



Rural Development

June 14, 2019

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TO: State Directors  
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ATTN: Program Directors  
Multi-Family Housing

FROM: Bruce W. Lammers /s/ *Bruce W. Lammers*  
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SUBJECT: Guidance on the Use of Section 538 Guaranteed Rural Rental  
Housing Program with Section 515 Properties

The intent of this Unnumbered Letter (UL) is to clarify issues concerning the use of Section 538 loan guarantees in transactions involving the revitalization and preservation efforts of existing affordable housing properties financed with Section 515 direct loans. It is written for the sole use of the Rural Development State Office staff and area offices involved in processing Section 538 guaranteed loan applications received in conjunction with existing Section 515 property transfers and the Multifamily Preservation and Revitalization (MPR).

The use of the Section 538 program enhances Rural Development’s capacity to attract private capital to support the revitalization of the Section 515 portfolio. The Section 515 Rural Rental Housing program and the Section 538 Guaranteed Rural Rental Housing program have different regulatory frameworks. This UL intends to reconcile the procedural differences between the two programs.

The attachment to this UL is titled “SECTION 538/515 PROGRAM REQUIREMENTS MATRIX”. Column A contains several program requirements that are addressed in this UL. Column B contains an overview of the program requirement from the Section 538 perspective. Column C contains an overview of the program requirement from the Section 515 perspective. It should be noted that both Column B and Column C are only summary statements. Reviewers should rely on the respective regulations and handbooks for each program for detailed program guidance. Column D outlines the program requirements Rural Development staff should utilize for each program requirement contained in Column A. The guidance provided generally directs the user to utilize the most restrictive guidance from either the Section 538 program or the Section 515 program. Effective January 6, 2017,

EXPIRATION DATE:  
June 30, 2020

FILING INSTRUCTIONS:  
Housing Programs

Chapter 7 of HB-3-3560, Multi-Family Housing Project Servicing Handbook, was revised. Changes to Chapter 7 that have an effect on the processing of Section 515 and Section 538 joint transactions are reflected in the Matrix.

If you have any questions regarding this UL, please contact Tammy S. Daniels of the Multi-Family Housing Guaranteed Loan Division at (202) 720-0021 or [tammy.daniels@wdc.usda.gov](mailto:tammy.daniels@wdc.usda.gov).

Attachment

<b>COLUMN A</b> <b>Program</b> <b>Requirements</b>	<b>COLUMN B</b> <b>Section 538 Requirements</b>	<b>COLUMN C</b> <b>Section 515 Requirements</b>	<b>COLUMN D</b> <b>Sections 538/515 Projects Recommended</b> <b>Approach</b>
<b>1. Equity Contribution</b>	<p>For-Profit – the greatest of 10 percent of the Total Development Cost (TDC) or of the appraised value.</p> <p>Non-Profit – the greatest of 3 percent of the TDC or of the appraised value.</p> <p>Cash or/and land value meet the equity requirement (other Agency approved sources may be considered).</p>	<p>For-Profit – 3 percent <b>of the Agency RRH loan</b> not receiving Low Income Housing Tax Credits (LIHTC).</p> <p>For-Profit – 5 percent of the <b>Agency RRH loan</b> if receiving LIHTC.</p> <p>Non-Profit – 0 percent; can loan 100 percent plus 2 percent operating expenses.</p> <p>Not required for properties in the Multifamily Preservation and Revitalization (MPR) Demonstration program using the MPR tools provided in the MPR NOSA. However, equity contributions are still required for MPR properties and transfers using supplemental/subsequent Section 515 loan funds to complete the transaction.</p> <p>Any additional funds advanced under the MPR program may only be used for MPR authorized purposes.</p>	<p>Prior to the issuance of the Agency’s Conditional Commitment, the Lender certifies in its application that Section 538 program’s equity requirements were met, and Agency personnel must verify Lender’s calculations. Prior to the issuance of a permanent guarantee, an appraisal (unless waived) of the project once construction is completed must confirm the Borrower’s equity contribution certification.</p> <p>Existing Section 515 reserve account Balances will not be used to meet Section 538 equity contribution requirements.</p>

