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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.

[69 FR 69106, Nov. 26, 2004, as amended at 80 FR 9912, Feb. 24, 2015]

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§ 3560.50 OMB control number.

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

Subpart B—Direct Loan and Grant Origination

§ 3560.51 General.

This subpart contains the Agency's loan origination requirements for multi-family housing (MFH) direct loans for Rural Rental Housing, Rural Cooperative Housing, and Farm Labor Housing. Additional requirements for farm labor housing loans and grants are contained in subpart L of this part for Off-Farm Labor Housing and subpart M of this part for On-Farm Labor Housing.

§ 3560.52 Program objectives.

The Agency uses appropriated funds to finance the construction, rehabilitation of program properties, or purchase and rehabilitation of MFH and related facilities to serve eligible persons in rural areas. The Agency encourages the use of such financing in conjunction with funding or financing from other sources.

§ 3560.53 Eligible use of funds.

Funds may be used for the following purposes.

(a) *Construct housing.* Funds may be used to construct MFH.

(b) *Purchase and rehabilitate buildings.* Funds may be used to purchase and rehabilitate buildings that have not been previously financed by the Agency.

(1) Rehabilitation must meet the definition of either moderate or substantial rehabilitation as defined in 7 CFR part 1924, subpart A.

(2) The building to be rehabilitated must be structurally sound and the improvements to the building must be necessary to meet the requirements of decent, safe, and sanitary living units.

(3) The total development cost (TDC) for the purchase and rehabilitation of existing buildings must not be more than the estimated TDC for construction of a similar type and unit size property in the same area.

(c) *Subsequent loans.* Funds may be used to provide subsequent loans in accordance with the provisions of § 3560.73.

(d) *Purchase and improve sites.* Funds may be used to purchase and improve the site on which MFH will be located, provided that the amount of loan funds used to purchase the site does not exceed the appraised market value of the site immediately prior to purchase.

(e) *Develop and install necessary systems.* Funds may be used to install streets, a water supply, sewage disposal, heating and cooling systems, electric, gas, solar, or other power sources for lighting and other features necessary for the housing. If such facilities are located off-site, loan funds may only be used if the following additional requirements are met:

(1) The loan applicant will hold title to the facility or have a legal right to use the facility in the form of an easement or other instrument acceptable to the Agency for a period of at least 50 percent longer than the term of the loan or grant and the title or right is transferable to any subsequent owner of the housing.

(2) The facilities will either be provided for the exclusive use of the proposed housing project, or Agency funds are limited to the prorated part of the total cost of the facility according to

the use and benefit to the MFH project. If entities other than the housing project financed by the Agency use the facilities on a reimbursable fee basis, the loan applicant must agree, in writing, to apply any fees collected in excess of operating expenses to their Agency loan account as an extra loan payment.

(f) *Landscaping and site development.* Funds may be used to provide landscaping and site development related to a MFH project such as lighting, walks, fences, parking areas, and driveways.

(g) *Tenant-related facilities.* Funds may be used to develop tenant-related facilities appropriate to the size, economics, and prospective tenants of a MFH project, such as a community room, development of space for education and training purposes for tenants, central laundry facility, outdoor seating, space for passive recreation, tot lots, and a small emergency care infirmary. In congregate housing and group homes, funds may be used for central cooking and dining areas.

(h) *Management-related facilities.* Funds may be used to develop management-related facilities appropriate to the size and economics of a MFH project such as a maintenance workshop, storage facilities, office, and living quarters for a resident manager and other personnel.

(i) *Purchase and install equipment and appliances.* Funds may be used to purchase and install equipment and appliances affixed to the property as customary and appropriate for the area in which the housing is located.

(j) *Household furnishings (Section 514/516).* For farm labor housing sections 514 and 516 only, funds may be used to purchase household furnishings.

(k) *Initial operating capital.* Loan funds equal to 2 percent of total development cost or appraised value, whichever is less, may be used by a state or political subdivision thereof, Indian tribe, consumer cooperative, or any public or private nonprofit borrower who is not receiving low-income housing tax credits (LIHTC), to make the initial operating capital contribution required by § 3560.64. Other borrowers must use their own resources to make the required initial operating capital

contribution and may not use loan funds for that purpose.

(1) *Builder's profit, overhead and general requirements.* Subject to the following limits, funds may be used for builder's profit, overhead and general requirements.

(1) Up to 10 percent of the construction contract may be used for builder's profit.

(2) Up to 4 percent of the construction contract may be used for general overhead.

(3) Up to 7 percent of the construction contract may be used for general requirements.

(m) *Legal, technical and professional services.* Funds may be used for the costs of legal, technical, and professional services related to the borrower's MFH project, including appraisals, environmental documentation, and construction plans and specifications.

(n) *Permit and application fees.* Funds may be used for required MFH permits and application fees.

(o) *Reimbursement to nonprofit organizations and public bodies.* Funds may be used to reimburse a nonprofit organization or public body for up to 2 percent of total development costs for section 515, or up to 4 percent of total development costs for off-farm labor housing, for costs that are reasonable and typical for the area, including:

(1) Development and packaging of a loan application and a MFH proposal; and

(2) Legal, technical, and professional fees incurred in the formation of the loan application and MFH proposal; or

(3) Technical assistance from another nonprofit organization to assist in the organization's formation and in the development and packaging of a loan application and MFH proposal.

(p) *Educational programs.* Funds may be used for educational programs related to owning and managing a cooperative housing project for the board of directors of a housing cooperative during the first year of the housing operation. Such funds will be available from the initial operating account. The amount of the funds disbursed will be subject to Agency approval and availability of financial resources from the project.

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(q) *Interest and customary charges.* Funds may be used for interest accrued and customary charges necessary to obtain interim financing.

(r) *Purchase housing from an interim lender.* Funds may be used to purchase MFH from an interim lender that holds fee simple title to Agency-financed housing upon which construction commenced and a letter of commitment had been issued by the Agency but the original applicant for whom funds were obligated will not or cannot continue with construction of the housing. In order for the purchase to take place, there must be no outstanding unpaid obligations in connection with the housing.

(s) *Uniform Relocation Assistance and Real Property Acquisition Act of 1970.* Funds may be used for necessary costs incurred to comply with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970.

(t) *Demonstration programs.* With the RHS Administrator's approval, funds may be used to construct demonstration housing involving innovative units and systems which do not meet existing published standards, rules, regulations, or policies but meet the intent of providing affordable, decent, safe, and sanitary rural housing, and are consistent with the requirements of Title V of the Housing Act of 1949.

