United States Department of Agriculture

Rural Development

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TO: State Directors
Rural Development

ATTN: Program Directors and Coordinators
Multi-Family Housing

FROM: Bruce W. Lammers /s/ ***Bruce W. Lammers***
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SUBJECT: Implementation of the Revised Definition of Domestic Farm Laborer for Farm Labor Housing

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 Farm Labor Housing (FLH) tenant eligibility to agricultural workers legally admitted to the United States and authorized to work in agriculture.

This revised Unnumbered Letter (UL) provides additional clarification and replaces the previous published UL dated July 5, 2018, on how to implement this change to the FLH program.

IMPLEMENTATION RESPONSIBILITIES:

For FLH loans, HB-2-3560, Chapter 6 and 7 CFR 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 CFR 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.

Multi-Family Housing (MFH) is currently working on revising 7 CFR part 3560 to conform to the new statutory changes. In the meantime, offices should include

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Housing Programs

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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 CFR 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 CFR 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 CFR 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 the 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 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 will be ineligible for Rental Assistance (RA). In addition, under no circumstance may any currently eligible FLH tenants be displaced from their homes as a result of this statutory change.

Attachment A – Frequently Asked Questions; received from stakeholders after the initial issuance of the UL has been compiled and includes Agency clarifications.

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

FREQUENTLY ASKED QUESTIONS

TOPIC	QUESTION	ANSWER
Application	Does H-2A eligibility apply to both existing developments and proposals for new construction?	Yes, H-2A eligibility applies to both existing and new construction Farm Labor Housing (FLH) properties. The Agency will continue to develop applications that are submitted in response to the Notice of Solicitation Applications (NOSA) for FLH. The eligibility of H-2A workers to live in FLH is not a separate FLH program.
NOSA	Will Rural Development fund developments for H-2A workers? How will Rural Development prioritize allocation of new loan funds under the NOSA due August 27, given the new eligibility category?	The Agency will continue to review and process applications that are submitted in response to the NOSA for FLH. The eligibility of H-2A workers to live in FLH as H-2A is not creating a new program.
NOSA On-Farm	How will "on-farm" proposals be evaluated and awarded? Are "on-farm" proposals subject to the Section 514/516 NOSA?	On-Farm FLH is not subject to the Section 514/516 NOSA. Also, On-Farm FLH is not eligible for Section 516 (grant funds).
Dorm Style	Is group housing such as dormitory style housing acceptable for FLH?	Yes, RD Instruction 1924-A; 1924.5(d)(1)(vi) Farm Labor Housing design and construction, outlines Agency requirements for dormitory and other non-family type projects, based on length of occupancy.
On-Farm Housing	If developers want to build on-farm housing, can it be dormitory style? We are aware that off-farm cannot, but there is interest in building a dorm style structure; like another structure they already have developed.	7 CFR 3560.608 states: Permanent Units – Housing may be multi-family or single family in type and may be located on the farm away from farm service buildings, or in the nearby community. Single family type housing is defined as an individual or a group of individual single family detached dwelling units. All sites and housing shall be planned and constructed in accordance with 7 CFR part 1924, subparts A and C. Seasonal Units – On-FLH occupied for less than 8 months of the year will be considered seasonal housing. Such housing must meet the following requirements. (1) Housing designed for seasonal occupancy may be either multi-family or single family. (2) Seasonal housing may be constructed in accordance with Exhibit I of 7 CFR part 1924, subpart A. If constructed in accordance with Exhibit I, the housing must be suitable to allow for conversion to full-year occupancy if the need for migrant farmworkers in the area declines. These requirements are designed not only to meet the immediate need of specific farmers to provide housing for their laborers, but to ensure that in the event the market shifts or the farmer no longer desires to remain in the farming industry, this housing may be used for other eligible populations.

Market	In the context of new proposals, has the Agency considered how to document H-2A demand, such as in the context of market studies?	The market study on H-2A workers is not a requirement for eligibility. 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 terms of the H-2A program.
Eligibility	How will Rural Development define the various categories of individuals who may fit within the new Appropriations Act language allowing eligibility of "a person legally admitted to the United States and authorized to work in agriculture"?	The Agency is currently working on publishing a proposed rule where we will be revising 7 CFR part 3560 to conform to the new statutory changes and outlining these details.
Eligibility	Currently, Rental Assistance (RA) is available under 7 CFR 3560.254 (c)(3) for a head of household who is "a legal alien as defined in 3560.11, which definition incorporates the Department of Housing and Urban Development immigrant eligibility categories. These categories are much broader than the historic domestic farm laborer categories of USCs and LPRs. Will Rural Development use the 214 categories in determining eligibility for Section 514/516 housing as well as RA?	No, the Agency will not be making any changes to the current RA policy or using the 214 categories for determining eligibility in the Section 514/516 FLH program.
Eligibility	Who can live in Farm Labor Housing?	Active farm laborer households; (a) very low-income households, (b) low-income household, (c) moderate-income households. Retired domestic farm laborer households and disabled domestic farm laborer households in the local market area; and retired domestic farm laborer households and disabled domestic farm laborer households who were not active in the local market area. Farmworkers who are admitted to this country on a temporary basis under the H-2A program, are now eligible to occupy Section 514/516 FLH housing units which are currently or becoming unoccupied or underutilized.
Eligibility	Will the new eligibility category include asylees, refugees, U or T visa holders or applicants, and others who have been lawfully admitted and given deferred action status and employment authorization?	No, any persons who are legally admitted to this country and authorized to perform work in agriculture, (H-2A) this does not include any other type of work permit.
Eligibility	Will H-2B workers in reforestation (considered to be agricultural workers for purposes of the Federal Agricultural Workers Protection Act) be eligible?	No, any persons who is legally admitted to this country and authorized to perform work in agriculture, (H-2A) this does not include any other type of work permit.

