the Restrictive-Use Agreement (herein contained) which sets forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable Rural Housing Service regulations. (Name of Owner) understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the United States to seek enforcement of the provisions.

§ 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.

(e) The Agency may enforce restrictive-use provisions through administrative and legal actions.

§§ 3560.664–3560.699 [Reserved]

§ 3560.700 OMB control number. [Reserved]

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. Borrowers are expected to:

(1) Request explanations from tenants for any assistance considered to be unauthorized because of inaccurate information supplied by the tenant.

(2) Issue demand for repayment of an amount certain by a date certain for unauthorized assistance. The demand notice must include the right of a tenant to challenge the accuracy of the information relied upon. Such challenges will be conducted under the provisions of § 3560.160.

(3) Initiate and pursue eviction should tenants not timely exercising their right to challenge the accuracy of the information or should the borrower determine that the information provided warrants recapture of unauthorized assistance and the tenant is unwilling or unable to provide timely repayment. The Agency must be timely notified of all evictions initiated and the status of such actions.

(4) Notify the Agency of amounts of unauthorized assistance scheduled to be repaid, actually repaid, or refused to be repaid. The Agency must be notified of any unauthorized assistance which is not being timely repaid by tenants. The Agency reserves the right to pursue collection of amounts not timely paid by tenants.

§ 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.

(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 and pursuing 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 a copy of the written notice to the tenant. 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 which might alter the determination that the assistance received was unauthorized.

(b) 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 will include offsets and the use of private or public collection agents. 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) If a borrower or tenant agrees to repay unauthorized assistance, the borrower or tenant proposed repayment schedule must be approved by the Agency prior to implementation. Repayment may be made either with a lump sum payment or through payments made over a period of time. 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, 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 the tenant for recovery of unauthorized assistance when the borrower's efforts are unsuccessful or where tenants have been evicted.

(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. If a tenant refuses to enter into an unauthorized assistance repayment schedule, the Agency will initiate recovery actions against the tenant household.

(g) Borrowers may not use housing project funds to pay amounts due to the Agency as a result of unauthorized assistance.

§ 3560.706 Offsets.

Offsets will 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 Agency's programs if they have the legal and financial capabilities to do so. Approval considerations for such forbearance 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 prior to the determination that the interest rate was incorrect 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 concurs in a borrower request for approval to pay the unauthorized assistance amounts due through 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 are not allowable under the provisions of subparts D, E, and F of this part; 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 for or use housing project funds 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, whether due to borrower or tenant fraud or borrower or tenant error, 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 in the case of initial demands on a borrower, or by the borrower in the case of an initial demand by a borrower on a tenant, or by the Agency in the case of demands on a tenant made initially by the Agency or upon referral by a borrower for Agency collection servicing efforts.

§§ 3560.710–3560.749 [Reserved]**§ 3560.750 OMB control number. [Reserved]****Subpart P—Appraisals****§ 3560.751 General.**

This subpart sets forth appraisal policies for Agency-financed multi-family housing consisting of five or more rental units. Agency-financed housing project's 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, release, and review.

(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

to determine appropriate servicing or preservation decisions. Appraisals used for Agency decision-making may be no more than 12 months old unless the Agency and the applicant or borrower mutually agree to the use of an appraisal more than 12 months old.

(b) *Appraisal requests.* Appraisal requests must be in writing and must specify the intended use of the appraisal and the value basis on which the housing project and related facilities are to be appraised.

(1) The appraisal request must indicate whether the housing project and related facilities are to be appraised on a "value-in-use" basis or a "market value" basis.

(i) A request for a "value-in-use" appraisal means the appraisal will take into consideration any subsidies or use restrictions imposed on the property by a financing source. A value-in-use appraisal will take into consideration any interest credits, tax credits, tax rebates, rent subsidies, grant funds, or other forms of assistance related to the housing, including subsidies or use restrictions imposed by the Agency or any other government or non-government source.

(ii) A request for a "market value" appraisal means the appraisal will take into consideration the price which a property should sell for in a competitive and open market with no subsidies or use restrictions. The appraisal will assume a fair sale with the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus such as a foreclosure or other legal action that forced a sale of the property. 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) Both parties are well informed or well advised and acting in what they consider their best interest;

(B) A reasonable time is allowed for exposure in the open market;

(C) Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and,

(D) The price represents consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(2) The appraisal request must indicate whether the "as-is" or the "as-improved" value of the housing is to be calculated.

(i) *As-is* value means the value of the housing and the related facilities in the condition in which the housing exists at the time the appraisal is conducted. If

the property is to be appraised as Agency financed housing, the "as-is" value should take into consideration anticipated expenses to bring the housing into compliance with Agency requirements, vacancy rate expectations, anticipated tenant turn over rates, and estimated operation and maintenance expenses taking into consideration the property's condition.