(u) *Conversion of section 502 properties.* In accordance with § 3560.506, loan funds may be used to finance the conversion of real estate owned units originally financed under section 502 of the Housing Act of 1949, to MFH authorized by section 515 of the Housing Act of 1949.

§ 3560.54 Restrictions on the use of funds.

(a) *Ineligible uses of funds.* Funds may not be used for:

(1) Housing intended to serve temporary and transient residents, with the exception of housing to serve migrant farm workers in accordance with § 3560.554;

(2) Special care facilities or institutional-type homes;

(3) Facilities which are not in compliance with the design requirements specified in § 3560.60;

(4) Any costs associated with space in a housing project that is leased for

commercial use or any commercial facilities except essential service-type facilities when otherwise not conveniently available;

(5) Specialized equipment for training and therapy;

(6) Operating capital for a central dining facility or any items which do not become affixed to the real estate security with the exception of household furnishings for farm labor housing units financed under sections 514 and 516;

(7) Compensation to a loan applicant for value of land contributed in excess of the equity contribution requirements in § 3560.63(c);

(8) Refinancing of an applicant's debt except when the debt involves interim financing or when refinancing is necessary to obtain a release of an existing lien on land owned by a nonprofit organization;

(9) Payment of any fee, charge, or commission to a broker or anyone else as a developer's fee or for referral of a prospective loan applicant or solicitation of a loan;

(10) Payment to any officer, director, trustee, stockholder, member, or agent of an applicant; or

(11) Purchasing land for a site in excess of what is needed, except when:

(i) The applicant cannot acquire an alternate site or cannot acquire the needed land as a separate parcel;

(ii) The applicant agrees to sell the excess land as soon as practical and to apply the proceeds to the loan; and

(iii) Program site density requirements are met in accordance with the site requirements established under § 3560.58.

(b) *Obligations incurred before loan approval.* Funds may not be used for expenses incurred by an applicant prior to approval except when all the following conditions are met:

(1) The debts were incurred for eligible purposes;

(2) Contracts, materials, construction, and any land purchased meet Agency standards and requirements;

(3) Payment of the debts will remove any attached liens and any basis for liens that may attach to the property on account of such debts; and

(4) The appropriate level of environmental review in accordance with 7

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CFR part 1940, subpart G has been completed.

§ 3560.55 Applicant eligibility requirements.

Applicants for off-farm labor housing loans and grants should also refer to § 3560.555, and applicants for on-farm labor housing loans should refer to § 3560.605.

(a) *General.* To be eligible for Agency assistance, applicants must meet the following requirements:

(1) Be a U. S. citizen or qualified alien(s); a corporation; a state or local public Agency; an Indian tribe as defined in § 3560.11; or a limited liability company (LLC), nonprofit organization, consumer cooperative, trust, partnership, or limited partnership in which the principals are U.S. citizens or qualified aliens;

(2) Be unable to obtain similar credit elsewhere at rates that would allow for rents within the payment ability of eligible residents;

(3) Possess the legal and financial capacity to carry out the obligations required for the loan or grant;

(4) Be able to maintain, manage, and operate the housing for its intended purpose and in accordance with all Agency requirements;

(5) With the exception of applicants who are a nonprofit organization, housing cooperative or public body, be able to provide the borrower contribution from their own resources (this contribution must be in the form of cash, or land, or a combination thereof);

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

(7) Not be suspended, debarred, or excluded based on the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs." The list is available to Federal agencies from the U.S. Government Printing Office. Non-federal parties should contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800.

(8) Not delinquent on Federal debt or a Federal judgment debtor, with the

exception of those debtors described in § 3560.55 (b).

(b) *Additional requirement for applicants with prior debt.* If an applicant or the managing general partner of a borrower, as well as any affiliated entity having a 10 percent or more ownership interest, has a prior or existing Agency debt, the following additional requirements must be met.

(1) The applicant must be in compliance with any existing loan or grant agreements and with all legal and regulatory requirements or must have an Agency-approved workout agreement and be in compliance with the provisions of the workout agreement. The Agency may require that applicants with monetary or non-monetary deficiencies be in compliance with an Agency-approved workout agreement for a minimum of 6 consecutive months before becoming eligible for further assistance.

(2) The applicant must be in compliance with the Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and all other applicable civil rights laws.

(c) *Additional requirements for nonprofit organizations.* In addition to the eligibility requirements of paragraphs (a) and (b) of this section, nonprofit organizations must meet the following criteria:

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

(2) The applicant must have in its charter the provision of affordable housing.

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

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

(5) In the case of off-farm labor housing loans and grants, nonprofit organizations must be "broad-based" nonprofit organizations (refer to § 3560.555(a)(1)).

(d) *Additional requirements for limited partnerships.* In addition to the applicant eligibility requirements of paragraphs (a) and (b) of this section, limited partnership loan applicants must meet the following criteria:

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(1) The general partners must be able to meet the borrower contribution requirements if the partnership is not able to do so at the time of loan request.

(2) The general partners must maintain a minimum 5 percent financial interest in the residuals or refinancing proceeds in accordance with the partnership organizational documents.

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

(e) *Additional requirements for Limited Liability Companies (LLCs).* In addition to the applicant eligibility requirements of paragraphs (a) and (b) of this section, LLC loan applicants must meet the following criteria:

(1) One member who holds at least a 5 percent financial interest in the LLC must be designated the authorized agent to act on the LLC's behalf to bind the LLC and carry out the management functions of the LLC.

(2) No new members may be brought into the organization without prior consent of the Agency.

(3) The members must commit to meet the equity contribution requirements if the LLC is not able to do so at the time of loan request.

§ 3560.56 Processing section 515 housing proposals.

Processing requirements for farm labor housing proposals are found in subpart L of this part for Off-Farm and subpart M of this part for On-Farm.

(a) *Notice of Funding Availability (NOFA) responses.* (1) The Agency will publish an annual NOFA with deadlines and other information related to submission of new construction MFH proposals, including expansion of existing MFH in designated places selected in accordance with § 3560.57.

(2) To be eligible for funding consideration, MFH proposals must be submitted in accordance with the NOFA and must provide information requested in the NOFA for the Agency to score and rank the proposals.

(3) MFH proposals needing rental subsidies must include requests for Agency rental assistance or a description of any non-Agency rental subsidy to be used with the proposal and must

provide information required by § 3560.260 (c).

(4) The Agency will consider housing proposals requesting rental assistance in rank order to the extent rental assistance is available. When there is no rental assistance available, the Agency will consider only those housing proposals in rank order that do not require rental assistance.

