



HAC Housing Assistance Council

**PRESERVING RURAL
RENTAL HOUSING:
A GUIDE FOR NONPROFIT
ORGANIZATIONS,
PUBLIC AGENCIES,
AND OTHERS**

2008

Housing Assistance Council
1025 Vermont Avenue, N.W.
Suite 606
Washington, DC 20005
202-842-8600 (voice)
202-347-3441 (fax)
hac@ruralhome.org
<http://www.ruralhome.org>

ISBN 978-1-58064-159-3

This report was prepared by Leslie R. Strauss of the Housing Assistance Council (HAC). The work that provided the basis for this publication was supported by the John D. and Catherine T. MacArthur Foundation.

HAC, founded in 1971, is a nonprofit corporation that supports the development of rural low-income housing nationwide. HAC provides technical housing services, loans from a revolving fund, housing program and policy assistance, research and demonstration projects, and training and information services. HAC is an equal opportunity lender.

TABLE OF CONTENTS

Introduction 1
 The Statutory Framework..... 2
 Applicable Regulations, Handbooks, and Other Agency Guidance..... 2
 Working with USDA RD..... 3

Purchasing in the RD Prepayment Process..... 4
 The Prepayment Request 5
 Notices to Organizations..... 5
 Incentives 6
 After Rejection of Incentives 7
 Offer to Sell to Nonprofit or Public Agency..... 7
 Capital Gains Considerations 8

Purchasing without a Prepayment Request..... 10
 Purchaser Eligibility..... 10
 Property Eligibility 11
 Financial Feasibility and Capital Needs..... 11
 Financial Assistance from RD..... 12
 Equity to Seller 12
 Restrictive Use 12
 Underlying RD Considerations..... 12
 Process and Timing..... 13

Resources 15

References 17

Appendices

 Appendix A. A Brief History of the Section 515 Program and Prepayment 19
 Appendix B. Section 502(c) of the Housing Act of 1949, as Amended..... 22
 Appendix C. Application Checklist (Attachment 7-B-1 to HB-3-3560) 27

INTRODUCTION

This handbook is intended to provide readers with a general understanding of the opportunities available to preserve rental housing funded by the Section 515 multifamily housing program administered by the U.S. Department of Agriculture (USDA) Rural Development Housing and Community Facilities Programs (RD).¹

The rural preservation landscape has changed significantly since 2004. RD has implemented a Multi-Family Preservation and Revitalization (MPR) program. New regulations for Section 515 prepayment took effect in February 2005. A stream of court decisions, studies, and recommendations for change have been published, and legislation has been introduced in Congress. The major Housing and Economic Recovery Act that became law in July 2008 included changes related to the preservation of Section 515 properties using Low Income Housing Tax Credits. This guide describes the current options for saving Section 515 units and the ways in which these options may be altered by upcoming events.

Apartments may be lost from the stock of decent, affordable rental homes for low-income rural Americans in at least two different ways:

1. A project owner may prepay the project's Section 515 loan. When the federal mortgage is gone, its requirement to serve low-income tenants is lost, along with its 1 percent interest rate. If the property had USDA Section 521 Rental Assistance (RA), that aid is transferred to other projects or communities, because RA is linked to Section 514 or 515 funding and cannot be used in buildings that do not have mortgages under one of those programs.
2. A project owner may default on a Section 515 loan. If attempts to collect past due payments are futile, USDA has the right to accelerate the mortgage, making the entire amount due immediately. A purchaser – which can even be the current owner – can pay off the 515 loan and acquire the property without the 515 requirements.

Those who wish to preserve Section 515 homes for their tenants can help avoid loss of units by monitoring prepayment activity, intervening when necessary, and/or by purchasing projects when they are offered for sale. It is easier to purchase a property before an owner asks for USDA permission to prepay than after the owner has initiated such a request, because the request sets in motion a statutory process involving a variety of requirements.

This manual is intended to help a would-be purchaser navigate either process: a purchase without a formal prepayment request (known as a Transfer of Physical Assets, or TPA) or a purchase through the prepayment process established by the Emergency Low-Income Housing Preservation Act of 1987 (ELIHPA).

¹ Rental housing financed through the Section 514 Farm Labor Housing loan program may be lost as well, but the farmworker housing stock has been far less seriously impacted than the Section 515 Rural Rental Housing stock, so this guide will refer primarily to Section 515 housing.

The Statutory Framework

ELIHPA imposed restrictions on the prepayment of Section 515 loans made before December 21, 1979, and a later statute extended the restrictions to loans made between December 21, 1979 and December 14, 1989. Loans made after December 14, 1989 are required to be maintained as low- and moderate-income housing for the full 30-year term of the loan and may not be prepaid. The prepayment restrictions all became part of Subsection 502(c) of the Housing Act of 1949, as amended, included as Appendix B to this guide.

Appendix A provides a more detailed, yet still brief, history of the Section 515 program and the prepayment issue.

Applicable Regulations, Handbooks, and Other Agency Guidance

Almost all RHS regulations on the Section 515 Rural Rental Housing loan and Section 514/516 Farm Labor Housing loan and grant programs are at 7 CFR Part 3560. A few relevant pieces appear in other places in the Code of Federal Regulations. The “3560” rule was published in the *Federal Register* on November 26, 2004 and took effect on February 24, 2005.² RD issued the 3560 rule as an interim final rule, on which it accepted comments, but it is not known whether the agency is developing any changes in response to those comments.

Three handbooks supplement the regulations and are essential for interpreting and using the programs: HB-1-3560, *MFH Loan Origination Handbook*; HB-2-3560, *MFH Asset Management Handbook*; and HB-3-3560, *MFH Project Servicing Handbook*. Additional guidance is issued periodically in the form of Administrative Notices (ANs) and Unnumbered Letters (ULs); changes to the handbooks are transmitted by Procedure Notices (PNs).

The regulations relating to prepayment and preservation are Subpart N in 7 CFR Part 3560 (§§3560.651-3560.700), and are supplemented by HB-3-3560, Chapter 15. Regulations relating to sale and purchase of property outside the prepayment process are also in 7 CFR Part 3560 (§3560.406), supplemented by HB-3-3560, Chapter 7.

RD/RHS regulations, handbooks, ANs, ULs, and PNs can be downloaded from the USDA web site at <http://www.rurdev.usda.gov/regs/>. The 3560 regulations are included in each handbook as Appendix A.

The Housing Assistance Council monitors RD issuances. Notices about new developments are printed in the *HAC News* newsletter, published every two weeks and available free at <http://www.ruralhome.org>. Major changes are also announced separately at <http://www.ruralhome.org>.

² The effective date was delayed indefinitely for regulatory provisions that would have required heads of households living in RD multifamily housing to be U.S. citizens or permanent residents (RHS 2005). The National Housing Law Project had challenged the provision, arguing that the law restricts receipt of Section 521 Rental Assistance to U.S. citizens or permanent residents, but does not impose occupancy restrictions based on resident status.

Working with USDA RD

RD is a “mission area” within the U.S. Department of Agriculture. The prepayment and preservation process is administered by RD’s Office of Rural Housing Preservation (ORHP), based in the agency’s Washington, D.C. national office. Purchases of existing Section 515 rental properties or 514/516 farmworker housing involve local and state offices as well.

