



December 1, 2020

Rural Development

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TO: National Office Officials
Rural Development

ATTN: Multi-Family Housing Staff
Rural Development

FROM: Elizabeth Green /s/ **Elizabeth Green**
Administrator
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SUBJECT: Section 515 and Section 514 Multi-Family Housing Property Tenant
Eligibility Document Retention Policies and Best Practices for
Owners and Management

PURPOSE

The purpose of this Unnumbered Letter (UL) is to review the Tenant File documentation retention requirements for Rural Development (RD) Multi-Family Housing (MFH) Section 515 Rural Rental Housing and Section 514 Farm Labor Housing Owners. Form RD 3560-8, "*Tenant Certification*" and all related documentation are required to determine eligibility for occupancy and tenant contribution towards rent which can include Section 521 Rental Assistance (RA), when available. Section 515 and Section 514 Borrowers and their representative management agents must retain these documents according to the regulations for these programs, in 7 CFR 3560.

This guidance is intended to specifically address the loss or unavailability of required Section 515 or Section 514 tenant eligibility documentation that may be requested as part of an Agency review and or during the transition of management for a property financed under these MFH direct loan programs.

BACKGROUND

RD's MFH program provides decent, safe, and sanitary housing rental units for very-low, low, and moderate-income households in rural areas. Agency regulations provide guidance regarding the certification of MFH tenant eligibility which may include the assignment and amount of RA received.

EXPIRATION DATE:
December 31, 2021

FILING INSTRUCTIONS:
Housing Programs

This UL reiterates the Agency's position on appropriate document retention for tenant eligibility for MFH Borrowers and property managers. MFH program regulations state at 7 CFR 3560.152, Tenant Eligibility Borrower Requirements, require that "(e)(2) (vi) Borrowers must retain executed tenant certification forms and any supporting documentation in the tenant file for at least three years or until the next

Agency monitoring visit or compliance review, whichever is longer. The MFH HB-2-3560, Chapter 6.11, B Verification Procedures also identifies the appropriate documentation and timeframe for file retention.

IMPLEMENTATION

Through MFH program's multiple continuing actions, the Agency seeks to ensure accurate tenant data and income calculations. This is essential to preventing improper tenancy in an MFH property and any possible unauthorized RA subsidy payments. An Office of the Inspector General (OIG) audit in 2019 found that; in some cases, the documentation required to verify income deductions was not retained when management of the property transitioned to a new provider. In other, limited cases, the management company did not comply with the OIG request for tenant documentation. When the Agency researched these findings; it appears that in the interim, a new management company had been appointed after the previous site management that did not comply during the audit. At that time, compliance with the requests were prompt and the proper documentation was proven to have been available during the audit.

Overall, RD encourages a change in property management when warranted, for the sake of the health of the property. Borrowers must continue to prioritize that suitable management services are in place at the property.

It is ultimately the Borrower's responsibility to plan for and secure the complete transfer of documents between the present and new management companies. If management performance for the property has not been successful, and new management is recommended, inexperienced Borrowers should reach out to their servicing official for guidance on how to proceed with successfully change management practices for the property.

To comply with Agency regulations and as a condition of approval of the management agent and the management fee, the borrower and the management entity must execute a Form RD 3560-13, "*Management Certification*" jointly to the Agency to attest that; the borrower, management agent, and supplier of goods and services agree that all records relating to the housing project are the property of the project; the Agency, and the Agency's representatives. Also, the current management plan should include details as to the proper storage and timely disposal of required tenant application files, *Form RD 3560-8* as required in 7 CFR 3560.154 Tenant Selection, (e) Recordkeeping.

The Agency has established procedures for servicing its MFH loans and grants when it determines that the borrower, grantee, or tenants were not eligible for all or part of the financial assistance received, or the project was not made subject to Restrictive-Use Provisions required by law and/or regulation. RD monitoring reviews that include review of tenant certifications can include the Tri-Annual Supervisory Visit. When documentation is unavailable to RD, during an Agency compliance review or audit, the Borrower may be required to pay unauthorized assistance, to recover any associated RA subsidy amounts that could not be verified, as required in 7CFR 3560.705, Recapture of Unauthorized Assistance. HB-3-3560, Chapter 9 also includes guidance on collection of Unauthorized Assistance and or enforcement by Civil Monetary Penalties.

Preservation of MFH RA subsidy, and keeping housing affordable for tenants, are of the highest priority for RD. Much of this necessitates that Section 515 and Section 514 tenant occupancy and possible RA subsidy is authorized according to regulatory requirements, with the associated documentation to support the tenant's application. RD's continuing goal is to limit improper payments due to ineligible occupancy or receipt of unauthorized assistance and to have this resource available for as many MFH-eligible tenants as possible. Keys to accomplishing this task are, management company compliance with Agency information requests and timely Tri-Annual Supervisory Visits validating tenant and management compliance with program regulations.

RD Loan Specialists and Servicing Officials will continue to closely review tenant certifications and all associated documentation to ensure that MFH properties and Borrowers are in compliance with 7 CFR 3560.154 Tenant Selection, (e) Recordkeeping, and following the guidance in HB-2-3560, Chapter 6.11 Verification Procedures.

If you have any questions regarding the guidance in this UL, please contact the MFH Specialist assigned to your Section 515 or Section 514 MFH property.