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<b>2. Lease-Up Reserve</b>	<p>Lease-up reserve in lieu of 90/90</p> <ul style="list-style-type: none"> <li>• Required only if the permanent guarantee is to be issued prior to achievement of 90 percent occupancy for 90 continuous days in the 120-day period immediately prior to the issuance of the permanent guarantee.</li> <li>• Lender and/or developer must elect to use a lease-up reserve prior to the start of construction.</li> <li>• Borrower funded with a non-mortgageable cash contribution.</li> <li>• Reserve must be fully funded prior to issuance of permanent guarantee.</li> <li>• For Option 3 Continuous Guarantees, the lease-up reserve is fully funded on or before the issuance of the guarantee.</li> <li>• For Option 2 Construction/Permanent, the lease-up reserve must be funded prior to the closing of the construction loan.</li> <li>• For Option 1 Permanent Only, the lease-up reserve must be funded prior to the closing of the permanent loan guarantee.</li> <li>• Reserve must be at least 2 percent of the greater of appraised value or TDC.</li> </ul> <p>Unused funds are transferred to the Section 538 Operations and Maintenance (O&amp;M) reserve account and may be returned to the Borrower as a cash distribution at the end of the year and if the requirements of HB-1-3565 Paragraph 7.7 E have been met.</p>	<p>For Section 515 transfers and MPRs, Borrowers must fund any required Tenant Protections specified in the direct loan underwriting approval by establishing from non-project resources a specific cash escrow set-aside for this purpose at the time of the transfer closing. Tenant Protections are project specific and must be funded as approved in the transfer approval. So long as the Tenant Protections are required, additional funding of the reserve may be required on an ongoing basis. Discuss individual transactions with a National Office Review Underwriter.</p> <p>Tenant Protections are not the same as the lease-up reserve. Tenant Protections apply to all projects not having full Rental Assistance (RA) and to all non-RA assisted revenue units where the transfer results in a rent or authorized Return to Owner (RTO) increase.</p> <p>Any unused Tenant Protection funds remaining at the end of the required Tenant Protections period may be returned to the Borrower upon Rural Development approval of the Borrower's request.</p> <p>See Sections 7.2, 7.9 and 7.27 of HB-3-3560, Chapter 7.</p>	<p>When the Lender and/or developer opt to use the lease-up reserve in lieu of the 90/90 requirement, the lease-up reserve will be managed pursuant to Section 538 requirements. (If the Section 538 lender provides the funds, the lender will control the account and its distributions). Once the lender has opted to establish the lease-up reserve in lieu of the 90/90, the lender must still fund the reserve even if the project reaches 90/90 prior to closing of the Section 538 loan. The lease-up reserve must be funded in accordance with the Section 538 guidelines that are listed in Column B of this document.</p> <p>If the Lender, Borrower and Agency choose not to fund a lease-up reserve during the construction period, documentation for the basis of the decision must be in the Agency file. There must be documented evidence that the project will not expect to lose tenants due to displacement or due to increased rents.</p> <p>If a Section 538 lease-up reserve is not used, the project must meet the 90/90 test in the 120-day period immediately prior to the issuance of the permanent guarantee.</p> <p>Unused funds are transferred to the Section 538 O&amp;M reserve account and may be returned to the Borrower as a cash distribution at the end of the year if the requirements of HB-1-3565, Paragraph 7.7 E have been met. (If the lender establishes the O&amp;M reserve account)</p> <p>Tenant Protections for direct RRH loan transfers are discussed in HB-3-3560, Chapter 7.</p>