PURCHASING IN THE RD PREPAYMENT PROCESS³

The ability to prepay a Section 515 mortgage, and the process for doing so, are governed by statutes and RD's regulations and handbooks. Mortgages made on or after December 15, 1989 cannot be prepaid. Mortgages financed before December 21, 1979 can be prepaid only after the owner requests RD permission, rejects incentives to stay in the program, and sometimes offers the property to nonprofit or public entities. Projects with Interest Credit subsidy approved between December 21, 1979 and December 15, 1989 are subject to twenty-year use restrictions and those without Interest Credit subsidy to fifteen-year restrictions. Legislation in 1992 attempted to impose the pre-1979 requirements on mortgages generated during that 1979 to 1989 period, but a National Housing Law Project analysis notes that USDA's regulations have "major shortcomings," including a failure to incorporate properly that 1992 law.⁴

The date of the mortgage documents determines whether a loan was made on or after December 15, 1989. Determining whether a project was financed before or after December 21, 1979 is more difficult, however. Based on the language of the statute, USDA considers the relevant date to be the date it issued its Form AD-622 committing a loan for the project. USDA Rural Development and the property owner have this information, but it is not provided in the mortgage documents in the public record.

The restrictions applicable to a loan approved before December 21, 1979 change if a consolidation or reamortization of the loan occurs, or if the loan is transferred to and assumed by a new borrower.

Loan date/characteristics	Prepayment prohibition	Restrictive use provisions	Eligible for incentives
Made before or on 12/21/79			X
12/22/79-12/14/89		X	X, if restrictions have expired
On or after 12/15/89	X		
Subsequent loan on or after 12/15/89	X, if for add'l rental units	X, if not for add'l rental units	
Loan with restrictions imposed by servicing action incl. transfers		X	X, if restrictions have expired

Details of the types and lengths of restrictive use provisions are not discussed in this guide; see 7 CFR §§3560.661-663 and HB-3-3560.

Note that if a borrower repays its loan on an accelerated schedule, its final payment will be considered to be a prepayment. RD advises field staff to tell such a borrower about prepayment requirements 180 days or six payments before its last payment.

³ Some of the key information in this subsection is based on National Housing Law Project, *RHCDS (FmHA) Housing Programs: Tenants' and Purchasers' Rights* (2d ed.) (Oakland, Calif.: 1995), Chapter 15.

⁴ National Housing Law Project, *RHCDS (FmHA) Housing Programs*, 15.1.

The Prepayment Request

An owner seeking to prepay a pre-1979 or pre-1989 mortgage must submit a written prepayment request, including all information prescribed by the RD regulations, at least 180 days before the proposed prepayment date. Within 10 days after receiving the request, RD must determine whether the request is complete. Then the agency either returns an incomplete request to the borrower, or acknowledges receipt of a complete request. Within 30 days after receiving it, RD must send a letter to tenants telling them the borrower has submitted a prepayment request, and should notify “other interested parties.”

Within 60 days, RD also evaluates the borrower’s ability to prepay, based on the availability of financing. If the borrower cannot realistically prepay, RD can reject the request outright. Such situations have occurred, but not often, according to RD staff.

Notices to Tenants

Notices must be sent to individual tenants by certified mail with return receipt requested, and posted in the public areas of the project.

RD is supposed to keep tenants apprised of decisions related to the prepayment request and to let them know when related events will happen.

At least 60 days before RD finalizes its approval, tenants must be notified by certified mail and postings at the property that prepayment is imminent. The notice must explain why RD intends to accept the prepayment, explain the future rents and any use restrictions, and provide information about other housing in the area and any helpful agencies.

Tenants who will be displaced within two years after the prepayment are eligible for Letters of Priority Entitlement (LOPEs) that put them at the head of waiting lists for other Section 515 housing anywhere in the country. LOPEs are not issued automatically; tenants must request them. The request must be made within one year.

Tenants have the right to participate in an owner’s appeal of an RD denial of prepayment. They do not, however, have the right to appeal an approval of prepayment.

Notices to Organizations

RD must notify organizations of the prepayment offer. If a borrower requesting prepayment is required to or chooses to offer the property for sale to a nonprofit or public body, RD must also provide a notice about that possibility.

Under the pre-2005 regulations, nonprofits and public agencies could request these notices even if they did not intend to try to purchase properties. The current regulations obligate RD to notify only “nonprofit organizations and public bodies involved in providing affordable housing or financial assistance to tenants.”

When RD approves a prepayment request, organizations that received an initial notice of the request must be notified of the decision. Agencies that may be able to help displaced tenants must be sent information about the prepayment and any anticipated displacement.

Incentives

If the borrower is able to prepay the loan, RD must try to reach an agreement with the owner to extend the project's low-income use. For loans with interest credit (i.e., those with subsidized interest rates, which are most of the currently outstanding loans) the restrictive use must last 20 years.

RD can offer incentives for owners with pre-1979 loans, or 1979-1989 loans if their use restrictions have expired, to remain in the program. The regulation states that RD can choose to offer incentives if incentives are (1) necessary to provide the owner with a fair return on investment and (2) the least costly alternative to the government that is consistent with the purposes of the statute restricting prepayment. The handbook does not ask RD staff to make those determinations, however; it says simply that "the Agency offers incentives to all borrowers" in the eligible categories.

RD's incentive offer can be either general or specific. Available incentives include:

- △ increase the owner's rate of return on its investment;
- △ permit conversion of for-profit operation to limited-profit operation, thereby making Interest Credit subsidies available, i.e., lowering the interest rate on the loan (for-profit owners are not eligible for Interest Credit – which subsidizes the mortgage to a 1 percent interest rate – unless they agree to limit profits to an 8 percent return on investment);
- △ permit owners with project-based Section 8 assistance to receive rents in excess of the amounts needed to meet annual operating and maintenance expenses, debt service, and reserves; and
- △ provide owners with additional Rental Assistance.

If RD determines these incentives are not enough to provide a fair return on investment, it can make a subsequent loan for up to 90 percent of the difference between the project's appraised market value and the owner's equity.

Any deferred maintenance needs must be addressed as part of any incentive arrangement.

In conjunction with the receipt of incentives, an owner can choose to sell its property following the requirements of the non-prepayment transfer process described later in this guide. When an owner is in default or otherwise not complying with RD requirements, RD can offer incentives contingent on transfer of the project to an acceptable purchaser.

If an owner accepts incentives, but RD does not have enough funds available to cover the costs, the owner will be placed on a waiting list. A few years ago, lengthy waits were common, so the regulations now give the owner additional options if RD is not able to fund the incentives within 15 months. The owner can remain on the waiting list, offer to sell the project to a nonprofit or public agency, withdraw its prepayment request, withdraw its acceptance of incentives and proceed with the prepayment process, or obtain a third-party equity loan.

After Rejection of Incentives

If the owner rejects the incentive proposal, it can be approved for prepayment if it accepts a combination of restrictive use and sale to a nonprofit or public agency. The owner can (1) agree to restrictive use provisions for 10 years and at the end of that time offer the project for sale to a nonprofit or public body; (2) accept whatever restrictive use provisions are already in place and at the end of that time offer the project for sale to a nonprofit or public body; or (3) immediately offer the project for sale to a nonprofit or public body.

If the owner rejects these possibilities, RD must determine whether prepayment would impact housing opportunities for minorities. Adding a qualifier not present in the statute, the regulations require determining whether “minorities in the project, on the waiting list or in the market area will be *disproportionately* adversely affected by the loss of the affordable rental housing units” (emphasis added).

