USDA

United States Department of Agriculture

Rural Development

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TO: State Directors
     Rural Development

ATTN: Program Directors
       Multi-Family Housing
       (MFH)

FROM: Joel C. Baxley   /s/ *Joel C. Baxley*
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SUBJECT: Implementation of the Revised Definition of
          Domestic Farm Laborer for Farm Labor
          Housing (FLH)

PURPOSE:

The Consolidated Appropriations Act, 2018 (P.L. 115-141, March 23, 2018) permanently amended Section 514(f)(3)(A) of the Housing Act of 1949 (42 U.S.C. §1484(f)(3)(A)) to extend FLH tenant eligibility to agricultural workers legally admitted to the United States and authorized to work in agriculture.

This Unnumbered Letter provides guidance on how to implement this change to the FLH program.

IMPLEMENTATION RESPONSIBILITIES:

For FLH loans, HB-2-3560, Chapter 6 and 7 C.F.R. §3560.576(b) and §3560.624, limits tenant eligibility to persons who meet the definition of a "domestic farm laborer," a "retired domestic farm laborer," or a "disabled domestic farm laborer." As currently defined in 7 C.F.R. §3560.11, a domestic farm laborer must be either a citizen of the United States or reside in the United States, Puerto Rico, or the Virgin Islands after being legally admitted for permanent residence. The change to Section 514(f)(3)(A) of the Housing Act of 1949, as amended (42 U.S.C. §1484(f)(3)(A)) expands the definition of domestic farm laborer to include persons who are legally admitted to this country and authorized to perform work in agriculture.

EXPIRATION DATE: **FILING INSTRUCTIONS:**
July 31, 2019   Housing Programs

MFH is currently working on revising 7 C.F.R. part 3560 to conform to the new statutory changes. In the meantime, offices should include persons who are legally admitted in this country and authorized to perform work in agriculture in the definition of domestic farm laborer. This revision applies even if the admittance to this country is temporary.

The most common example of newly eligible tenants that offices will likely see are H-2A work visa holders. H-2A workers may occupy FLH units financed under the **on-farm** program and 7 C.F.R §3560.623 provides the employer/borrower/owner can use the H-2A's employment contract rather than a lease to meet the requirement of 7 C.F.R. §3560.623(b). Owners of **off-farm** projects will process H-2A workers' tenant applications as they would all other tenants, which is outlined in HB-2-3560 Chapter 6 and 7 C.F.R. §3560.576. Owners of off-farm projects may require that the H-2A's employment sponsor also sign the lease as a guarantor of the rental payment. Employment sponsors should not be included on the tenant certification.

Borrowers and Management Agents should be advised that when coding H-2A workers on Form 3560-8 "Tenant Certification", they should use "5 – Private RA" as the Agency will be using this data field to track the number of H-2A residents.

FLH occupancy by temporary agricultural workers under the H-2A program is only valid during the unexpired term of their work visa.   FLH borrowers and management agents are responsible for complying with the terms of H-2A program, the occupancy or management plan for the FLH property, including leases may need to be amended and submitted to the Agency for review to comply with these requirements. FLH borrowers and management agents should consult with the Department of Labor (DOL) for more information on the H-2A work visa requirements. (More information may also be found on the DOL website at: https://www.foreignlaborcert.doleta.gov/h-2a.cfm .)It is important to note, that persons admitted legally for agricultural work still remain ineligible for Rental Assistance (RA) as set forth in 7 C.F.R. §3560.254(c). In addition, under no circumstance may any currently eligible FLH tenants be displaced from their homes as a result of this statutory change.

Any questions regarding the information included in this UL, should be directed to the MFH Portfolio Management Analyst assigned to your State.