(b) *Preliminary proposal assessment.* The Agency will make a preliminary assessment of the application using the following criteria and will reject those applications which do not meet all of these criteria:

(1) The proposal was received by the submission deadline specified in the NOFA,

(2) The proposal is complete as specified in the NOFA,

(3) The proposal is for an authorized purpose, and

(4) The applicant meets Agency eligibility requirements.

(c) *Scoring and ranking project proposals.* The Agency will score and rank each housing proposal that meets the criteria of paragraph (b) of this section.

(1) The following criteria will be used to score housing proposals as more completely established in the NOFA:

(i) The presence and extent of leveraged assistance in the proposal for the units that will serve tenants meeting Agency income limits at basic rents comparable to what the rent would be if the Agency provided full financing.

(ii) The proposal will provide rental units in a colonia, tribal land, Rural Economic Area Partnership (REAP) community, Enterprise Zone or Empowerment Community (EZ/EC) or in a place identified in the state Consolidated Plan or a state needs assessment as a high need community for MFH.

(iii) The proposal supports Agency initiatives announced in the NOFA.

(iv) The proposal uses a donated site which meets the following conditions:

(A) The site is donated by a state, unit of local government, public body or a nonprofit organization;

(B) The site is suitable for the housing proposals and meets Agency requirements;

(C) Site development costs do not exceed what they would be to purchase and develop an alternative site;

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(D) The overall cost of the MFH is reduced by the donation of the site; and

(E) A return on investment is not paid to the borrower for the value of the donated site nor is the value of the site considered as part of the borrower's contribution.

(2) The Agency will rank housing proposals based on their scoring.

(i) When proposals have an equal score, preference will be given to Indian tribes as defined in § 3560.11 and local nonprofit organizations or public bodies whose principal purposes include low-income housing that meet the conditions of § 3560.55(c) and the following conditions.

(A) Is exempt from Federal income taxes under section 501(c)(3) or 501(c)(4) of the Internal Revenue code;

(B) Is not wholly or partially owned or controlled by a for-profit or limited-profit type entity;

(C) Whose members, or the entity, do not share an identity of interest with a for-profit or limited-profit type entity;

(D) Is not co-venturing with another entity; and

(E) The entity or its members will not be receiving any direct or indirect benefits pursuant to LIHTC.

(ii) A drawing will be held in the event of a tie score, first for proposals from applicants who meet the conditions of paragraph (c)(2)(i) of this section and next for proposals from applicants for which paragraph (c)(2)(i) of this section is not applicable. Each proposal will be numbered in the order in which it is drawn.

(3) The Agency will request initial loan applications from parties who submitted the housing proposals with the highest ranking, taking into consideration available funds. The Agency will notify non-selected parties with the reasons for their non-selection, and the process that may be used to seek a review of the non-selection decision.

(d) *Processing initial loan applications.* The Agency will review all initial loan applications submitted in accordance with Agency requirements to further evaluate the eligibility and feasibility of the housing proposals. This determination will include:

(1) A review of the preliminary plans and cost estimates,

(2) A market feasibility review,

(3) An Agency site visit to gather preliminary environmental information and determine that the proposed site meets the site requirements of § 3560.58,

(4) A review of the Affirmative Fair Housing Marketing Plan,

(5) An analysis of current credit reports,

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

(7) Completion of the appropriate level of environmental review in accordance with 7 CFR part 1940, subpart G.

(e) *Processing order of initial loan applications.* The Agency will process initial loan applications in rank order, taking into account available funds. If any initial loan applications are withdrawn, rejected, or delayed for a period of time that will not permit funding in the current funding cycle, the Agency will process, in rank order, the next initial loan application as funding levels permit.

(f) *Other assistance.* During each stage of loan application processing, loan applicants must notify the Agency of all other assistance, including other Federal Government assistance proposed or approved for use in connection with the loan application.

(g) *Proposal withdrawal or rejection.* An applicant may withdraw a housing proposal, an initial loan application, or a final loan application at any time during the Agency review process with a written request. The Agency may reject a housing proposal, an initial loan application, or a final loan application at any time during the Agency review process when an applicant fails to provide information requested by the Agency within the time frame specified by the Agency.

(h) *Final applications.* Applicants, with initial loan applications that are selected by the Agency for further processing, must submit a final application, with any additional information requested by the Agency, to confirm and document a housing proposal's eligibility and feasibility, including an affirmative fair housing

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marketing plan. The Agency will notify applicants with initial loan applications that are not selected for further processing of their non-selection, the reasons for their non-selection, and the process that may be used to seek a review of the non-selection decision.

(i) *Rural cooperative housing proposals.* Rural cooperative housing loan proposals will be solicited through a NOFA and will be assessed and processed in the same manner described in paragraphs (a) through (h) of this section.

§ 3560.57 Designated places for section 515 housing.

(a) *Establish a list of designated places.* The Agency will establish a list of designated places from which loan proposals will be accepted. The list is updated each fiscal year and is available when the NOFA is published. The NOFA provides information on obtaining the list. This list will be developed from a list of rural places which the Agency identifies as having the greatest need for multifamily housing based on the following factors:

- (1) Qualification as a rural area as defined in §3560.11,
- (2) Lack of mortgage credit, and
- (3) Demonstrated need for MFH based on:
 - (i) The incidence of poverty,
 - (ii) The existence of substandard housing,
 - (iii) The lack of affordable housing, and
 - (iv) The following high need areas:
 - (A) Places identified in the state Consolidated Plan or similar state plan or needs assessment report,
 - (B) Indian reservations or communities located within the boundaries of tribal allotted or trust land, and
 - (C) EZ/EC or REAP communities.

(b) *Establishing partnership designated place list.* The Agency, in states with an active leveraging program and formal partnership agreement with the state agency, may establish a partnership designated place list consisting of places identified by the partnership as high need areas based on criteria consistent with the Agency's and the state's authorizing statutes. The partnership agreement and partnership des-

ignated place list must have the concurrence of the Administrator.

(c) *Administrator's discretion.* The Administrator may add to the list of designated places any place that is determined to have a compelling need for MFH, for example, a place that has had a substantial increase in population not reflected in the most recent decennial Census of the United States, or a place that has experienced a loss of affordable housing because of a natural disaster.

(d) *Restrictions on loans in certain designated places.* (1) Initial loan applications will not be requested and final loan applications will not be closed for housing proposals in designated places where any of the following conditions exist:

- (i) The Agency has selected another MFH proposal in the designated place for processing.
- (ii) A previously funded Agency, the U.S. Department of Housing and Urban Development (HUD), low-income housing tax credit or other similar assisted MFH in the designated place has not been completed or has not reached projected occupancy levels.
- (iii) Existing assisted MFH in the designated place is experiencing high vacancy levels.
- (iv) A special note rent or other loan servicing tool is pending or in effect for other assisted housing in the designated place, or
- (v) The need in the market area is for additional rental assistance and not additional rental units.