(ii) *As-improved* value means the value of the housing and the related facilities in the condition in which the housing will exist after specified improvements are made. If the property is to be appraised as Agency financed housing the "as-improved" value should take into consideration vacancy rates, tenant turn over rates, and operations and maintenance costs as expected after improvements.

(3) *Section 8 project-based assistance.* Depending on the purpose and use of the appraisal, the Agency will specify whether or not section 8 project-based assistance will be considered in the calculation of the housing's estimate of value. 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 purpose and use of the appraisal, the Agency will specify whether or not LIHTC's and other financing sources involved in the housing will be considered in the calculation of the housing's estimate of value.

(c) *Release of appraisals.* Appraisals procured by the Agency for internal decision-making processes will not be released for purposes unrelated to the decision for which the appraisal was procured.

§ 3560.753 Agency appraisal standards and requirements.

(a) *General.* The Agency recognizes the Uniform Standards of Professional Appraisal Practice (USPAP) as the basic standards for appraisals. Appraisals completed by independent appraisers must comply with USPAP standards and this part.

(b) *Appraisers.* Appraisals prepared for the Agency will be conducted by Agency staff who have met the educational requirements of the State's appraisal licensing board in the state where the duty station of the Agency staff or independent fee appraisers who meet the licensing requirements of the state where the property is located.

(c) *Appraisal report.* Appraisal report format may be a form appraisal or a

narrative appraisal. The Agency will specify the appraisal format that best addresses the circumstances of the housing project being appraised when the appraisal is requested.

(1) *Form appraisal reports.* The Agency will accept form appraisal reports that meet generally accepted industry standards 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 statement;
- (vii) A statement about any environmental issues, including the issue of potential contamination of the property from hazardous substances, hazardous wastes, or petroleum products;
- (viii) A cost approach analysis;
- (ix) A sales or market approach analysis;
- (x) An income approach to value analysis; and
- (xi) A dated and signed final estimate of value with a reconciliation of the cost, sales or market, and income approaches.

(3) At the time an appraisal is requested, the Agency will specify one of the following types of appraisal reports based upon the complexity of the appraisal assignment.

(i) A self-contained report which provides comprehensive details of the estimate of value.

(ii) A summary report which provides a concise presentation of the findings that support the estimate of value.

(iii) A restricted report which provides a presentation of the estimate of value with minimal documentation.

(d) *Highest and best use statement and analysis.* The principle of highest and best use is to be addressed for each site to be used for multi-family housing as if the site was ready to be developed. If the highest and best use of a site is for something other than housing, the appraisal report must provide this information to the Agency for consideration in the loan process. The highest and best use statement for a multi-family housing site must address whether the proposed use of the site is:

- (1) Legally permissible;
 - (2) Physically possible;
 - (3) Financially feasible; and
 - (4) Maximally profitable.
- (e) *Valuation methods and variances.* The final estimate of value presented in

an appraisal report must have considered a cost approach, a sales approach, and an income approach. If one of these standard approaches is not used, or if the variation between the three approaches exceeds 10 percent, the reconciliation narrative shall provide a full and complete explanation of the variances, or the reasons one approach was not used.

(f) *Real estate history.* Appraisals must contain a 5-year ownership history for the housing project being appraised.

(g) *Reserve accounts.* When conducting appraisals in conjunction with a prepayment request or a transfer request, funds in the housing project's reserve account in excess of repair costs to bring the housing into compliance with state and local codes and the physical standards established under § 3560.103(a)(3), shall be considered as part of the housing's value.

(h) *Escrow accounts.* Short-term prepaid escrow accounts for general operating expenses such as taxes and insurance, shall not be considered during appraisals.

(i) *Rental rates comparison.* The appraisal report must document whether the housing project's basic rents are less than, equal to, or greater than conventional rents for comparable conventional non-subsidized units in the area where the housing is located.

(j) *Description of housing.* The appraisal report must identify and describe both the real estate (legal rights) and the real property (tangible property) interest being appraised.

(k) *Exclusions of rental units from appraisals.* The Agency will provide appraisers with instructions on which rental units will not be valued in the appraisal report.

(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.

(m) *Value for energy-saving devices.* Appraisal for housing projects with energy-saving devices must document the device's estimated annual cost savings in present value dollars for each year during the manufacturer's useful life projection for the energy-saving device. If a device is found to produce a negative savings, then an adjustment for obsolescence is to be made to the value of the energy-saving measure.

§ 3560.754 Non-completion of appraisal assignment.

If an appraiser determines that the instructions provided are inappropriate or unclear, or the appraiser is unsure of the assignment after beginning the appraisal, the appraiser must provide

written notice to the Agency listing the reasons why the appraisal cannot be completed and requesting further instructions.

§§ 3560.755—3560.799 [Reserved]

**§ 3560.800 OMB control number.
[Reserved]**

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Thomas C. Dorr,

Under Secretary, Rural Development.

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