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<b>3. Construction Contingency Reserve</b>	<ul style="list-style-type: none"> <li>• At least 2 percent of total construction costs.</li> <li>• Borrower funds reserve with a non- mortgageable cash contribution. The Lender may release unused construction contingency reserves to the Borrower any time after completion of construction and achievement of the 90/90 test. All other reserve accounts must be fully funded prior to the release of any unused construction contingency funds.</li> <li>• May accept letter of credit (LOC) in lieu of cash.</li> </ul>	<ul style="list-style-type: none"> <li>• 7 percent – 10 percent and may be funded with Section 515/MPR funds or other third-party financing as authorized in the transfer approval for construction hard cost contingencies. The maximum contingency will not exceed 10% unless extenuating circumstances are justified on an individual basis and approved by the agency.</li> <li>• Upon final inspection and acceptance by Rural Development, any remaining unused funds will be deposited into project’s Rural Development capital reserve account.</li> </ul>	<p>For projects using the Section 538 construction guarantee, Section 538 requirements apply.</p> <p>State Offices must approve all change orders for Sections 515/538 construction contracts.</p>
<b>4. Occupancy &amp; Rent Restrictions</b>	<ul style="list-style-type: none"> <li>• At initial occupancy, tenancy restricted to individuals and families whose incomes do not exceed 115 percent of area median income.</li> </ul>	<ul style="list-style-type: none"> <li>• At initial occupancy, annually or other re-certifications, tenant must qualify as a very low, low or moderate-income household meeting Rural Development definitions.</li> <li>• Rural Development Section 515 rent levels must reflect realistic O&amp;M expenses and expectations in accordance with Section 515 program policy. Overly optimistic or unjustifiable expenses will be rejected under Section 515 underwriting principles.</li> </ul>	<p>The most restrictive occupancy and rent restrictions (typically Section 515) will be used.</p>

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<b>5. Operating Costs and Rent Levels</b>	<ul style="list-style-type: none"> <li>Operating costs and rent levels must be adequate to meet program and the Notice of Funding Availability (NOFA) requirements on a sustainable basis in the budget analysis.</li> <li>At rent up and on a continuing basis, rents including tenant utility allowances may not exceed 30 percent of 115 percent of area median income adjusted for family size.</li> <li>Average rent for all units in a project cannot exceed 30 percent of 100 percent of area median income adjusted for family size.</li> </ul>	<ul style="list-style-type: none"> <li>Rural Development Section 515 rent levels must reflect O&amp;M expenses that are reasonable, typical, necessary and show a clear benefit to the residents of the property and expectations in accordance with Section 515 program policy. Must meet regulatory requirements for allowable expenses per 7 CFR 3560. Overly optimistic or unjustifiable expenses will be rejected under Section 515 underwriting principles. Projects must be sustainable and will be underwritten with expenses, costs and incomes that can typically be supported in the market area.</li> <li>At approval of new loans and MPR tools, transfers, prepayments, etc., and upon completion of all construction, rents cannot exceed the amount specified in the direct loan approval conditions. This is typically the lesser of the Conventional Rents for Comparable Units (CRCU) or other standard, unless waived by the National Office.</li> <li>On an ongoing basis, rents remain budget-based. CRCU standards do not apply to annual budget submissions.</li> </ul>	<p>Underwriters will review both Section 538 and Section 515 anticipated income and expense projects to reconcile the operating projections. If LIHTCs are also included, such projections will also be considered in determining feasibility projections and sustainability determinations.</p> <p>O&amp;M expenses that are reasonable, typical, necessary and show a clear benefit to the residents of the property and expectations in accordance with Section 515 program policy. Must meet regulatory requirements for allowable project expense per 7 CFR 3560.</p>