(2) Exceptions to the provisions in §3560.57(d)(1) may be made:

- (i) When a group home is proposed for persons with disabilities in an area where the existing MFH is insufficient or unavailable for their needs; or
- (ii) There is a compelling need for additional MFH, for example when the units that have been approved or are under development represent only a small portion of the total units needed in the community.

[69 FR 69106, Nov. 26, 2004, as amended at 80 FR 9912, Feb. 24, 2015]

§ 3560.58 Site requirements.

(a) *Location.* (1) New construction section 515 loans will be made only in

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designated places selected by the Agency in accordance with the requirements of § 3560.57.

(2) Agency-financed MFH must be located in residential areas as part of established rural communities, except as permitted in § 3560.58(b), and for farm labor housing units financed under sections 514 and 516, which may be developed in any area where a need for farm labor housing exists.

(3) Communities in which Agency-financed MFH is located must have adequate facilities and services to support the needs of tenants.

(4) Housing complexes will not be located in areas where there are undesirable influences such as high activity railroad tracks; adjacent to or near industrial sites; bordering sites or structures which are not decent, safe, or sanitary; or bordering sites which have potential environmental concerns such as processing plants. Sites which are not an integral part of a residential community and do not have reasonable access, either by location or terrain, to essential community facilities such as water, sewerage removal, schools, shopping, employment opportunities, medical facilities, may not be acceptable. Consistent with Federal law and Departmental Regulation, the Agency must conduct an environmental assessment and a civil rights impact analysis before a site can be accepted. Sites may be determined by the Agency to be unacceptable if any of the adverse conditions described in this paragraph exist.

(b) *Structures located in central business areas.* The Agency will consider financing construction or the purchase and substantial rehabilitation of an existing structure located in the central business area of a rural community. With prior consent from the Agency, a portion of such a structure may be designated for commercial use on a lease basis. RHS funds may not be used to finance any cost associated with the commercial space.

(c) *Site development costs and standards.* The cost of site development must be less than or comparable to the cost of site development at other available sites in the community and the site must be developed in accordance with 7 CFR part 1924, subpart C and any appli-

cable standards imposed by a state or local government.

(d) *Densities.* Allowable site densities will be determined based on the following criteria:

(1) Compatibility and consistency with the community in which the MFH is located;

(2) Impact on the total development costs; and

(3) Size sufficient to accommodate necessary site features.

(e) *Flood or mudslide-prone areas.* (1) The Agency will not approve sites subject to 100-year floods when non-floodplain sites exist. The environmental review process will assess the availability of a reasonable site outside the 100-year floodplain.

(2) Sites located within the 100 year floodplain are not eligible for federal financial assistance unless flood insurance is available through the National Flood Insurance Program (NFIP). The Agency will complete Federal Emergency Management Agency (FEMA) Form 81-93, Standard Flood Hazard Determination, to document the site's location in relation to the floodplain and the availability of insurance under NFIP.

§ 3560.59 Environmental requirements.

Under the National Environmental Policy Act, the Agency is required to assess the potential impact of the proposed action on protected environmental resources. Measures to avoid or at least mitigate adverse impacts to protected resources may require a change in the site or project design. Therefore, a site cannot be approved until the Agency has completed the environmental review in accordance with 7 CFR part 1940, subpart G, or any successor regulation. Likewise, the applicant should be informed that the environmental review must be completed and considered before the Agency can make a commitment of resources to the project.

§ 3560.60 Design requirements.

(a) *Standards.* All Agency-financed MFH will be constructed in accordance with 7 CFR part 1924, subpart A and will consist of two or more rental units plus appropriate related facilities. Single family structures may be used for

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group homes and cooperative housing. Also, manufactured homes may be used to create MFH and single family housing originally financed through section 502 of the Housing Act of 1949 may be converted to MFH. Maintenance requirements are listed in §3560.103(a)(3).

(b) *Residential design.* All MFH must be residential in character, except as provided for in §3560.58(b), and must meet the needs of eligible residents.

(c) *Economical construction, operation and maintenance.* Taking into consideration life-cycle costs, all housing must be economical to construct, operate, and maintain and must not be of elaborate design or materials.

(1) Economical construction means construction that results in housing of at least average quality with amenities that are reasonable and customary for the community and necessary to appropriately serve tenants.

(2) Economical operating and maintenance means housing with operational and maintenance costs that allow a basic rent structure less than or consistent with conventional rents for comparable units in the community or in a similar community except that when determined necessary by the Agency to allow for decent, safe and sanitary housing to be provided in market areas where conventional rents are not sufficient to cover necessary operating, maintenance, and reserve costs. Basic rents may be allowed to exceed comparable rents for conventional units, but in no case may the rent exceed 150% of the comparable rent for conventional unit rent level.

(3) In meeting the Agency objective of economical construction, operation and maintenance, housing proposals must:

(i) Contain costs without jeopardizing the quality and marketability of the housing;

(ii) Employ life-cycle cost analyses acceptable to the Agency to determine the types of materials which will reduce overall costs by lowering operation and maintenance costs, even though their initial costs may be higher; and

(iii) Provide assurances that costs will be reduced when the Agency determines that housing costs are not eco-

nomical. If assurances cannot be provided, funding may be withdrawn.

(4) The housing proposal will give maximum consideration to energy conservation measures and practices.

(d) *Accessibility.* All housing will meet the following accessibility requirements.

(1) For new construction of MFH, at least 5 percent of the units (but not less than one) must be constructed as fully accessible units to persons with disabilities. The Uniform Federal Accessibility Standards (UFAS) will be followed. Individual copies of these standards are available from the Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW, Suite 1000, Washington, DC 20004-1111, Telephone: (202) 272-0080, TTY: (202) 272-0082, e-mail address: *info@access-board.gov*. When calculating how many accessible units are required, always round up to the next whole number to ensure the 5 percent requirement is met.

(2) For existing properties that do not have fully accessible units, the 5 percent requirement will apply when making substantial alterations as defined by UFAS. The UFAS defines substantial alteration as "alteration to any building or facility is to be considered substantial if the total cost for a twelve month period amounts to 50 percent or more of the full and fair cash value of the building * * *" UFAS further defines full and fair cash value as "the assessed valuation of a building or facility as recorded in the assessor's office of the municipality and as equalized at one hundred percent (100%) valuation, or the replacement cost, or the fair market value." The 5 percent rule will also apply to repair or renovation work on a single unit. For instance, if a unit is damaged by fire and extensive repair is necessary, to the extent possible the unit is to be converted to a fully accessible unit.