Eligibility	Will H-2A workers be considered "migrant farm laborers" under the United States Department of Agriculture (USDA) definition?	Yes, based on the current definition; migrants or migrant agricultural laborer. A person (and the family of such person) who receives a substantial portion of his or her income from farm labor employment and who establishes a residence in a location on a seasonal or temporary basis, in an attempt to receive farm labor employment at one or more locations away from their home base State, excluding day-haul agricultural workers whose travels are limited to work areas within one day of their residence.
Eligibility	Does this change the tenant eligibility requirement that tenants be citizens or "permanent resident aliens"?	For FLH loans, HB-2-3560, Chapter 6 and 7 CFR §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 CFR §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. The Agency is currently working on publishing a proposed rule where we will be revising 7 CFR part 3560 to conform to the new statutory changes.
Eligibility	Does this allow eligibility to non-H-2A's who have work permits but are not permanent residents?	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. This does not include any other type of work permit or permanent resident status.
Renting	Are borrowers/management agents renting to H-2A worker, or to his employer?	For FLH loans, HB-2-3560, Chapter 6 and 7 CFR §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." 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. This change allows the H-2A worker as an eligible tenant. The Unnumbered Letter (UL) specifically states that "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."

Renting	Will H-2A workers be required to pass a criminal background check? If yes, how can this be done for H-2A workers?	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 CFR §3560.576.
Renting	How will Rural Development prioritize eligibility for admission currently governed by 7 CFR 3560.577? Given the tremendous demand for housing for domestic farm laborers and their families, how will Rural Development ensure the availability of FLH when newly eligible occupants depart?	This will not change the current prioritization as the applicant would be considered an eligible active farm laborer household with first priority going to very low-income households, next priority to low-income households, and last to moderate-income households.
Renting	How will Rural Development ensure that borrowers met their affirmative fair housing obligations to market to those least likely to apply for available housing? 7 CFR 3560.576(a) prohibits off-farm borrowers or grantees from requiring that an occupant work for any particular farm or owner as a condition of occupancy. How will Rural Development enforce this?	Borrowers are still responsible to meet requirements as outline in 3560.104 and Agency monitoring scope, purpose, and borrower responsibilities 3560.352(b) (4) "Verify compliance with Affirmative Fair Housing Marketing requirements, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, as amended, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, other applicable Federal laws, and Agency requirements related to occupancy and tenant eligibility."
Lease	Per 7 CFR 3560.156 (b)(2) it states, "that all leases must be one-year in length." I know the UL talks about making changes to the lease, but it doesn't specifically state that the lease to an H-2A worker could be less than 12 months. Am I correct to assume 7 CFR 3560.156 will still apply? Since HB-2-3560 requires a one-year lease and H-2A workers are admitted valid only for the unexpired term of their work visa (less than 12 months), is there any Agency guidance on how to deal with the one-year lease term? Will borrowers/management agents be permitted to enter into lease terms which are less than the full 12 months while one-year leases are required of all other tenant applicants?	Through the UL the Agency is allowing the modification of 3560.156(b) to allow the initial term of the lease to be for a maximum term of the unexpired work visa, if less than one-year. "FLH borrowers and management agents are responsible for complying with the terms of the 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 DOL for more information on the H-2A work visa requirements."

