



Rural Development

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TO: State Directors
Rural Development

ATTENTION: Program Directors and Coordinators
Multi-Family Housing

FROM: Joel C. Baxley /s/ **Joel C. Baxley**
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SUBJECT: Fiscal Year 2015 Management Control Review
for Multi-Family Housing Section 515 Rural Rental Housing
and Section 514/516 Off-Farm Labor Housing Loan Servicing

The purpose of this Unnumbered Letter (UL) is to address the concerns raised as a result of the fiscal year (FY) 2015 Management Control Review (MCR) conducted for the Section 515 Rural Rental Housing program and the Section 516 Off-Farm Labor Housing program. As a result of the MCR Team's review of project servicing files and site visits, several internal program weaknesses were identified. Those weaknesses are addressed in this UL.

Reserve Account Usage for Borrowers

The MCR revealed that the Multi-Family Housing (MFH) Loan Servicers were not ensuring that the use of reserve account funds was in accordance with the Agency approved Capital Needs Assessment (CNA). The Agency recommends that reserve account funding levels be evaluated periodically to ensure sufficient funds are available to address the capital requirements of the property. In accordance with the Multi-Family Housing Asset Management Handbook (HB-2-3560), Chapter 5.7, a CNA identifies the immediate and future capital needs of a project. It is based on a physical inspection and a life-cycle analysis of a project's major building components systems, equipment, and exterior amenities. The CNA includes a replacement schedule that anticipates the useful life of each item, and estimates when they will need to be replaced and the cost. Once the CNA is approved, borrowers are expected to only use reserve account funds in accordance with the schedule set forth in the CNA. Not expending reserve account funds in accordance with the schedule in the CNA could result in deferred maintenance and physical deterioration over time, which creates a potential risk to the Agency's security.

Multifamily Preservation and Revitalization (MPR) Demonstration program borrowers are limited as to how reserve account funds can be used. In accordance with the MPR Conditional Commitment, paragraph 27. D. Reserve for Replacement, "No withdrawals shall be made for items other than actual costs of building system replacements, and no withdrawals shall be made with respect to building systems that were not included in such capital needs assessment, unless authorized by the Agency."

EXPIRATION DATE:
April 30, 2019

FILING INSTRUCTIONS:
Housing Instructions

Once fully implemented, the upload and tracking of the CNA within the Multi-Family Information System (MFIS) will greatly improve the ability of the Loan Servicers to monitor and track reserve account fund usage for projects with a CNA, and will lessen the potential for misuse of reserve account funds.

Required Site Inspections

The MCR results show that all of the required site inspections are not being completed. A full Supervisory Visit has 3 components: a physical inspection, an on-site review, and compliance review. Multi-Family Housing HB-2-3560, Chapter 9.10(C) states that Supervisory Visits must be conducted at least once every 3 years, after the initial Post Occupancy Review, completed prior to the end of the fiscal year and should be conducted more frequently for projects with management that is unfamiliar with Agency requirements, or for projects experiencing occupancy or operational difficulties. A site inspection is required annually for properties having 1 or more open physical findings. States that will not be able to complete all required site inspections should inform their National Office Portfolio Management Analyst, and provide an action plan for completing the overdue site inspections.

Recommending Workout Agreements

The MCR results determined that owners of properties having unresolved violations did not enter into a Workout Agreement. Borrowers are expected to seek resolutions to violations expeditiously. In accordance with HB-3-3560, Chapter 10.11, after the two servicing letters (Handbook Letter 301 and 302 (3560)), have been sent by the Loan Servicer notifying the borrower of problems with a project, a Project Suitability Evaluation should be performed, in accordance with the procedure outlined in Chapter 6.2 of HB-3-3560. If it is then determined that pursuing a Workout Agreement with the borrower would be in the best interest of the Agency, a meeting must be held with the borrower. Guidance for meeting with non-compliant borrowers can be found in HB-3-3560, Chapter 10.12, "Meeting with the Borrower."

If the borrower fails to meet with the Agency after the meeting has been requested, or if no suitable resolution is offered by the borrower, then the Loan Servicer should proceed as directed in HB-3-3560, Chapter 10.14, by issuing a "*Report on Real Estate Problem Case*," Form RD 3560-56, to the State Director. If it has been determined that enforcement actions are the best course of action, guidance can be found in HB-3-3560, Chapter 10.15, "Enforcement Actions."

MFH Project Accessibility

The results of the Project Accessibility portion of the MCR revealed that most properties reviewed on-site had some degree of non-compliance with nationally recognized physical accessibility standards, including several recently renovated properties. In some cases, there was no Self Evaluation/Transition Plan in place for the property to address accessibility concerns in the future. Full Agency guidance on Physical Accessibility is set forth in Appendix 5 of HB-2-3560, "Civil Rights Laws' Accessibility Requirements That Apply to the Multi-Family Housing Program." To emphasize the Physical Accessibility requirements of existing multi-family properties from a loan servicing perspective, Program Support Staff developed Exhibit 1, "MFH Accessibility Guidelines."

