

June 24, 2014

TO: State Directors
Rural Development

ATTN: Program Directors and Coordinators
Multi-Family Housing

FROM: Tony Hernandez /s/ *Tony Hernandez*
Administrator
Housing and Community Facilities Programs

SUBJECT: Servicing Section 515 Borrowers that Received Damages Under the Prepayment Settlement Agreement and File Retention for Loans Subject to Future Claims

The purpose of this Unnumbered Letter (UL) is to provide guidance on servicing the accounts of borrowers who have accepted damages as a result of the Settlement Agreement (Agreement) dated May 21, 2007, for the 731 properties involved in prepayment litigation (aka SAT Projects) and retention of information in Section 515 cases that may be subject to similar litigation.

Part III, Section B, of the Agreement outlines the impact of the settlement for borrowers who accepted damages as a result of the execution of the Agreement. Borrowers who received damages shall be treated on an equal basis with all other borrowers in the Section 515 program, in their dealings with the Government, except for the following:

1. The borrower shall not be entitled to receive any of the incentives made available to discourage prepayment of loans under the 7 C.F.R. §3560.656.
2. The borrower shall not be entitled to prepay the loan which was the basis for a claim, including prepayment subject to continuing restrictions (i.e., "G-4" restrictions), excepting those situations where the Government determines that the property is no longer needed in the Section 515 Program.

EXPIRATION DATE:
June 30, 2015

FILING INSTRUCTIONS:
Housing Programs

In applying the aforementioned, a borrower who received damages pursuant to the Agreement may file a request to prepay the loan on which their claim was based, but may not receive any incentives to avert prepayment. The borrower can only prepay the loan, or be released from the obligations under the Restrictive-Use Covenant (RUC), if the Agency determines the project is no longer needed in the Section 515 program, or if the financial assistance provided to the tenants of the housing will no longer be provided due to no fault, action or lack of action on the part of the borrower. The borrower can sell or transfer the project in accordance with 7 C.F.R. §3560.659, under the prepayment regulations or in accordance with 7 C.F.R. §3560.406, at anytime. It should be noted here that any appraisal conducted in conjunction with a sale or transfer of these properties should consider the RUC in accordance with 7 C.F.R. §3560.752 (b) (1) (i). Additionally, if the transfer or sale fails to materialize and close, the prepayment request will be withdrawn and returned to the borrower. The impact of the RUC and Agreement would affect any new requests for prepayment or any outstanding requests that were pending at the time the Agreement became effective.

If, in the course of servicing the loans on properties that received damages under the Agreement, it is determined it will be necessary to seek liquidation of the account through foreclosure, the opinion of the Regional Office of General Counsel (OGC) must be obtained as to whether or not the Rural Development mortgage must be subordinated to the RUC in order to survive a foreclosure sale. If OGC determines that mortgage must be subordinated to the RUC, the subordination will be completed prior to acceleration of the account. The Multi-Family Housing Information System (MFIS) should also be updated to reflect the date that the new RUC expires on the property that received damages.

Based on the issues that precipitated the Agreement, it has been determined that any loan made or assumed during the period of December 21, 1979, to December 14, 1989, could be the subject of future litigation. AN No. 4717 (2033-A), dated (to be determined), addresses the retention of information in case files for accounts for which prepayment was requested. However, in order to insure that the records and documents regarding these loans are adequately preserved, it will be necessary to retain the loan file and servicing files in the cases of any Section 515 loan made or assumed during the period of December 21, 1979, to December 14, 1989, until 6 years after the loan is satisfied. This would also include any electronic correspondence (e-mail) and data stored in MFIS. Please note that for prepayment cases currently filed, documents are subject to a litigation hold and while under the litigation hold, files must be retained in their entirety. There is no need to retain and preserve documents from litigation cases that have been closed.

For all other cases involving section 515 loans made or assumed between December 21, 1979 to December 14, 1989, information such as tenant certifications, Identity of Interest's, management plans and agreements, expired insurance policies, old Affirmative Fair Housing Marketing Plans, and old energy audits may be destroyed in accordance with RD Instruction 2033-A, as they have no impact on the determination of potential damages in prepayment cases. Documentation regarding all supervisory visits and all budgets must be retained for 6 years after the loan is satisfied.

Questions regarding this UL may be directed to the Preservation and Direct Loan Division or Tiffany Tietz at 616.942.4111 extension 126 or e-mail at tiffany.tietz@wdc.usda.gov.