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<b>6. Construction Monitoring, Inspections, Payouts</b>	<ul style="list-style-type: none"> <li>• New construction, rehabilitation, modular and manufactured structures must meet RD Instruction 1924-A.</li> <li>• Actual work inspected by, or on behalf of the Lender.</li> <li>• Minimum three inspections.</li> <li>• In addition to the three inspections; Lender inspections must be done prior to each payment to the contractor.</li> <li>• Lender must coordinate final inspection.</li> <li>• Agency must approve all change orders.</li> </ul>	<ul style="list-style-type: none"> <li>• Agency to inspect all work completed and materials suitably stored on-site.</li> <li>• Minimum three inspections at key times.</li> <li>• In addition to the three required inspections; Agency encouraged to make monthly inspections if time and resources permit.</li> <li>• Prior Agency concurrence with each pay request and proposed change order.</li> <li>• MPR projects are subject to project-specific requirements under the terms of the MPR Conditional Commitment and only released for the MPR authorized purposes as required under the MPR Conditional Commitment.</li> <li>• Follow RD Instruction 1924-A requirements.</li> </ul>	<p>For Sections 515/538 transfer and MPR projects financed with a Section 538 construction guarantee, the applicable provisions of HB-1-3565 for construction monitoring that are in accordance with the development requirements of RD Instruction 1924-A or otherwise specified in transfer or MPR approval conditions may be authorized on a case-by case basis. If time and resources permit, State Offices are encouraged to monitor the construction through on-site reviews/inspections. State Office staff should review, but not sign, the contractor's payment requests. Any Change orders altering the size or number of units or removing any accessibility or Fair Housing requirements in the approved plans and specs must be reviewed and accepted by the RD approval official.</p>
<b>7. Mortgage Terms</b>	<p>Term of not less than 25 years and not more than 40 years.</p>	<p>Third-party loans must:</p> <ul style="list-style-type: none"> <li>• be fully amortized; or</li> <li>• have a maturity date that is after the Rural Development/Section 515 debt maturity; or</li> <li>• include a written agreement with the third-party lender to extend the scheduled maturity through re-amortization (or whatever means available to the lender on terms that do not require rents to exceed CRCU).</li> </ul>	<p>In Section 515 transactions, the Section 538 loan term must exceed the term of the Section 515 subordinate financing. The minimum term of the Section 538 loan will be 25 years or the term of the Section 515 subordinate debt whichever is greater. The maximum term of the Section 538 loan is 40 years.</p>

COLUMN A Program Requirements	COLUMN B Section 538 Requirements	COLUMN C Section 515 Requirements	COLUMN D Sections 538/515 Projects Recommended Approach
<b>8. Debt Service Coverage Ratio (DSCR)</b>	Requires DSCR of at least 1.15 unless Agency approves lower DSCR.	<p>The general industry minimum standard of 1.15 DSCR is used for transfers and includes all amortizing debt being placed on the property in the initial underwriting review and authorization determination based on the first-year of typical operations (rents, O&amp;M, etc.). For transfer underwriting and analysis, the project at a minimum must meet an initial DSCR of 1.15 through year 3 and may project subsequent DSCRs of 1.1 in years 4 and 5, and 1.0 for the remaining years solely for the purposes of the Rural Development initial transfer analysis.</p> <p>Discuss individual transactions with a National Office Review Underwriter.</p>	The general industry minimum standard of 1.15 DSCR is used for transfers and includes all amortizing debt being placed on the property in the initial underwriting review and authorization determination based on the first full year of typical post construction operations (rents, O&M, taxes, insurance, etc.). For transfer underwriting and analysis, the project at a minimum must meet an initial typical year DSCR of 1.15 through year 3 and may project subsequent DSCRs of 1.1 in years 4 and 5, and 1.0 for the remaining years solely for the purposes of the Rural Development initial transfer analysis. Subsequent annual operating budgets are approved to meet all RD-approved operating expenses, tax and insurance, reserve and approved RTO. Debt service is for Agency approved debt payments.
<b>9. Interest Credit</b>	If available, interest credit for 538 loans is generally limited as to basis points and loan amount.	Reduction in the effective interest rate for the Agency's entire loan down as low as 1 percent with Rural Development Interest Credit Agreement.	Interest credit eligibility, availability and limitations for Sections 515/538 transactions will be published in the respective program NOSA.