Should you have any questions regarding this UL, please contact the Multi-Family Housing Portfolio Management Division at (202) 690-1436.

Attachment

MFH Accessibility Guidelines

MFH projects typically fall under the jurisdiction of one (or more) of 4 accessibility regulations:

Regulations	Key Dates	Compliance Documents	Residential Units	Common Areas
“Retroactive” UFAS (504 Rehab Act) (see 7 CFR 15b)	Before June 10, 1982	Self- Evaluation & Transition Plan	Five percent accessible units <u>OR</u> handle under reasonable accommodation.	Accessible
UFAS (504 Rehab Act)	June 10, 1982 Onwards	Self- Evaluation Plan, and if needed, Transition Plan	Five percent of units accessible.	Accessible
FHA (Fair Housing Act)	March 13, 1991 Onwards	If Needed	In covered multi- family dwellings, only first floor units in non- elevator buildings adaptable design. If elevator, all units are adaptable design.	Accessible
ADA	January 26, 1993 Onwards	If Needed	If recipient is State, local Government, or public housing authority, Title II also applies and either UFAS or Fair Housing Accessibility Guidelines.	Accessible “Public” Areas (Title III)

(UFAS = Uniform Federal Accessibility Standards)

All recipients must conduct a Self-Evaluation Plan on its entire operations and where physical barriers exists and the property does not meet the Accessibility Standards, a Transition Plan is required. Details on this process are set forth on pages 3-4.

The general accessibility requirements of Retro-UFAS, UFAS, FHA, and ADA are set forth on pages 5-7.

Management Plans should be expanded to address accessibility issues. Additional topics recommended for all Management Plans are set forth on page 8.

Self-Evaluation & Transition Plan

If not already done, a Self-Evaluation Plan is required and if physical barriers to accessibility exists, a Transition Plan is required for:

- all retro-UFAS projects
- all public body borrowers
- all projects receiving subsequent USDA assistance (rehabilitation or equity loans, transfers)
- other projects when determined necessary by USDA

Retain the Self-Evaluation & Transition Plan on-site (available to the public upon request).

Self-Evaluation – in consultation with interested parties (persons with disabilities, disability organizations, or groups representing individuals with disabilities), evaluate current policies and practices, including application process and procedures; household rules; tenancing and eviction procedures; tenant boards; outreach; etc., and modify them to eliminate any that may result in denial of equal opportunity and access to the program in its entirety. A Self-Evaluation Plan is a fluid document that should be reassessed when concerns arise or annually.

Self-Evaluation document consists of:

- a. List of persons consulted
- b. Description of areas examined and any problems identified
- c. Description of modifications made and remedial steps taken
- d. Strategy for budgeting to fund the remaining barriers (if applicable)

Transition Plan – in consultation with interested parties (persons with disabilities, disability organizations, or groups representing individuals with disabilities) details all steps (with timeframe) to be taken to correct all physical accessibility obstacles associated with the project.

Transition Plan consists of:

- a. Identify physical obstacles
- b. Identify steps that will be taken to correct obstacles
- c. Schedule for implementation, if more than 1 year process (but not more than 3 years)
- d. Identify person responsible for implementation
- e. Strategy for budgeting to fund the remaining physical modifications.

Problems in completing the transition:

- Transition Plans as a result of the Self-Evaluation Plan identification of physical barriers are to be completed as soon as possible and in not less than 3 years. If required accessibility cannot be achieved after 3 years, the borrower will review and update the Transition Plan annually until the plan is accomplished.
- “Structurally Impractical” – see Retro-UFAS projects
- “Undue Financial Burden” – generally, USDA will approve budgets necessary to accomplish a Transition Plan. USDA (except the Secretary of Agriculture) cannot waive accessibility requirements because of financial impracticability. And, to date, no Secretary of Agriculture has waived an accessibility item due to “undue financial burden”.

Retro-UFAS Projects

Prepare a Self-Evaluation Plan & Transition Plan to achieve the following:

The goal is to ensure that the entire program is accessible to individuals with disability. The program consists of the operations, administration, and physical property assessment.

Common areas accessible

- Parking – car accessible (van accessible space for on-site office is ADA requirement)
- Walkways & Ramps – accessible routes to all essential facilities
- Office – accessible, TDD or “equally effective communication system”
- Community Room – accessible
- Laundry Room – accessible, at least 1 front loading washer & dryer
- Mailbox – accessible route, within reach range
- Trash Area – accessible route, within reach range
- Playground, picnic tables, grills, other site amenities – accessible route (remember “if you provide one, a minimum of one must be accessible”)
- Common use Restroom – accessible, 5’ turning circle only if >1 lavatory and commode.
- The term accessible consists of various requirements per accessibility guidelines.