If RD identifies an adverse impact on minorities, the owner must offer the property for sale to a nonprofit or public agency. If it does not find an adverse effect on minorities, but does find that there is not enough other decent, safe, sanitary, and affordable housing in the market area, the borrower must accept restrictive use provisions to protect the tenants, or offer the property for sale to a nonprofit or public agency.

If RD finds no adverse impact on minorities and no shortage of other affordable housing, the owner may prepay.

Offer to Sell to Nonprofit or Public Agency

In any situation requiring the owner to offer to sell a project to a nonprofit organization or a public body, the process is the same. The owner must notify nonprofits and public agencies that have expressed interest, and must advertise for at least 180 days. It must respond promptly to any inquiries.

If no good faith offer is received within 180 days the owner can then prepay the loan. Prepayment is also permitted if a good faith offer was received within 180 days and the owner cooperated with the potential purchaser, but the purchaser was unable to fulfill the terms of the offer within 24 months of the offer date. The regulations make no allowance for delays caused by RD.

To establish the sales price, the owner and RD must each obtain an appraisal of market value. The borrower may agree to accept RD’s appraisal. If the two appraisers disagree, the parties jointly select a third appraiser whose determination will be binding.

A nonprofit or public buyer must commit to maintain the project as affordable housing for low- and very low-income tenants for the project’s remaining useful life. Its officers and directors must have no identity of interest with an entity that has prepaid another Section 515 loan, and no relationship to someone with such an identity of interest. The purchaser must demonstrate the financial feasibility of its purchase, including other anticipated funding. It must complete RD’s application forms and follow RD’s sales process.

Local nonprofits and public bodies are given priority as purchasers. Before an owner can accept an offer from a regional or national nonprofit or public body, RD must determine that no local purchaser is available. Between offers that meet all criteria equally, the borrower must give preference to the entity with the most previous successful experience in developing and maintaining subsidized housing. If the offers are still equal, preference goes to the purchaser with the longer experience in developing and maintaining subsidized housing.

A nonprofit or public agency purchaser cannot later transfer ownership to another entity unless it obtains RD permission. RD will determine that the transfer either will further the provision of low-income housing, or that the project is no longer needed.

RD may finance the nonprofit or public agency's purchase, based on the appraised value. If the project's general operating account is not sufficient to meet operating expenses for the first year of ownership, RD can make a loan for that purpose, up to 2 percent of the appraised value.

RD can also provide small grants to help purchasers cover legal and architectural fees and other costs of transfer. The dollar amount of these grants can vary from year to year: in fiscal year 2005 they were capped at \$20,000, and then Congress increased the cap to \$50,000 in USDA's FY 2006 appropriations bill. The cap dropped back to \$20,000 for FY 2007 and 2008, however.

If RD does not have sufficient funds for sales, a deal is added to the waiting list for incentives. If funds are still not available after 15 months, the owner has the same choices as if incentive funding were not available.

A project owner can change its mind and withdraw its prepayment request at any time up to the closing on the sale, though it is then responsible for paying any damages related to breaking its sales contract.

To keep units affordable for their tenants, RD provides subsidies to nonprofit and public agency purchasers. It may continue Interest Credit subsidies on the assumed loan, extend the subsidy on an assumed loan that was not receiving Interest Credit, and extend Interest Credit on the new loan. In addition, RD is required to transfer Rental Assistance subsidies to the new owner. RD may also forgive a portion of the owner's debt in order to keep rents affordable.

As of June 2004, if Rental Assistance is not transferred with a prepaying property (if, for example, the affordable units are no longer needed in the market area), RD will allocate those RA units to other properties being preserved. The agency's top priority is to use them as preservation incentives.

Capital Gains Considerations

One reason that owners have been reluctant to sell their housing project to a nonprofit or public agency is the fact that the capital gains consequences of transfer of ownership to a nonprofit or a public agency are considerable. This disincentive can be averted when there is a property exchange, since an equity loan (as opposed to equity received from an outright sale) is not subject to capital gains taxes. (In most instances, the property has already been depreciated for tax purposes.) Because few owners have been willing to sell their property so far, the role of the nonprofit or public organization has been primarily to monitor borrowers' prepayment

applications to ensure that they are not permitted to prepay via exceptions when tenants will be displaced and to be prepared to purchase a project in the event an offer is made.

PURCHASING WITHOUT A PREPAYMENT REQUEST

When a Section 515 loan is not being prepaid, but is instead being assumed by the purchaser of a Section 515 property, the ownership transfer is governed by §3560.406 of RD's regulations and must be approved by RD.

The project's budget must show that the buyer will have sufficient resources to cover the debt service on both the RD loan being assumed and on any new loans.

The property's value must be high enough to provide security for both the RD loan being assumed and any new loans being made as part of the transfer. If the value of the loans totals over \$100,000, an RD appraisal is required.

The terms of the existing loan often change when a transfer takes place. The length of the loan, for example, is usually shortened from 50 years to 30 years, or even less time if the remaining economic life of the housing is less. The loan amortization period is changed to 50 years or the remaining economic life, whichever is less. The interest rate may be changed as well. For a Section 515 loan, the interest rate remains the same or is reduced to RD's note rate on the day the transfer is approved or on the day the transfer is closed, whichever is the lowest. For a Section 514 Farm Labor Housing Loan, the interest rate does not change unless the purchaser is a public body or nonprofit organization and the interest reduction is necessary to maintain affordable rents for tenants.

Purchaser Eligibility

Many transfer requirements are the same as requirements for a Section 515-funded acquisition of an existing property. For example, the same entities are eligible for both transfers and new Section 515 loans: individuals, partnerships, limited partnerships, for-profit corporations operating on a limited profit basis, nonprofit organizations, limited equity cooperatives, Native American tribes, and public agencies. Section 514 loans for off-farm housing may be made or transferred to nonprofits, public agencies, tribes, or partnerships with nonprofit general partners.

A purchaser must document not only that it is an eligible entity type, but also that it has the financial capacity to operate the project successfully, and that it has or can hire an entity that has the ability to manage the development properly.

The regulations authorize RD to approve a transfer to an entity that does not meet Section 515 or 514 eligibility requirements if RD determines that such a sale would "be in the best interest of the Federal Government and the objectives of the original loan can no longer be met." For a "non-program transfer":

- (1) The transferee must make a down payment of at least 10 percent of the remaining loan balance to be assumed.
- (2) The transferee must have the ability to pay the Agency debt.
- (3) Monthly or annual installments will be amortized over the term of the loan and the interest rate will be at a rate of interest at least one percent higher than the interest rate offered to eligible borrowers as explained above.

Property Eligibility

The property must meet the same eligibility requirements as if the purchaser were applying for an RD loan for the first time.

Financial Feasibility and Capital Needs

RD must be convinced that after the transfer the property will comply with RD requirements and that the financial plan is feasible. The new owner's ability to meet the project's repair and rehabilitation needs is a key part of this determination.

A would-be purchaser must include with its application a detailed plan showing the project's short-term and long-term needs, how they will be met, and how much the work will cost. RD must agree to all aspects of the plan as part of its approval of the transfer. This may involve property inspections by RD staff, including its State Architect and Civil Rights Coordinator, may inspect the property, as well as extensive discussions about the work needed and its cost.