(3) The variety of bedroom quantities of fully accessible units will be comparable to the variety of bedroom quantities of units which are not fully accessible. Borrowers will not, however, be required to exceed the 5 percent requirement simply to have an accessible unit of each bedroom quantity. In addition, accessible units should be

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distributed throughout the complex so not to concentrate the units in one location.

(4) All MFH must meet:

(i) The accessibility requirements as contained in section 504 of the Rehabilitation Act of 1973;

(ii) The requirements of the Fair Housing Amendments Act of 1988;

(iii) The requirements of the Americans with Disabilities Act of 1990, as applicable; and

(iv) All other Federal, State, and local requirements. When architectural standards differ, the most stringent standard will be followed.

§ 3560.61 Loan security.

(a) *General.* Each loan made by the Agency will be secured in a manner that adequately protects the financial interest of the Federal Government throughout the period of the loan.

(b) *Lien position.* (1) The Agency will seek a first or parity lien position on Agency-financed property in all instances. The Agency may accept a junior lien position if the Federal Government's interests are adequately secured.

(2) The Agency will seek a first or parity lien on revenue from rent; Agency, HUD, state or private rental subsidy payments; chattels; assignments; and operating and reserve accounts. The Agency will accept a junior lien position if the Federal Government's interests are adequately secured.

(c) *Liability.* Personal liability will be required of all individual borrowers. Personal liability will not be required for the members or stockholders of any corporation or trust or any partners in a limited partnership.

(d) *Housing and land ownership.* Applicants must own the MFH and related land for which the loan is being requested, or become the owner when the loan is closed or have a leasehold interest in the land. If an applicant is not the owner of the housing and the related land, the following conditions must be met prior to or at loan closing.

(1) A recorded mortgage on the improvements is given as collateral.

(2) The amount of the loan against the collateral does not exceed its estimated security value.

(3) The unexpired term of the lease on the date of loan closing is at least 50 percent longer than the term of the loan and rent charged for the lease does not exceed the rate being paid for similar leases in the area.

(4) The applicant's leasehold interest is not subject to summary foreclosure or cancellation.

(5) The lease permits:

(i) The Agency to foreclose the mortgage and to transfer the lease;

(ii) The Agency to bid at a foreclosure sale or to accept voluntary conveyance of the security in lieu of foreclosure;

(iii) The Agency to occupy the property, sublet the property, or sell the leasehold for cash or credit if the leasehold is acquired through foreclosure, if the Agency accepts voluntary conveyance in lieu of foreclosure, or if the borrower abandons the property; and

(iv) The applicant, in the event of default or inability to continue with the lease and the loan, to transfer the leasehold subject to the mortgage to a transferee that will assume the property ownership obligations.

§ 3560.62 Technical, legal, insurance, and other services.

(a) *Legal services.* Applicants must have written contracts for any legal services that are to be paid out of Agency loan funds.

(b) *Title clearance.* Applicants must obtain title clearance in accordance with the provisions of 7 CFR part 1927, subpart B applicable to title clearance, which would include title insurance or title opinion, unless the loan applicant is leasing the property or is an organization or an individual with special title or loan closing problems, in which case title clearance and related legal services will be obtained in accordance with procedures approved by the Agency.

(c) *Architectural services.* Applicants must obtain a written contract for architectural services in accordance with the provisions of 7 CFR part 1924, subpart A.

(d) *Insurance.* Applicants must have property and liability coverage at loan closing as well as flood insurance, if needed. Fidelity coverage must be in force as soon as there are assets within

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the organization and it must be obtained before any loan funds or interim financing funds are made available to the borrower. At a minimum, applicants must meet the property, liability, flood, and fidelity insurance requirements in § 3560.105.

(e) *Surety bonding.* Applicants must comply with the surety bonding provisions of 7 CFR part 1924, subpart A.

§ 3560.63 Loan limits.

(a) *Determining the security value.* The security value for an Agency loan is the lesser of the total development cost (exclusive of any developer's fee as provided by paragraph (d)(2) of this section) or the housing project's security value as determined by an appraisal conducted in accordance with subpart P of this part, minus any prior or parity liens on the housing project. For purposes of determining security value:

(1) Total development cost must be calculated excluding costs not considered allowable under § 3560.54(a), and excluding costs related to compliance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970.

(2) The appraisal, which will determine the market value, subject to restricted rents, will be obtained by the Agency and conducted in accordance with subpart P of this part.

(b) *Limitations on loan amounts.* The Agency will not make any loans without adequate security. The following limitations will be set on loan amounts:

(1) For all loan applicants who will receive benefits from the low-income housing tax credit program, the amount of Agency financing for the housing will not exceed 95 percent of the security value available for the Agency loan.

(2) For all loan applicants who will not receive low-income housing tax credit benefits and who are comprised solely of nonprofit organizations, consumer cooperatives, or state or local public agencies, the amount of the loan will be limited to the security value available for the Agency loan, plus the 2 percent initial operating capital and any necessary relocation costs incurred.

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(3) For all other loan applicants who will not receive low-income housing tax credit benefits, the loan amount will be limited to no more than 97 percent of the security value available for the Agency loan.

(c) *Equity contribution.* Loan applicants, with the exception of nonprofit organizations, consumer cooperatives, or state or local public agencies who will not be receiving tax credits, must make an equity contribution from their own resources.

(1) Loan applicants who will receive benefits from the low-income housing tax credit program must make an equity contribution in the amount of 5 percent of the Agency loan. The maximum Agency loan will be determined in accordance with § 3560.63(b).

(2) Loan applicants who will not receive benefits from the low-income housing tax credit program and are not nonprofit organizations, consumer cooperatives, or state or local public agencies must make an equity contribution in the amount of 3 percent of the Agency loan. The maximum Agency loan will be determined in accordance with § 3560.63(b).

(d) *Review of assistance from multiple sources.* The Agency will analyze Federal Government and other assistance provided to any MFH project to establish the maximum loan amount and to assure that the assistance is not more than the minimum necessary to make the housing affordable, decent, safe, and sanitary to potential tenants.

(1) *Determining minimum assistance.* For purposes of determining minimum assistance, the total amount paid for builder's profit, overhead, and general requirements may not exceed 21 percent of the construction contract. Unless specified differently in a Memorandum of Understanding between the Agency and the state agency that allocates low-income housing tax credits, limits will be those specified in § 3560.53(1).