	Will the Agency draft language for property management's use as a lease addendum to address the H-2A worker situation, i.e. less than a 12-month lease, name of sponsor, etc.? Are borrowers required to house H-2A workers if their management plan and funding requires the provision of year-round housing to eligible households? With a harvest being for a specified timeframe, who will be responsible for the remaining amount of time on the lease?	(see above)
Lease	What will be the timing for requiring borrowers to submit revised occupancy and management plans and leases, and for Rural Development approval of the new plans and leases?	Per 3560.102(b) Borrowers should submit revised or updated occupancy, management plans and leases to the Agency for review within 60 days of the effective date of the new plans and leases.
Lease	How will Rural Development ensure it meets its fair housing obligations with respect to allocation of funds and oversight of admission of eligible households, especially with respect to prohibitions against discrimination based on familial status and national origin? How will Rural Development ensure that borrowers comply with State and local law admission priorities and prohibitions against discrimination based, for example, on familial status or national origin discrimination?	Per §3560.352 Agency monitoring activities are designed to assess borrower and tenant compliance with Agency requirements. The Agency will also review material related to a housing project submitted by a tenant or other source. To assess conditions such as a housing project's physical condition, record keeping procedures, and operations and management activities, including borrower compliance with Federal, State, and local laws and Agency requirements, the Agency will conduct periodic on-site monitoring reviews of a housing project. Also, per 3560.352(b) (4) "Verify compliance with Affirmative Fair Housing Marketing requirements, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, as amended, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, other applicable Federal laws, and Agency requirements related to occupancy and tenant eligibility."
Lease	Additionally, given Rural Development's regulations; both the lease and tenant certification are issued to and signed by the H-2A worker and not the grower?	Correct. The UL addresses this issue. "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."
Lease	Is the H-2A employment contract sufficient to meet lease requirements for both on-farm and off-farm housing? If not, what is the difference?	Contract is sufficient for on-farm and for off-farm.

Lease	Since the employers are paying the rent, would the employers count the rent as income?	The UL specifically states that "Owners of off-farm projects may require that 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."
Lease	For "off-farm" housing, the guidance says owners "may" require H-2A employers to sign the lease as a guarantor of the rental payment. Since the provision of housing is a requirement of the H-2A program, shouldn't that be "shall" require the employer's guarantee of rental payment?	The Agency is leaving it to the owner's discretion as to whether they will require the H-2A employer to sign the lease as a guarantor of the rental payment. We defer to DOL to state what the H-2A worker is legally capable of doing.
Lease	How will Rural Development ensure that borrowers comply with "the terms of the H-2A program"?	Through verification of valid/unexpired visa and valid employment contract. Also, H-2A worker's spouse and unmarried children under 21 years of age may seek admission in H-4 non-immigrant classification. Family members are not eligible for employment in the United States while in H-4 status.
Lease	How will USDA determine rent payments? Since the H-2A program requires employers provide housing without cost to workers and in some cases family members, how will Rural Development ensure that domestic workers and their families are likewise able to obtain housing without cost?	The Agency requires all tenants rent payments to be determined based on the tenant income as current regulations outlined in §3560.203 "Tenant contributions: A tenant's contribution to rent charged for a rental unit in an Agency financed housing project is based on the tenant's income, as calculated on the Agency's tenant certification forms, and the availability of Agency or non-Agency rental subsidies." §3560.575 Rental Structure. "Off-farm FLH is subject to the tenant contribution and rental unit rent requirements for Plan II housing established under subpart E, of this part, except where seasonal housing will be occupied for less than a three-month period. In such instances the best available and practical income verification methods may be used with prior approval from the Agency."
Lease	If we lease to an H-2A tenant, what is the impact on RA for that unit? Could Rural Development take away the RA as unnecessary after some period of time?	Yes, to the extent permitted by law, when any FLH RA units have not been used for a 12-month period the Agency may transfer the unused RA units to another rent overburden tenant.
Lease	Units under contract for H-2A would not be eligible, but what happens if unit is later rented to an RA eligible tenant?	RA may be assigned to the tenant if available and eligible.
Lease	Many H-2A employment contracts/ clearance orders state that workers have to vacate immediately upon termination from employment. Tenants in Section 514 housing have rights to notice and time to vacate, and to a hearing. How will you ensure that	Owners still need to follow the normal eviction protocol for MFH properties pursuant to the loan agreements and regulations.

	the Section 514 housing tenant rights are applicable to H-2A workers?	
Operating Subsidy	RA will not be awarded to H-2A worker in our year-round properties, but the UL does not talk about how to handle the operational assistance at our seasonal properties.	Operating assistance is provided to the property to cover expenses for seasonal housing and not affected by this UL.
Vacancy	Can H-2A workers be considered to help reduce current vacancy in FLH projects?	Currently FLH has less than 1000 vacant units (6 percent) within the portfolio that could utilize this expanded definition.
Waiting List	Most employers/growers need to make reservations in advanced for housing H-2A workers. Does the UL allow them to bypass the waiting list and allow the housing provider hold blocks of rooms for a specific grower? Does this UL prohibition against displacing eligible households include assurances that arriving families will be equally able to apply for Farm Labor Housing? How will Rural Development ensure equal opportunity for admission of seasonal and migrant farmworker families by prohibiting advance "block booking" of units?	The UL does not allow H-2A workers to bypass waiting lists or to allow providers to hold blocks of rooms for specific growers. H-2A workers cannot displace a citizen and or be given any type of preference on waiting lists or blocks of rooms. It is permissible under the UL for the borrower to work with the sponsor on providing housing for the incoming H-2A workers without displacing current tenants or applicants.