The transfer agreement must include provisions for addressing the property's capital needs, as identified in a capital needs assessment (CNA), which includes a review of compliance with federal accessibility requirements. A civil rights compliance review is also required. According to HB-3560 (para. 7.18.C.1), approval of a transfer generally does not require preparation of an environmental review, although if RD is providing additional financing, environmental review may be required by that program.

CNA-related requirements have proved challenging for many purchasers. As a result, USDA rural housing programs administrator Russell Davis issued an unnumbered letter on August 17, 2007, titled "Guidance on the Capital Needs Assessment Process." The document is four pages long, with 51 pages of appendices.

A CNA is usually prepared by a third party contractor with no identity of interest with the other parties to the transaction. RD must approve the choice of contractor and the contract

A CNA provides an estimate of the amount needed in each year for 20 years to repair and replace parts of the project. The contractor develops these estimates based on an inspection of 25 percent of the units in a property with under 60 units, or 20 percent in a property with 50 or more units. One concern, therefore, is that despite efforts by the contractor and owner to select representative units for inspection, the units actually chosen and inspected may not be representative of the entire property.

Both short-term and long-term (up to 20 years) capital needs must be identified, and cost estimates must be provided. These cost estimates affect the amount of reserves that must be set aside each year in the project's budget. Since existing reserve accounts tend to be underfunded, CNAs often require significant amounts be put into reserves every year.

RD's forms specifically instruct the CNA contractor *not* to analyze the adequacy of the property's reserve account to address the capital needs identified.

Financial Assistance from RD

RD may provide a variety of types of aid to a purchaser, in addition to transferring the existing Section 515 or 514 loan.

Write down. RD has the authority to write down its loan so the purchaser assumes a smaller amount of debt. It can provide the seller with an equity payment, in the form of either a loan or cash. It may extend the term of the existing loan to 30 years or the remaining economic life of the housing, whichever is less. It may amortize a new loan over 50 years or the remaining economic life of the housing, whichever is less. A new loan can be in the form of a senior or junior loan, a parity lien, or a soft second.

Third party financing. Additional financing may come from state programs and private loans. The most likely possibilities, which are accessed through state or local agencies, are Low Income Housing Tax Credits, tax exempt bonds, and HUD's HOME program. RD must approve any added loans, whether junior, senior, or on par with the RD loan. The property's value must be sufficient to provide security to RD, no matter what position its loan holds.

New RD loan. RD can make a new "subsequent" Section 515 loan to the purchaser, in addition to the existing loan. It can be amortized over a period of up to 50 years, or less if the property's remaining economic life is considered to be less.

Loan guarantee. The purchaser may receive a Section 538 guarantee for a loan made by a bank or thrift.

Equity to Seller

Equity due to the project seller may be paid in cash or through a loan. If the equity is not paid in full at the sale, and not paid through an RD equity loan or a third party equity loan approved by RD, the transferee must certify that equity payments due to the borrower will be paid from sources other than project funds, and must identify the sources.

Restrictive Use

Whether acquiring the property after a request for prepayment or through the ownership transfer process, a purchaser must accept a restrictive use agreement requiring the property to be used for program purposes for a specified period of time.

When an equity loan is made at transfer, the use restriction must be for 30 years.

Underlying RD Considerations

The transfer process is spelled out in more detail in Handbook 3-3560, which begins with a general framework for agency analysis:

The fundamental question the [USDA RD] Loan Servicer should ask when evaluating a transfer request is:

Will the project and the Agency be better, or at least no worse, off as a result of the transfer?

In answering this question, the Loan Servicer tries to ensure that the transfer meets two Agency objectives:

1. Improve or maintain the likelihood of loan repayment; and
2. Improve or maintain the quality of housing for the tenants.

It is essential that the Loan Servicer can justify that the transfer meets both of these conditions without incurring unreasonable costs to the Agency before recommending to the State Office that the transfer be approved. If a transfer is inadequate in meeting one of the objectives, the Loan Servicer should work with the transferee and the borrower to resolve issues of concern.

Process and Timing

Attachment 7-B-1 to HB-3-3560, reproduced as Appendix C here, provides an application checklist of items that must be submitted as part of the application to purchase a property and take over its Section 515 or 514 loan.

In the past, most preservation transfers required that the administrator of RD housing programs approve exceptions to the regulations. The 2005 regulations and handbooks may have improved the situation, but owners continue to experience difficulties. Their frustrations led to introduction in the House of Representatives of H.R. 3873, the Section 515 Rural Housing Property Transfer Improvement Act in 2007. The bill proposed streamlining the transfer approval process and would require RD to act within specified timeframes. Some of the streamlining was enacted in the Housing and Economic Recovery Act of 2008, applicable specifically to transfers involving Low Income Housing Tax Credits; these provisions are described in more detail below.

A transfer application is submitted to a Loan Servicer in a local RD office. When that person has negotiated with the seller and buyer, completed paperwork, and is ready to recommend approval of the transaction, the application is forwarded to the RD State Office. The State Office staff may approve the transfer or may forward the file to the National Office for review.

If RD denies a transfer request it must inform the applicant of the reason for its decision and the applicant's appeal rights.

RD's handbook encourages agency staff to use all available servicing authorities to facilitate revitalization (Attachment 7-A). These include:

1. Subordination for third party equity or rehabilitation loans.
2. Accept parity or junior liens for equity or rehabilitation purposes.
3. Accept pre or post transaction consolidations to facilitate efficient management.

4. Reamortization of existing Agency debt to reduce debt service.
5. Reallocate unused rental assistance (RA) units to assure affordability by existing tenants.
6. Allow for a post-transaction asset management fee to a nonprofit or public body.
7. Other waivers and National Office approvals as necessary.

RESOURCES

Any rural rental preservation effort is likely to involve numerous sources of financing to cover the costs of acquisition and rehabilitation. Simple preservation deals may involve only two or three sources, but most require far more.

In addition to funds available for all rental housing development and therefore useable for preservation – such as Low Income Housing Tax Credits, Section 538 loan guarantees, Federal Home Loan Bank Affordable Housing Program funds, and the like – a number of funding resources are devoted exclusively to the preservation of rental housing. They include the following.

Section 538 guaranteed rental housing loans can be used by purchasers or stay-in owners of Section 515 properties, alone or in conjunction with tax credits or other financing. USDA provides a 90 percent guarantee and interest credit on \$1.5 million of the loan amount down to the long-term monthly applicable federal rate at the date of loan closing. Program terms include a minimum 1.15 debt service coverage ratio and 40-year amortization. Eligible lenders are those approved by and active with Fannie Mae, Freddie Mac, or the Federal Housing Administration, or those approved by USDA.

The Multi-Family Housing Preservation and Revitalization Restructuring Program, known as MPR, was created in fiscal year 2006. USDA selects a limited number of properties for help restructuring their Section 515 loans in order to revitalize them while keeping them affordable, with or without a change in ownership. USDA's preferred form of assistance is deferral of existing Section 515 debt, enabling the cash flow to be used instead for physical revitalization. Other possibilities include new financing from third party sources such as Low Income Housing Tax Credits, Section 538 guaranteed loans, or others; rehabilitation loans; soft mortgage loans; debt forgiveness; and (for nonprofit owners or purchasers only) revitalization grants.