(2) *Developer's fee.* While, in accordance with § 3560.54(a)(9), payment of a developer's fee is not an eligible use of Agency loan funds, the Agency will include in total development costs a developer's fee paid from other sources when analyzing the Federal Government assistance to the housing. The

Agency may recognize a developer's fee paid from other sources on construction or rehabilitation of up to 15 percent of the total development costs authorized for low-income housing tax credit purposes, or by another Federal Government program. Likewise for transfer proposals that include acquisition costs, the developer's fee on the acquisition cost may be recognized up to 8 percent of the acquisition costs only when authorized under a Federal Government program providing assistance. The developer's fee is not included in determining the Agency's maximum debt limit and loan amount.

(e) *Limits on equity loans.* For equity loans to avert prepayment, the amount of the Agency equity loan will be limited to no more than the difference between 90 percent of market value of the property when appraised as conventional unsubsidized MFH and all current unpaid balances. For information on appraisal issues, refer to subpart P of this part.

(f) *Cost overruns.* (1) All applicants must agree in writing to provide funds at no cost to the housing and without pledging the housing as security to pay any cost for completing planned construction after the maximum debt limit is reached.

(2) After loan approval, the Agency will only approve cost increases for housing proposals involving new construction or major rehabilitation when the additional costs will not cause the limits specified in §3560.53(1) or the maximum debt limit to be exceeded and the cost increases were caused by:

- (i) Unforeseen factors that are determined by the Agency to be beyond the borrower's control;
- (ii) Design changes required by the Agency, state, or the local government; or
- (iii) Financing changes approved by the Agency.

§3560.64 Initial operating capital contribution.

Borrowers are required to make an initial operating capital contribution to the general operating account in the amount of at least 2 percent of the total development cost or appraised value, whichever is less.

(a) Borrowers that are nonprofit organizations, consumer cooperatives, or state or local public agencies and are not receiving low-income housing tax credits, may use loan funds for their initial operating capital contribution. All other borrowers must fund the initial operating capital contribution from their own resources.

(b) Borrowers must provide to the Agency for approval a list of materials and equipment to be funded from the general operating account for initial operating expenses. As specified in §3560.304(b), initial operating capital may be used only to pay for approved budgeted expenses. If total initial operating expenses exceed 2 percent, the additional amount must be paid by the borrower from its own resources, except that borrowers meeting the provisions of §3560.64(a) who do not have sufficient resources for this purpose may request Agency assistance. Withdrawals from the reserve account will not be approved for such expenses.

(c) Borrowers must provide the Agency with documentation of their initial operating capital contribution deposited into the general operating account prior to the start of construction or loan closing, whichever comes first, and such funds thereafter, may only be used for authorized budgeted purposes.

(d) If the conditions specified in §3560.304(c) are met, funds contributed as initial operating capital may be returned to the borrower.

§3560.65 Reserve account.

(a) For new construction, to meet major capital expenses of a housing project, applicants must establish and fund a reserve account that meets the requirements of §3560.306. The applicant must agree to make monthly contributions to the reserve account pursuant to a reserve account analysis which sets forth how the reserve account funds will meet the capital needs of the property over an acceptable 20-year period. The reserve account analysis is based on either a Capital Needs Assessment or life cycle cost analysis, provided and acceptable to Rural Development by the applicant. Adjustments may be made to the contribution amount at 5 or 10-year intervals, either through an updated Capital

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Needs Assessment or as part of the original life cycle cost analysis. The cost of conducting either a Capital Needs Assessment or life cycle cost analysis will be paid for by the applicant. The cost of the initial Capital Needs Assessment or life cycle cost analysis may be included in the loan financing.

(b) For ownership transfers or sales, the requirements of §3560.406(d)(5) will be met.

(c) For other existing properties, at a minimum the borrower must agree to make monthly contributions to the reserve account at the rate of 1 percent annually of the amount of total development cost until the reserve account equals 10 percent of the total development cost.

[77 FR 40255, July 9, 2012]

§ 3560.66 Participation with other funding or financing sources.

(a) *General requirements.* The Agency encourages the use of funding or financing from other sources in conjunction with Agency loans. When the Agency is not the sole source of financing for MFH, the following conditions must be met.

(1) The Agency will enter into a participation (or intercreditor) agreement with the other participants that clearly defines each party's relationship and responsibilities to the others.

(2) The rental units that will serve tenants eligible for housing under the Agency's income standards must meet Agency standards and the number of units that will serve the Agency's tenants are at least equal to the units financed by the Agency.

(3) All rental units must be operated and managed in compliance with the requirements of the Agency and the other sources. To the extent these requirements overlap, the most stringent requirement must be met. The Agency may negotiate the resolution of overlapping requirements on a case-by-case basis; however, at a minimum, Agency requirements must be met.

(4) If the number of units subject to the LIHTC rent and income restrictions is greater than the number of units projected to receive Agency rental assistance (RA) or similar tenant subsidy, the market feasibility docu-

mentation must clearly reflect a need and demand by LIHTC income-eligible households financially able to afford the projected rents without such a subsidy for the units not receiving RA or similar tenant subsidy.

(b) *Rental assistance.* The Agency may provide rental assistance with MFH loans participating with other sources of funding under the following conditions:

(1) The Agency's loan equals at least 25 percent of the housing's total development cost.

(2) The rental assistance is provided only to those rental units where the basic rents do not exceed what basic rents would have been had the Agency provided full financing.

(3) The provisions of subpart F of this part are met.

(c) *Security requirements.* The security requirements of §3560.61 must be met for all Agency-financed MFH participating with other sources of funding.

(d) *Reserve requirements.* Reserve account requirements will be determined on a case-by-case basis, taking into consideration the reserve requirements of the other participating lenders, so that the aggregate fully funded reserve account is consistent with the requirements of §3560.65. Reserve requirements and procedures for reserve account withdrawals must be agreed upon by all lenders and included in the intercreditor or participation agreement.

(e) *Design requirements.* Housing and related facilities must be planned and constructed in accordance with 7 CFR 1924, subparts A and C. If housing includes non-Agency financed common facilities, the following conditions must be met:

(1) The non-Agency-financed common facility's operating and maintenance costs must be paid through collection of a user fee from residents who use the facility,

(2) The non-Agency-financed common facility must be designed and operated with appropriate safeguards for the health and safety of tenants, and

(3) The facility must be fully available and accessible to all tenants.

§ 3560.67 Rates and terms for section 515 loans.

Rates and terms for farm labor housing loans are found in subpart L of this part for Off-Farm and subpart M of this part for On-Farm.

(a) *Interest.* Loans will be closed at the lower of the interest rate in effect at the time of loan approval or the interest rate that is in effect at time of loan closing.

