

§ 3560.707

7 CFR Ch. XXXV (1-1-10 Edition)

§ 3560.707 Program participation and corrective actions.

(a) With Agency approval, a borrower or tenant, who has received unauthorized assistance, may continue to participate in the project if they have the legal and financial capabilities to do so. Approval considerations for such forbearance and repayment are in § 3560.705.

(b) A borrower or tenant who was responsible for the circumstances causing the unauthorized assistance must take appropriate action to correct the problem within 90 days of the unauthorized assistance determination notice date, unless an alternative date is agreed to by the Agency.

(c) When the interest rate shown in a debt instrument resulted in the receipt of unauthorized assistance, the debt instrument will be modified to the correct interest rate. All payments made by the borrower at the incorrect interest rate will be reapplied at the correct interest rate, and remaining payments due on the loan will be recalculated on the basis of the correct interest rate, plus any amounts due to the Agency as a result of the use of an incorrect interest rate, unless the Agency agrees to a separate repayment process.

§ 3560.708 Unauthorized assistance received by tenants.

(a) Tenant actions that require tenant repayment of unauthorized assistance received by tenants include, but are not limited to:

(1) Knowingly or mistakenly misrepresenting income, assets, adjustments to income, or household status to the borrower as required under subpart D of this part; or

(2) Failure to properly report changes in income, assets, adjustments to income, or household status to the borrower as required in subpart D of this part.

(b) Borrower actions that require borrower repayment of unauthorized assistance received by tenants include, but are not limited to:

(1) Incorrect determination of tenant income or household status by the borrower, resulting in rental assistance or interest credit that is not allowable under the provisions of subparts D, E, or F of this part, as applicable; or

(2) Assignment of rental assistance to a household that is ineligible under the requirements of subpart F of this part.

(c) When it is determined that a tenant has received unauthorized assistance, the borrower shall notify the tenant and the Agency through the procedure specified in § 3560.704.

(d) Borrowers may not charge tenants to pay amounts due to the Agency as a result of unauthorized assistance to tenants through borrower error.

(e) Borrowers must notify the Agency of all collections from tenants as repayments for unauthorized assistance and must remit or credit the amounts collected to applicable housing project accounts.

(f) When rental assistance was improperly assigned to a tenant, for any reason, the rental assistance benefit must be canceled and reassigned.

(1) Before a borrower notifies a tenant of rental assistance cancellation, the borrower must request Agency approval. If the Agency determines that the unauthorized rental assistance was received by the tenant due to borrower fraud or error, the borrower must give the tenant 30 days notice, in writing, that the unit was assigned in error and that the rental assistance benefit will be canceled effective on date that the next monthly rental payment is due after the end of the 30-day notice period.

(2) Tenants also must be notified, in writing, that they may cancel their lease without penalty at the time the rental assistance is canceled. Tenants must be offered an opportunity to meet with a borrower to discuss the rental assistance cancellation.

§ 3560.709 Demand letter.

(a) If a borrower fails to respond to an unauthorized assistance determination notice or fails to agree to a repayment schedule, the Agency will send the borrower a demand letter specifying:

(1) The amount of unauthorized assistance to be repaid and the basis for the unauthorized assistance determination; and

(2) The actions to be taken by the Agency if repayment is not made by a specified date.

(b) If a tenant fails to respond to the unauthorized assistance determination notice or fails to agree to a repayment schedule, the borrower will send the tenant a demand letter specifying:

(1) The amount of unauthorized assistance to be repaid and the basis for the unauthorized assistance determination;

(2) The actions to be taken if repayment is not made by a specified date, including termination of tenancy; and

(3) The appeal rights of the tenant as specified in § 3560.160.

(c) A demand letter may be sent to a borrower or tenant, in lieu of an unauthorized assistance determination notice, when the evidence documenting the unauthorized assistance determination is deemed to be conclusive by the Agency or borrower sending the letter.

§§ 3560.710–3560.749 [Reserved]

§ 3560.750 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart P—Appraisals

§ 3560.751 General.

This subpart sets forth appraisal policies for Agency-financed multifamily housing (MFH) projects consisting of five or more rental units. Agency-financed housing projects with fewer than five rental units may be appraised in accordance with the Agency's single family housing appraisal policies established under 7 CFR 3550.62.

§ 3560.752 Appraisal use, request, review, and release.

(a) *Appraisal uses.* The Agency will use appraisals to determine whether the security offered by an applicant or borrower is adequate to secure a loan or determine appropriate servicing or preservation decisions. Appraisals used for Agency decision-making must be current, unless the Agency and the applicant, or borrower, mutually agree to the use of an appraisal that is not current. A current appraisal is an appraisal with a report date that is not more than one year old.

(b) *Appraisal requests.* Appraisal requests must be in writing and must specify the client and other intended users, the intended use, the purpose, and the scope of work of the appraisal, including the type and definition of the value(s) to be developed.

(1) *Type of Value.* The appraisal request must indicate whether the “market value”, the “market value, subject to restricted rents”, or any other type of value of the housing project and related facilities is to be concluded.

(i) A request for “market value, subject to restricted rents” means the appraisal will take into consideration any rent limits, rent subsidies, expense abatements, or restrictive-use conditions that will affect the property as a result of an agreement with the Agency or any other financing source. Each type of financing involved, including, but not limited to, interest credit subsidy, low-interest loans from other sources, tax-exempt bond financing, tax credits, and grants, must be valued separately in the appraisal.

(ii) A request for “market value” means the appraisal will take into consideration the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(A) Buyer and seller are typically motivated;