USDA's Preservation Revolving Loan Fund program, first funded in 2005, makes loans of up to 30 years to nonprofit intermediary organizations that, in turn, lend the funds to owners or purchasers of Section 515 developments. One of the intermediaries funded by the USDA PRLF program is the Housing Assistance Council. HAC's PRLF provides low-interest loans for refinancing and costs incorporated into long-term financing such as options, downpayments, purchase, site development, architectural and engineering fees, construction financing, rehabilitation, and more. The interest rate is 8 percent for for-profit entities and 5 percent for others, with the amount and term of each loan varying according to the project's needs.

Rental assistance for tenants may be available to increase the viability of some preservation deals. Some current Section 515 tenants receive Section 8 vouchers from HUD or Section 521 Rental Assistance from USDA. New RA is not available for MPR participants, but USDA sometimes provides new RA units as incentives to owners to stay in the program rather than prepaying their mortgages. In addition, since FY 2006, USDA has been able to provide its own vouchers to enable current tenants to remain in prepaid properties.

For more information about rural preservation, please visit the Housing Assistance Council's website at www.ruralhome.org/issues/preservation and USDA's MPR page at www.rurdev.usda.gov/rhs/mfh/MPR/MPRHome.htm. Examples showing how the resources

mentioned above have been used for rural preservation are highlighted in the Summer 2007 issue of HAC's *Rural Voices* magazine, available at www.ruralhome.org/manager/uploads/VoicesSummer2007.pdf.

REFERENCES

Rural Housing Service (RHS), U.S. Department of Agriculture. November 26, 2004. "Reinvention of the Sections 514, 515, 516 and 521 Multi-Family Housing Programs: Interim final rule." *Federal Register* 69:227. Available online <http://a257.g.akamaitech.net/7/257/2422/06jun20041800/edocket.access.gpo.gov/2004/pdf/04-25599.pdf>

Rural Housing Service (RHS), U.S. Department of Agriculture. February 22, 2005. "Reinvention of the Sections 514, 515, 516 and 521 Multi-Family Housing Programs: Interim final rule; delay of effective date." *Federal Register* 70:34. Available online <http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/pdf/05-3226.pdf>

APPENDICES

APPENDIX A

A BRIEF HISTORY OF THE SECTION 515 PROGRAM AND PREPAYMENT

Section 515 of the Housing Act of 1949, as amended, authorizes long-term loans to individuals, partnerships, corporations, nonprofit organizations, and public bodies to provide affordable, decent, safe, and sanitary rental housing for low- and moderate-income households. The program is limited to rural areas as defined in Section 520 of the act and is administered by the Rural Housing Service (RHS), which is part of the U.S. Department of Agriculture Rural Development (USDA RD) mission area. Until USDA was reorganized in the early 1990s, Section 515 was the responsibility of USDA's Farmers Home Administration (FmHA).

The Section 515 program evolved from the Senior Citizens Housing Act of 1962. During its early years Section 515 was a low volume program used primarily by individuals and nonprofit organizations. Until 1969 loans were made at a below market rate (BMR) of interest. Subsequent to the passage of the 1968 Housing Act, interest could be subsidized to an effective rate of 1 percent. Subsidized loans were limited to nonprofit borrowers, while profit-making borrowers continued to receive BMR loans.

Section 515, like RHS's other direct loan programs, has a "no credit elsewhere" test that limits the eligibility of would-be applicants. Essentially, the statute requires that an applicant be unable to provide the housing with its own resources or with private financing at affordable rates and terms. Since RHS lending supplements that of the private sector, borrowers are supposed to "graduate" to private credit when able. The "graduation" requirement played a key role in the prepayment issue, as noted later. HUD-assisted multifamily housing financing imposed 20-year prepayment restrictions, but Section 515 loans made before December 21, 1979 contained no such requirement. In fact, owners believed that covenants in their FmHA loan agreements required graduation to other credit, when able, and thus suggested prepayment.

During the early years of the Section 515 program, when only nonprofits could receive loans with interest subsidy, there was little danger that owners would be eligible for private financing or seek to prepay solely for the purpose of achieving private market status. However, after changes in the tax laws, in 1972 FmHA administratively revised the eligibility requirements for Section 515. The changes (1) made interest subsidy available and provided eligibility for organizations unable to obtain financing for housing with rents affordable by low- and moderate-income tenants, and (2) opened up the program to investors in limited partnerships who agreed to limit profit on their investment to a fixed percentage. The graduation requirements were maintained for the newly eligible applicants, even though their initial eligibility depended on affordability to the tenants (not the borrower, as is the case in the Section 502 homeownership program). A peculiar contradiction resulted. While still recognizing the need for capital to stimulate production of housing for the rural poor, FmHA was authorized to accept and, indeed, to encourage graduation without consideration of the consequences for the very low-income occupants that the program was intended to help.

The Nixon Administration's 1973 moratorium on subsidized housing also proved to be a factor in the development of the Section 515 program. Unlike their urban counterparts, whose efforts to end the moratorium failed, rural interests prevailed in a lawsuit. This fact, plus a 5 percent minimum investment, effective 1 percent loans, 40- to 50-year terms, tax benefits and ultimately rental assistance subsidy, proved very attractive to larger volume developers and investors, who became the dominant force in the program. They were motivated by the gains expected from

resale and tax shelters. By May, 1987, 74.2 percent of all units were owned by limited-profit entities (5.1 percent by full-profit and 20.7 percent by nonprofit or public owners).

In 1978 prepayment produced the first known displacement of tenants. Housing advocates brought the situation to the attention of FmHA, but the agency was then preoccupied with aggressive loan making, funding and targeting activities, and failed to grasp the potential seriousness of the issue. Tenant advocates, having failed to convince FmHA and its USDA counsel that it must change the graduation requirement, decided to pursue a change in the law.

A 1979 bill introduced by Rep. AuCoin (D-Ore.) went so far as to require retention for the term of the loan. The Senate provision contained a 15-year restriction on prepayment together with exceptions where FmHA determined there was no longer a need for the housing. The House-Senate conference yielded 20-year restrictions (15 years for unsubsidized loans) on prepayment of subsidized loans as part of a compromise which was slightly less rigid for retroactive loans (those closed prior to December 21, 1979). Pre-12/21/79 loans could be prepaid before 15 or 20 years if alternative affordable housing was provided or if loans concerned more than 10 units and the changes would not have a substantial, adverse effect on the supply of low- and moderate-income housing. FmHA supported the House legislation, whereas USDA, including FmHA's legal counsel, and OMB opposed the retroactive features. It was an extended and bitter conference, pitting the interests of the nonprofit community (who supported restrictions) against those of the developers and the National Association of Home Builders (NAHB), who argued the sanctity of contracts.

In 1980 the law was amended to strike the retroactive provisions and to retain as the tenants' only protection a priority for tenancy in other FmHA-financed units. The amendment was introduced on the House floor at the urging of development groups and NAHB. There was no such measure in the Senate bill. In the House/Senate conference, which was even more acrimonious than that of 1979, House conferees voted against their own amendment and Senate conferees voted to repeal. After much argument the developers, investors, and homebuilders prevailed.