(b) *Interest credit.* The Agency will provide interest credit to subsidize the interest on the Agency loan to a payment rate of 1 percent for all of the Agency's initial and subsequent loans.

(c) *Amortization period and term.* (1) Except for manufactured housing, loans will be amortized over a period not to exceed the lesser of the economic life of the housing being financed or 50 years and paid over a term not to exceed 30 years from the date of loan. The Agency may make a loan to the borrower to finance the final payment of a loan in accordance with § 3560.74.

(2) Loans for manufactured housing will be amortized and paid over a term not to exceed 30 years as specified in § 3560.70(c).

§ 3560.68 Permitted return on investment (ROI).

(a) *Permitted return.* Borrowers operating on a limited profit basis will be permitted a return not to exceed 8 percent of their required initial investment determined at the time of loan approval in accordance with § 3560.63(c).

(b) *Calculation of permitted return.* The permitted return will be based on the borrower's contributions from their own resources, which, when added to the Agency loan amount and all sources of funding or financing, do not exceed the security value of the MFH project as specified in § 3560.63(a).

(1) Proceeds received by the borrower from the syndication of low-income housing tax credit and contributed to the MFH project may be considered funds from the borrower's own resources for the portion of the proceeds which exceeds:

(i) The allowable developer's fee determined by the state agency administering the low-income housing tax credit, and

(ii) The borrower's expected contribution to the transaction, as determined by the state agency administering the low-income housing tax credit.

(2) A building site contributed by the borrower will be appraised by the Agency to determine its market value. A return may not be allowed on the amount above the equity contribution required by § 3560.63(c) if the market value as determined by the Agency, when added to the loan and grant amounts from all sources, exceeds the security value of the MFH project as specified in § 3560.63(a).

(c) *Return on additional investment.* The initial investment may exceed the equity contribution required by § 3560.63(c) and a return allowed on the investment if the additional return does not increase basic rents and rental assistance costs above what basic rents and rental assistance costs would have been with the Agency financing 95 or 97 percent of the total development cost.

(d) *Compensation to nonprofit organizations.* Although nonprofit organizations are not eligible to take a return on investment, with prior Agency approval, cooperatives and nonprofit organizations may use housing project funds to pay asset management expenses directly attributable to ownership responsibilities, as described in § 3560.303(b)(1)(ii).

§ 3560.69 Supplemental requirements for congregate housing and group homes.

(a) *General.* Congregate housing and group homes must be planned and developed in accordance with 7 CFR part 1924, subparts A and C.

(b) *Design criteria.* Congregate housing and group homes must be designed to accommodate all special services that will be provided.

(c) *Services.* Congregate housing and group home loan applicants, as part of their loan request, must submit a plan to make affordable services available to residents to assist the residents in living independently. The plan must address the availability of this assistance from service providers throughout the term of the loan.

(1) For congregate housing, the resident services plan must address how

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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

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unit, a bedroom, or a part of a bedroom. Agency rental assistance will be made available to tenants sharing a unit so long as the total rent for the unit does not exceed conventional rents for comparable units in the area or a similar area.

§ 3560.70 Supplemental requirements for manufactured housing.

(a) *Design requirements.* Manufactured housing must meet the requirements of 7 CFR part 1924, subpart A applicable to manufactured housing.

(b) *Eligible properties.* The manufactured housing must include two or more housing units. The applicant will become the first owner purchasing the manufactured homes for purposes other than resale. The following exceptions may be made to this provision:

(1) A housing proposal may include the purchase of the real property with existing manufactured housing which will be redeveloped with the placement of new manufactured homes.

(2) A housing proposal may include the rehabilitation of existing manufactured housing only if the units to be rehabilitated are currently financed by the Agency. The proposal will include the results of the applicant's consultation with the manufacturer to determine if the proposed rehabilitation work will affect the structural integrity of the unit and, if so, the statement will include an explanation as to how.

(c) *Terms.* The maximum loan amount will be determined in accordance with the requirements of § 3560.63. The amortization period and term of loans for manufactured housing will not exceed the lesser of the economic life of the housing being financed or 30 years.

(d) *Security.* A mortgage or deed of trust will be taken on the entire property purchased or improved with the loan. The encumbered property must be covered under a standard real estate title insurance policy or attorney's title opinion that identifies the housing as real property and insures or indemnifies against any loss if the manufactured home is determined not to be part of the real property. The property must be taxed as real estate by the jurisdiction where the housing is located

if such taxation is permitted under applicable law when the loan is closed.

(e) *Special warranty requirements.* The general contractor or dealer-contractor, as applicable, must provide a warranty in accordance with the provisions of 7 CFR part 1924, subpart A.

(1) The warranty must establish that the manufactured homes, foundations, positioning and anchoring of the units to their permanent foundations, and all contracted improvements, are constructed in conformity with applicable approved plans and specifications.

(2) The warranty must include provisions that the manufactured homes sustained no hidden damage during transportation and, for double-wide units, that the sections were properly joined and sealed.

(3) The general contractor or dealer contractor must warrant that the manufacturer's warranty is in addition to and does not diminish or limit all other warranties, rights, and remedies that the borrower or lender may have.

(4) The seller of the manufactured homes must deliver to the borrower the manufacturer's warranty with an additional copy for RHS. The warranty must identify the units by serial number.

§ 3560.71 Construction financing.

(a) *Construction financing plan.* Prior to loan approval, applicants must submit to the Agency for its concurrence a plan for the construction financing and securing of the loan.

(b) *Interim financing.* Interim financing is required by the Agency for any construction, except as noted in paragraph (c) of this section.

(1) The Agency reserves the right to review and approve the interim financing arrangements proposed by the applicant.

(2) When interim financing is used, the Agency will obligate the funds and provide an interim financing letter to the lender that will confirm the procedures and conditions for the construction financing. The take-out loan will be closed and the interim lender paid off when the conditions of the interim financing letter have been met.

(3) The applicable provisions of 7 CFR part 1924, subpart A will be used to monitor the construction.

(4) An environmental review must be completed in accordance with 7 CFR part 1940, subpart G, prior to issuance of the interim financing letter.

(c) *Multiple advances.* When interim financing is not available or when it is in the best interest of the Federal Government, the Agency may provide for multiple advances of the funds to cover the cost of construction.

(1) The Agency will review and approve the multiple advances proposed by the borrower.

(2) When multiple advances are used, the Agency will close the loan prior to any advancement of funds and the relevant provisions of 7 CFR part 1924, subpart A will be used to monitor the construction.

(3) The loan check will be handled in accordance with 7 CFR part 1902, subpart A.