Residential Units

- Recommend up to 5 percent of units UFAS-accessible. At any time, make one (or more) accessible or adaptable upon request as “reasonable accommodation”
- If not structurally feasible, have referral agreement with another project with accessible units

Problems in Completing the Transition Plan

- When the Agency determines it is structurally impractical to fix an accessibility problem, the project is accessible “to the extent possible”. The project borrower should establish a referral agreement with another project in the market area with accessible units. If this is not possible, the “program” has not been made accessible.
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UFAS Projects

Common Areas Fully Accessible:

- Parking – car accessible; sign; striped 5’ aisle (van accessible is ADA rule)
- Walkways & ramps – accessible routes to all essential facilities
- Office – accessible, TDD or “equally effective communication system” (e.g. relay service)
- Community room – accessible
- Laundry – accessible, at least 1 front-loading washer & dryer
- Mailbox – accessible route, within reach range
- Trash area – accessible route, within reach range
- Playground, picnic tables, grills, other site amenities – accessible route
- Common use restroom – accessible, 5’ turning circle only if >1 lavatory and commode
- The term accessible consists of various requirements per accessibility guidelines.

Accessible Residential Units

- Five percent of units accessible, and these accessible units are in a size mix comparable with the mix of unit sizes at the project. Where structurally feasible, the units are dispersed throughout the complex. If elevator exists, units on various floors.
- Lever Handle – only required on main entrance door to accessible unit
- Widths & Thresholds – accessible route into and through with maneuvering room
- Kitchen – maneuvering room at sink & counters, lever faucets, insulated pipes at sink, wall cabinets mounted at 48” above floor, 30” x 34” workspace.
- Switches, Outlets, Controls – at accessible heights (including stove hood)
- Bathroom – grab bars required in place per UFAS (unique to USDA), lever faucets, shower/tub seat, 5’ turning circle not required in residential bathroom.
- HUD Project-Based Section 8 Projects only – an additional 2 percent of units must be accessible to visually or hearing impaired.
- The term accessible consists of various requirements per accessibility guidelines.

If needed, prepare Transition Plan to achieve the above.

+ FHA projects

Common Areas Fully Accessible: (Note – UFAS requirements meet FHA common use requirements.)

- Accessible entrance on an accessible route
- Accessible public and common-use areas
- Usable doors
- The term accessible consists of various requirements per accessibility guidelines.

Residential Units

- All first floor/ground level units in 4-unit buildings must be of “adaptable” design. If elevator exists all units within building must be adaptable design.
- Usable Doors – all doors within the unit
- Accessible routes into and through the dwelling unit
- Accessible light switches, electrical outlets, and environmental controls
- Reinforced walls in bathroom (USDA requires grab bars in the 5 percent accessible units)
- Usable kitchens and bathrooms
- The term accessible consists of various requirements per accessibility guidelines.

If needed, Transition Plan to achieve the above.

+ ADA Projects

Public Areas Fully Accessible:

- Parking – van accessible; 8' aisle

Accessible Residential Units

- Title III of the** ADA applies only to public spaces. ADA does not apply to residential units. ADA Title II of ADA applies to recipient (State, local Government, municipality, and public housing authorities) receiving federal financial assistance.

If needed, Transition Plan to achieve the above.

Management Plans

The following additional topics are recommended for inclusion in all management plans.

5. Leasing and occupancy policies

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- e. Reasonable accommodation. Describe how applicants and tenants will be made aware that the owner will provide reasonable accommodations. How will request be handled and who is authorized to approve them? What is the timeframes for responding to request? If recipient employs 15 or more employees, a Section 504 Coordinator must be identified.
- f. TDD or equally effective communication system. Describe the telecommunication device the project will use for the hearing impaired. Explain how the public will be made aware of this.
- g. Hearing and sight impaired applicants and tenants. Describe accommodations that will be made. Examples include readers, sign language, interpreters, Braille, etc.
- h. Priority for fully accessible units. Explain how priority for such units will be given to persons who are in need of the special design features of an accessible unit. Explain what diligent efforts to market the units as accessible units will be undertaken and how this will be documented. Include policy for when individuals without disabilities are occupying accessible units. Also, the Plan should include language that tenants residing in the property who need an accessible unit will take priority over applicants on the waiting list needing an accessible unit.
- i. Verification of disability only after a tenant or applicant has asked that their disability be considered. State management's policy to this effect.
- j. Civil rights training. Describe training to employees.
- k. Marketing elderly projects to persons with disabilities of any age. Describe marketing.
- l. Public notice of nondiscrimination on basis of disability. Describe how materials published by the borrower will contain such a notice, e.g. through the use of the Equal Housing Opportunity log.
- m. Service and/or companion animals permitted. Describe the policy for permitting these.
- n. Persons with disabilities receive same choices as other applicants. Describe policy, for example, of given the choice of both first and second floor apartments.

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