Very little attention was given to the subject over the next few years. By 1983, however, prepayment activity began to increase and tenants were being displaced. This time it was apparent that such results were not isolated. Prepayment was fairly extensive in California, and in 1984 the California Department of Housing and Community Development began to study what was happening. Its report, released in 1985, was circulated and stimulated new action by the nonprofit sector and Congress. The House Subcommittee on Housing and Community Development held hearings on September 30, 1986, with the same polarization as in 1979 and 1980 – nonprofits and tenant advocates versus the housing industry. One exception was the Rural Builders Council of California, which supported some form of remedial action. Extensive and adverse news coverage of drastic rent hikes and evictions of elderly, handicapped, and other low-income households had produced an understanding that they could not simply rely on the sanctity of contracts.

California members of Congress were besieged with requests to aid affected tenants. At HAC's urging, FmHA ran a survey on prepayment for the years 1984-1986. It provided evidence that prepayment was causing tenant displacement. Representatives Gonzalez, Lehman, and Frank began to craft a bill (H.R. 1070) that would permit some prepayment but protect tenants by retaining the projects in the FmHA portfolio. The National Rural Housing Coalition (NRHC), at

the forefront of legislation to protect tenants, worked successfully to obtain a nine-month moratorium on prepayment (through June 30, 1987). The moratorium was extended a number of times through the period when corrective legislation took effect.

FmHA published a rule on June 30, 1987, which provided additional time for tenants facing displacement and improved their priority status in other FmHA projects. Requirements included: (1) owners wishing to prepay must provide FmHA and tenants with 180 days' notice and a commitment to maintain rents at their current levels for this period (unless tenants were given a 30-day comment period), (2) FmHA certified mail notice to tenants, (3) transfer of rental assistance, (4) a six-month priority period for occupancy in other FmHA-financed projects, and (5) a detailed report by the owner on the changes to be made.

As was the case in 1979 and 1980, legislation to correct prepayment problems was a polarizing issue, and among the same groups. The House bill became a compromise, embraced by neither side. The Senate passed no prepayment bill, but played a key role during conference. What emerged within the Housing and Community Development Act of 1987 was a four-part Title II entitled the Emergency Low-Income Housing Preservation Act (ELIHPA). Three parts (those affecting HUD programs) were to sunset in two years, but Subtitle C, "Rural Rental Housing Displacement Prevention," permanently limits prepayment of FmHA loans made on or before December 21, 1979. The provisions regulating post-December 21, 1979 loans were not amended and retained restrictions for subsidized low-income housing for 20 years from the date of the loan.

At the urging of NRHC, the House bill for 1989 contained a total prohibition on prepayment of all prospective Section 514 and 515 loans. It was understood that any final bill would have to be reasonably acceptable to those on both sides of the issue, and a compromise was passed. The 1989 prohibits prepayment. It provides that: (1) owners may receive guaranteed equity loans after 20 years, (2) such loans may be for up to 90 percent of equity or 30 percent of the original loan, whichever is less, (3) a reserve account will be established from tenant rent surcharges. The latter is to ensure that no tenant will pay more than 30 percent of income for rent and utilities as a result of owner payments for the guaranteed loans. The 1989 legislation was poorly crafted and FmHA attorneys interpreted most flawed language to the detriment of tenants. The 1990 Act corrected problems in the 1989 legislation.

The Housing and Community Development Act of 1992 amended Section 502(c) to make the provision of the 1987 Act (originally application to loans made before December 21, 1979) applicable to loans made between December 21, 1979 and December 14, 1989. Unfortunately the authorization for equity incentive loans in Section 515 (c)1) was not amended, and thus that incentive is not included for loans made between December 21, 1979 and December 14, 1989. There is currently some confusion regarding how the 15- and 20-year prepayment restrictions, still applicable for the loans made during that period, apply relative to the basic provision of the 1987 Act as amended.

APPENDIX B
SECTION 502(c) OF THE HOUSING ACT OF 1949, AS AMENDED

(c) Prepayment and refinancing provisions

(1)(A) The Secretary may not accept an offer to prepay, or request refinancing in accordance with subsection (b)(3) of this section of, any loan made or insured under section 1484 or 1485 of this title pursuant to a contract entered into after December 21, 1979, but before December 15, 1989, unless the Secretary takes appropriate action which will obligate the borrower (and successors in interest thereof) to utilize the assisted housing and related facilities for the purposes specified in section 1484 or 1485 of this title, as the case may be, for a period of -

(i) fifteen years from the date on which the loan was made in the case of a loan made or insured pursuant to a contract entered into after December 21, 1979, but before December 15, 1989, and utilized for housing and related facilities which have not received assistance under section 1490a(a)(1)(B), (a)(2), or (5) of this title or section 1437f of this title; or

(ii) twenty years from the date on which the loan was made in the case of any other such loan; or until the Secretary determines (prior to the end of such period) that there is no longer a need for such housing and related facilities to be so utilized or that Federal or other financial assistance provided to the residents of such housing will no longer be provided.

(B) The Secretary may not accept an offer to prepay, or request refinancing in accordance with subsection (b)(3) of this section of, any initial loan made or insured under section 1485 of this title pursuant to a contract entered into on or after December 15, 1989.

(2) If any loan which was made or insured under section 1484 or 1485 of this title pursuant to a contract entered into prior to December 15, 1989, is prepaid or refinanced on or after October 8, 1980, and tenants of the housing and related facilities financed with such loan are displaced due to a change in the use of the housing, or to an increase in rental or other charges, as a result of such prepayment or refinancing, the Secretary shall provide such tenants a priority for relocation in alternative housing assisted pursuant to this subchapter.

(3) Notice of offer to prepay. - Not less than 30 days after receiving an offer to prepay any loan made or insured under section 1484 or 1485 of this title, the Secretary shall provide written notice of the offer or request to the tenants of the housing and related facilities involved, to interested nonprofit organizations, and to any appropriate State and local agencies.

(4)(A) Agreement by borrower to extend low income use. - Before accepting any offer to prepay, or requesting refinancing in accordance with subsection (b)(3) of this section of, any loan made or insured under section 1484 or 1485 of this title pursuant to a contract entered into prior to December 15, 1989, the Secretary shall make reasonable efforts to enter into an agreement with the borrower under which the borrower will make a binding commitment to extend the low income use of the assisted housing and related facilities involved for not less than the 20-year period beginning on the date on which the agreement is executed.

(B) Assistance available to borrower to extend low income use. -

To the extent of amounts provided in appropriation Acts, the agreement under subparagraph (A) may provide for 1 or more of the following forms of assistance that the Secretary, after taking into account local market conditions, determines to be necessary to extend the low income use of the housing and related facilities involved:

(i) Increase in the rate of return on investment.

(ii) Reduction of the interest rate on the loan through the provision of interest credits under section 1490a(a)(1)(B) of this title, or additional assistance or an increase in assistance provided under section 1490a(a)(5) of this title.

(iii) Additional rental assistance, or an increase in assistance provided under existing contracts, under section 1490a(a)(2) or 1490a(a)(5) of this title or under section 1437f of this title.

(iv) An equity loan to the borrower under paragraphs (1) and (2) of section 1485(c) of this title or under paragraphs (1) and (2) of section 1484(j) of this title, except that an equity loan referred to in this clause may not be made available after August 6, 1996, unless the Secretary determines that the other incentives available under this subparagraph are not adequate to provide a fair return on the investment of the borrower, to prevent prepayment of the loan insured under section 1484 or 1485 of this title, or to prevent the displacement of tenants of the housing for which the loan was made.