§ 3560.72 Loan closing.

(a) *Requirements.* Loans will be closed in accordance with 7 CFR part 1927, subpart B and any state supplements. In all cases, the borrower must:

(1) Provide evidence that an Agency-approved accounting system is in place;

(2) Execute a restrictive-use contract acceptable to the Agency that establishes the borrower's obligation to operate the housing for program purposes for the term of the Agency loan;

(i) For all section 514 loans, except as provided in § 3560.621, made pursuant to a contract entered into on or after the effective date of this regulation, the following language will be included in the mortgage and deed of trust: "The borrower and any successors in interest agree to use the housing for the purpose of housing people eligible for occupancy as provided in sections 514 and 516 of title V of the Housing Act of 1949, and Rural Housing Service regulations then in effect. The restrictions are applicable for a term of 20 years from the date on which the last loan was closed. No eligible person occupying the housing will be required to vacate nor any eligible person denied occupancy for housing prior to the close of such period because of a prohibited change in the use of the housing. A tenant or person wishing to occupy the housing may

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seek enforcement of this provision as well as the Government.”

(ii) All other loans are subject to restrictive-use provisions as outlined in subpart N of this part.

(3) Provide evidence that construction financing arrangements are adequate when interim financing is going to be used;

(4) Provide evidence that all the funds from other sources as proposed in the application are available and that there have been no changes in the Sources and Uses Comprehensive Evaluation (SAUCE).

(5) Provide evidence of the title to all security required by the Agency;

(6) Provide a certification that all construction in the case of interim financing has been or, in the case of multiple advances, will be paid;

(7) Provide, in the case of interim financing, a dated and signed statement from the owner's architect certifying to substantial completion of the housing project;

(8) Provide a certification that all construction in the case of interim financing has been or, in the case of multiple advances, will be in accordance with the plans and specifications concurred in by the Agency;

(9) Provide evidence, if applicable, that the conditions of the interim financing letter have been met; and

(10) Attend a pre-occupancy conference with the Agency.

(b) *Cost certification.* In all cases, the borrower must report actual construction costs. Whenever the State Director determines it appropriate, and in all situations where there is an identity of interest as defined in 7 CFR 1924.4 (i), the borrower, contractor and any subcontractor, material supplier, or equipment lessor having an identity of interest must each provide certification as to the actual cost of the work performed in connection with the construction contract in accordance with 7 CFR part 1924, subpart A. The construction costs must also be audited in accordance with Governmental Auditing Standards, by a Certified Public Accountant (CPA). In some cases, the Agency will contract directly with a CPA for the cost certification. Funds that were included in the loan for cost certification and which are ultimately

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not needed because Agency contracts for the cost certification will be returned on the loan. Agency personnel will utilize exhibit M of 7 CFR part 1924, subpart A to assist in the evaluation of the cost certification process.

(c) *Notification of loan cancellation.* Loans may be canceled after approval and before loan closing. The Agency will notify all parties of the cancellation and the reasons for the cancellation in accordance with 7 CFR part 1927, subpart B.

§ 3560.73 Subsequent loans.

(a) *Applicability.* The Agency may make a subsequent loan to a borrower to complete, improve, repair, or make modifications to MFH initially financed by the Agency or for equity for preservation purposes. Loan requests to add units to comply with accessibility requirements may be processed as a subsequent loan; however, loan requests to add units to meet market demand will be processed as an initial loan request and must compete under the NOFA.

(b) *Application requirements and processing.* Upon receipt of a subsequent loan request, the Agency will inform the applicant what information is required based on the nature and purpose of the loan request. Subsequent loan requests do not have to compete for funding against initial loan proposals.

(c) *Amortization and payment period.* Subsequent loans will be amortized over a period not to exceed the lesser of the economic life of the housing being financed or 50 years and paid over a term not to exceed the lesser of the economic life of the housing or 30 years from the date of the loan.

(d) *Equity contribution.* Applicants for subsequent loans must make contributions on the loans in the same proportion as outlined in § 3560.63(c). Loan applicants will not be given consideration for any increased equity value that the property may have since the initial loan.

(1) Excess initial investment on an initial loan may be credited toward the required investment on a subsequent loan.

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(2) An initial operating capital contribution to the general operating account as described in § 3560.64 is required for a subsequent loan approved under the conditions set in § 3560.63(f) to complete housing construction but is not required for a subsequent loan to repair or improve existing housing.

(e) *Environmental requirements.* Subsequent loans are subject to the completion of an environmental review in accordance with 7 CFR part 1940, subpart G.

(f) *Design requirements.* All improvements, repairs, and modifications will be in accordance with 7 CFR part 1924, subparts A and C.

(g) *Architectural services.* The applicant must obtain architectural services when any of the following conditions exist:

- (1) Enclosed space is being added,
- (2) When required by state law, and

(3) When the Agency determines that the work being proposed requires architectural services.

(h) *Restrictive-use requirements.* Subsequent loans are subject to restrictive-use provisions as outlined in § 3560.662(a) and borrowers must execute a restrictive-use contract in accordance with § 3560.72(a)(2).

(i) *Designation changes from rural to nonrural.* If the designation of an area changes from rural to nonrural after the initial loan is made, a subsequent loan may be made only to make necessary improvements and repairs to the property or for equity when needed to avert prepayment.

(j) *Agency's discretion.* The Administrator may approve a subsequent loan in a place that is not on the list of designated places as a servicing action, for example, to replace units destroyed by a natural disaster.

§ 3560.74 Loan for final payments.

(a) *Use.* The Agency may finance final payments for borrowers holding existing loans for which the Agency approved an amortization period that exceeded the term of the loan.

(b) *Requirements.* The Agency may finance final payments if documentation regarding the market area shows that a need for low-income rental housing still exists for that area and one of the following conditions has been met.

(1) It is more cost efficient and serves the tenant base more effectively to maintain existing MFH than to build another property in the same location; or

(2) The MFH has been maintained to such an extent that it can be expected to continue providing affordable, decent, safe and sanitary housing for 20 years beyond the date of the loan to finance a final payment; and

(3) Funds are available.

(c) *Term.* The term of Agency loans to finance final payments will not exceed 20 years from the date of the initial loan final payment.

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§ 3560.100 OMB control number.

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

Subpart C—Borrower Management and Operations Responsibilities

§ 3560.101 General.

This subpart sets forth borrower obligations regarding management and operations of multi-family housing (MFH) projects financed by the Agency. As noted in § 3560.6, the borrower requirements listed in this subpart must be complied with by the borrower. The borrower may designate in writing a person to act as the borrower's authorized agent.