(v) Incremental rental assistance in connection with loans under clauses (ii) and (iv) to the extent necessary to avoid increases in the rental payments of current tenants not receiving rental assistance under section 1490a(a)(2) of this title or under section 1437f of this title, or current tenants of projects not assisted under section 1490a(a)(5) of this title.

(vi) In the case of a project that has received rental assistance under section 1437f of this title, permitting the owner to receive rent in excess of the amount determined necessary by the Secretary to defray the cost of long-term repair or maintenance of such a project.

(C) Approval of assistance. - The Secretary may approve assistance under subparagraph (B) for assisted housing only if the restrictive period has expired for any loan for the housing made or insured under section 1484 or 1485 of this title pursuant to a contract entered into after December 21, 1979, but before December 15, 1989, and the Secretary determines that the combination of assistance provided -

(i) is necessary to provide a fair return on the investment of the borrower; and

(ii) is the least costly alternative for the Federal Government that is consistent with carrying out the purposes of this subsection.

(5)(A) Offer to sell to nonprofit organizations and public agencies. -

(i) In general. - If the Secretary determines after a reasonable period that an agreement will not be entered into with a borrower under paragraph (4), the Secretary shall require the borrower (except as provided in subparagraph (G)) to offer to sell the assisted housing and related facilities involved to any qualified nonprofit organization or public agency at a fair market value determined by 2 independent appraisers, one of whom shall be selected by the Secretary and one of whom shall be selected by the borrower. If the 2 appraisers fail to agree on the fair market value, the Secretary and the borrower shall jointly select a third appraiser, whose appraisal shall be binding on the Secretary and the borrower.

(ii) Period for which requirement applicable. - If, upon the expiration of 180 days after an offer is made to sell housing and related facilities under clause (i), no qualified nonprofit organization or public agency has made a bona fide offer to purchase, the Secretary may accept the offer to prepay, or may request refinancing in accordance with subsection (b)(3) of this section of, the loan. This clause shall apply only when funds are available for purposes of carrying out a transfer under this paragraph.

(B) Qualified nonprofit organizations and public agencies. -

(i) Local nonprofit organization or public agency. - A local nonprofit organization or public agency may purchase housing and related facilities under this paragraph only if -

(I) the organization or agency is determined by the Secretary to be capable of managing the housing and related facilities (either directly or through a contract) for the remaining useful life of the housing and related facilities; and

(II) the organization or agency has entered into an agreement that obligates it (and successors in interest thereof) to maintain the housing and related facilities as affordable for very low-income families or persons and low income families or persons for the remaining useful life of the housing and related facilities.

(ii) National or regional nonprofit organization. - If the Secretary determines that there is no local nonprofit organization or public agency qualified to purchase the housing and related facilities involved, the Secretary shall require the borrower to offer to sell the assisted housing and related facilities to an existing qualified national or regional nonprofit organization.

(iii) Selection of qualified purchaser. - The Secretary shall promulgate regulations that establish criteria for selecting a qualified nonprofit organization or public agency to purchase housing and related facilities when more than 1 such organization or agency has made a bona fide offer. Such regulations shall give a priority to those organizations or agencies with the greatest experience in developing or managing low income housing or community development projects and with the longest record of service to the community.

(C) Financing of sale. - To facilitate the sale described in subparagraph (A), the Secretary shall -

(i) to the extent provided in appropriation Acts, make an advance to the nonprofit organization or public agency whose offer to purchase is accepted under this paragraph to cover any direct costs (other than the purchase price) incurred by the organization or agency in purchasing and assuming responsibility for the housing and related facilities involved;

(ii) approve the assumption, by the nonprofit organization or public agency involved, of the loan made or insured under section 1484 or 1485 of this title;

(iii) to the extent provided in appropriation Acts, transfer any rental assistance payments that are received under section 1490a(a)(2)(A) of this title or under section 1437f of this title, or any assistance payments received under section 1490a(a)(5) of this title, with respect to the housing and related facilities involved; and

(iv) to the extent provided in appropriation Acts, provide a loan under section 1485(c)(3) of this title to the nonprofit organization or public agency whose offer to purchase is accepted under this paragraph to enable the organization or agency to purchase the housing and related facilities involved.

(D) Rent limitation and assistance. - The Secretary shall, to the extent provided in appropriation Acts, provide to each nonprofit organization or public agency purchasing housing and related facilities under this paragraph financial assistance (in the form of monthly payments or forgiveness of debt) in an amount necessary to ensure that the monthly rent payment made by each low income family or person residing in the housing does not exceed the maximum rent permitted under section 1490a(a)(2)(A) of this title or, in the case of housing assisted under section 1490a(a)(5) of this title, does not exceed the rents established for the project under such section.

(E) Restriction on subsequent transfers. - Except as provided in subparagraph (B)(ii), the Secretary may not approve the transfer of any housing and related facilities purchased under this paragraph during the remaining useful life of the housing and related facilities, unless the Secretary determines that -

(i) the transfer will further the provision of housing and related facilities for low income families or persons; or

(ii) there is no longer a need for such housing and related facilities by low income families or persons.

(F) General restriction on prepayments and refinancings. - Following the transfer of the maximum number of dwelling units set forth in subparagraph (H)(i) in any fiscal year or the maximum number of dwelling units for which budget authority is available in any fiscal year, the Secretary may not accept in such fiscal year any offer to prepay, or request refinancing in accordance with subsection (b)(3) of this section of, any loan made or insured under section 1484 or 1485 of this title pursuant to a contract entered into prior to December 15, 1989, except in accordance with subparagraph (G). The limitation established in this subparagraph shall not apply to an offer to prepay, or request to refinance, if, following the date on which such offer or

request is made (or following February 5, 1988, whichever occurs later) a 15-month period expires during which no budget authority is available to carry out this paragraph. For purposes of this subparagraph, the Secretary shall allocate budget authority under this paragraph in the order in which offers to prepay, or request to refinance, are made.

(G) Exception. - This paragraph shall not apply to any offer to prepay, or any request to refinance in accordance with subsection (b)(3) of this section, any loan made or insured under section 1484 or 1485 of this title pursuant to a contract entered into prior to December 15, 1989, if -

(i) the borrower enters into an agreement with the Secretary that obligates the borrower (and successors in interest thereof) -

(I) to utilize the assisted housing and related facilities for the purposes specified in section 1484 or 1485 of this title, as the case may be, for a period determined by the Secretary (but not less than the period described in paragraph (1)(B) calculated from the date on which the loan is made or insured); and

(II) upon termination of the period described in paragraph (1)(B), to offer to sell the assisted housing and related facilities to a qualified nonprofit organization or public agency in accordance with this paragraph; or

(ii) the Secretary determines that housing opportunities of minorities will not be materially affected as a result of the prepayment or refinancing, and that -

(I) the borrower (and any successor in interest thereof) are obligated to ensure that tenants of the housing and related facilities financed with the loan will not be displaced due to a change in the use of the housing, or to an increase in rental or other charges, as a result of the prepayment or refinancing; or

(II) there is an adequate supply of safe, decent, and affordable rental housing within the market area of the housing and related facilities and sufficient actions have been taken to ensure that the rental housing will be made available to each tenant upon displacement.

(H) Funding. -

(i) Budget limitation. - Not more than 5,000 dwelling units may be transferred under this paragraph in any fiscal year, and the budget authority that may be provided under this paragraph for any fiscal year may not exceed the amounts required to carry out this paragraph with respect to such number.

(ii) Reimbursement of rural housing insurance fund. - There are authorized to be appropriated to the Rural Housing Insurance Fund such sums as may be necessary to reimburse the Fund for financial assistance provided under this paragraph, paragraph (4), and section 1487(j)(7) of this title.

(I) Definitions. - For purposes of this paragraph:

(i) Local nonprofit organization. - The term "local nonprofit organization" means a nonprofit organization that -

(I) has a broad based board reflecting various interests in the community or trade area; and
(II) is a not-for-profit charitable organization whose principal purposes include developing or managing low income housing or community development projects.

(ii) Nonprofit organization. - The term "nonprofit organization" means any private organization -
(I) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(II) that is approved by the Secretary as to financial responsibility; and

(III) that does not have among its officers or directorate persons or parties with a material interest (or persons or parties related to any person or party with such an interest) in loans financed under section 1485 of this title that have been prepaid.

(J) Regulations. - Notwithstanding section 1490n of this title, the Secretary shall issue final regulations to carry out this paragraph not later than 60 days after February 5, 1988. The Secretary shall provide for the regulations to take effect not later than 45 days after the date on which the regulations are issued.

ATTACHMENT 7-B-1

APPLICATION CHECKLIST

Part 1. Critical items needed

Please submit each of the following immediately once they become available. The buyer/transferee must submit one (1) original to the local AGENCY servicing office and one (1) copy of all of the “critical” documents to the State Office.

1. Forms SF 424 Application for Federal Assistance, *SF 424C Budget Information – Construction Programs*, and *SF 424D Assurances – Construction Programs*.

These forms can be obtained on line at: <http://www.gsa.gov/>

2. “MFH Transfer & Assumption Application Supplement” including the “Preservation Transfer Development Budget” (See Attachment B-3)

3. Copy of executed purchase agreement, including any and all amendments.

4. Physical Needs Assessment.

5. *Optional, but strongly encouraged.* A professional market study, documenting comparable market rents is encouraged when an appraisal is not required

6. Appraisal. Please note, a *third* copy of the appraisal should be sent to your State Appraiser.

7. Copy of associated applications filed with any other financing source (and, if the financing is committed, a copy of the commitment letter – e.g., a preliminary reservation letter).

8. Preliminary title report.

9. Project budget. This budget form should set forth the project’s current AGENCY-approved budget in the “Current Budget” columns and the project’s proposed budget after acquisition in the Proposed Budget columns.

a) Form RD 3560-7. This form is available upon request from AGENCY in an Excel format or it may be obtained in a pdf format on line at: <http://rdinit.usda.gov/regs/forms/3560-07.pdf>

b) Narrative justification of changes in budget. *It is important that any and all differences between the current and proposed budget be fully explained and justified.*

10. Rehabilitation plan. The rehab work should be developed in light of the Comprehensive Needs Assessment (above). The rehab work should be categorized as follows: (i) all necessary repairs to address any deferred maintenance and assure that the housing will be decent, safe, & sanitary; (ii) any needed property improvement to bring the property into conformance with Fair Housing, Americans with Disabilities Act, or Section 504 requirements; (iii) other rehabilitation proposed to enhance long-term viability of the housing; and (iv) any other feasible upgrades that will increase its marketability. The plan must include tenant relocation costs if necessary to rehabilitate the project. The agency must concur with the plan as part of the approval of the transfer.

- a) A detailed plan and timeline of all rehab work to be accomplished. The plan must identify each repair or enhancement item, the timeframe for completion, estimate of costs for each item, who will do the work, and any Identity of Interest between the transferee and the party doing the work or providing materials and services.
- b) Form RD 1924-13. Complete the estimated cost columns. This form can be obtained on line at: <http://rdinit.usda.gov/regs/forms/1924-13.pdf>
11. Contact list. (See Attachment B-4.)

Part 2. Additional application materials needed as soon as possible

These “additional” documents should be submitted to the local AGENCY servicing office only. Copies do not need to be sent to the State Office.

From the seller:

12. Form RD 3560-1 – signed by the *seller*. This form can be obtained on line at: <http://rdinit.usda.gov/regs/forms/3560-01.pdf>

From the buyer/transferee:

13. Brief narrative or resume of applicant’s experience in multi-family housing.
14. Current financial statements of the applicant and of all general partners and owners with a >10% ownership interest. An example of an appropriate certification is Attachment B-5. The certification should be attached to each financial statement. (Note: If the applicant is an entity that has not yet been formed, financial statements should be a *pro forma* financial statement of the applicant along with financial statements of the proposed principals.)
15. *If the buyer is a nonprofit or has a nonprofit general partner:* Most recent IRS Form 990, “Return of Organization Exempt from Income Tax” (with Schedules A & B).
16. Organizational documents as appropriate for applicant entity type – e.g., partnership agreement, articles of incorporation, by-laws, certificate of good standing, resolution to apply for this loan – along with a letter from the applicant’s attorney certifying their legal sufficiency. (Note: If the applicant is an entity that has not yet been formed, drafts documents may be submitted instead.) If the borrower is a nonprofit, also provide:
- a) Tax-exempt ruling from the IRS conferring 501(c)(3) or 501(c)(4) status.
- b) List of members on Board of Directors.
17. Form HUD 9832, Management Entity Profile – signed by the applicant. This form can be obtained online at: http://www.hudclips.org/sub_nonhud/cgi/pdfforms/9832.pdf
18. Form HUD 2530/RD 1944-37 – signed by the applicant. This form can be obtained online at: http://www.hudclips.org/sub_nonhud/html/pdfforms/2530.pdf (fillable pdf format)
19. Form RD 3560-30, – signed by the applicant. This form can be obtained online at: <http://rdinit.usda.gov/regs/forms/3560-30.pdf>

20. *If there is any Identity of Interest: Form RD 3560-31*, – signed by the applicant. This form can be obtained online at: <http://rdinit.usda.gov/regs/forms/3560-31.pdf>

21. *Form RD 1910-11, Applicant Certification Federal Collection Policies for Consumer or Commercial Debts* – signed by the applicant. This form can be obtained online at: <http://rdinit.usda.gov/regs/forms/1910-11.pdf>

22. *Form AD 1047, Certification Regarding Debarment, Suspension and other Responsibility Matters* – signed by the applicant. This form can be obtained online at http://www.ocio.usda.gov/forms/ocio_forms.html

23. *Form RD 400-1*. This form can be obtained on line at: <http://rdinit.usda.gov/regs/forms/0400-01.pdf> (fillable pdf format)

24. *Form RD 400-4, Assurance Agreement*. This form can be obtained on line at: <http://rdinit.usda.gov/regs/forms/0400-01.pdf> (fillable pdf format)

25. RD Instruction 1940-Q, Exhibit A-1. This form is attached as Attachment B-6.

Information on other funding sources:

26. If the project will be receiving funding from other sources besides the requested AGENCY loan, for each source, attach a copy of any draft regulatory/loan agreements associated with the financing.

Project management information:

27. *Form HUD 935.2* – signed by the applicant. This form can be obtained online at: http://www.hudclips.org/sub_nonhud/cgi/pdfforms/935-2.pdf (fillable pdf format)

28. Proposed Management Agreement

29. Proposed Management Plan

30. Proposed lease & occupancy rules to be used at the project (with letter from attorney indicating legal sufficiency).