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<b>10. O&amp;M Reserve/ Initial Operating Capital (IOC)</b>	<p>O&amp;M Reserve</p> <ul style="list-style-type: none"> <li>All Borrowers must contribute from their own resources at least 2 percent of the loan amount.</li> <li>Funds may be provided in cash or LOC.</li> <li>For Options 1 and 2 Guarantees, the O&amp;M Reserve is funded on or before the closing of the permanent loan. For Option 3 Continuous Guarantee, the O&amp;M Reserve is funded no later than 30 days before the issuance of the first certificate of occupancy is anticipated.</li> </ul>	<p>IOC</p> <p>To provide a source of capital for start-up costs, such as the purchase of equipment, and paying operating, maintenance, and debt service expenses. Borrowers are required to make an IOC contribution to the General Operating Account (GOA) as described in §3560.64.</p> <p>A new O&amp;M expense level will be established for all transfers that is adequate to support the project and the project's GOA must be equal to 20 percent total operating expense as underwritten at the time of transfer (excluding the required prorated tax and insurance escrow). The GOA is different from O&amp;M Reserve and must be funded with additional cash not later than the date of transfer closing. The applicant may recoup the additional required cash deposit to the GOA between the second and seventh year of operation in accordance with HB-2-3560 Chapter 4, Section 1, 4.3.</p>	<p>O&amp;M Reserve for a guaranteed loan is not required when State Office Multi-Family Housing (MFH) staff concurs that the Section 515 GOA complies with any specific transfer approval requirements and is fully funded at the level specified. This reserve is independent of any rent up or initial operational reserve that may be specified by the syndicator, investor, or other third-party requirement for the specific transaction.</p> <p>When additional Section 538 O&amp;M Reserve deposits are required by the 538 lenders, such funds will be managed in accordance with Section 538 requirements and be held and maintained separately from the Section 515 Project O&amp;M Account. If additional O&amp;M or rent up deposits are required by the Section 538 Lender or syndicator, the account and its distributions will be controlled as specified in the Section 538 loan guarantee or approved intercreditor agreement.</p>
<b>11. Credit Enhancements During Construction</b>	<p>Per 3565.303 (c) (2) acceptable credit enhancements include:</p> <ul style="list-style-type: none"> <li>Surety bonding or performance and payment bonding acceptable to the Agency;</li> <li>An irrevocable LOC acceptable to the Agency; or</li> <li>A pledge to the Lender of collateral that is acceptable to the Agency.</li> </ul>	<p>Acceptable credit enhancements include:</p> <ul style="list-style-type: none"> <li>Surety bonding or a payment and performance (P&amp;P) Bond (preferred).</li> <li>An irrevocable LOC, Rural Development is named as Beneficiary – 100 percent of contract.</li> <li>Cash deposit in amount of contract.</li> <li>All construction must adhere to RD Instruction 1924-A. MPR projects must also comply with the terms of the MPR Conditional Commitment.</li> </ul>	<p>For projects financed with a Section 538 construction guarantee, follow the applicable provisions of 3565.303 (c) (2) to the extent that it does not conflict with Section 515 conditions; including surety, bonding and final acceptance.</p>
<b>12. Developer Fee</b>	<ul style="list-style-type: none"> <li>Developer fee is an eligible use of Section 538 loan proceeds.</li> <li>Deferred developer fee can be repaid from surplus cash at year end.</li> </ul>	<ul style="list-style-type: none"> <li>Allow reasonable developer fee when the only other funding source is a Section 538 loan that is being used with existing Section 515 property transfers and MPRs.</li> <li>Deferred developer fees cannot be repaid except as part of the approved annual Return on Investment.</li> </ul>	<p>Developer fee will be an allowed cost with Section 538 loan proceeds. The developer fee will be disbursed at closing or as specified in the syndication agreement accepted by RD.</p> <p>The disbursement of a deferred developer fee will be subject to Section 515 limitations on annual distributions.</p>

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<p><b>13. Project Reserve Accounts Including Capital Needs Assessment (CNA) Requirements</b></p>	<ul style="list-style-type: none"> <li>• Lender holds funds.</li> <li>• Lender approves all release of funds.</li> <li>• Deposits based on CNA. CNAs on Section 538 properties should follow 538 program requirements.</li> <li>• At least every five years, but no later than each seventh year, the Lender must review the CNA as part of adjusting the replacement reserve deposit. The reserve account must be adjusted accordingly. If the reserve deposits as determined by the CNA are not adjusted, the Lender must provide a justification to the Agency. The Lender must continue to do an evaluation of the property during the annual physical inspection to ensure that the reserve account has acceptable funding levels.</li> <li>• Lenders should require Borrowers to obtain bids on major repairs, construction projects, or purchases. A recommended standard is three written bids for any single purchase or project that exceeds \$10,000. Borrowers should be required to justify any bid accepted that is higher than the lowest bid.</li> </ul>	<ul style="list-style-type: none"> <li>• Section 515 reserve account funds required to be held in a supervised bank account.</li> <li>• Requires prior Rural Development concurrence to release funds.</li> <li>• Emergency situation may request post approval.</li> <li>• Minimum two bids required when costs are more than \$5,000 or when identity of interest (IOI)-involved bid is submitted directly to State Office prior to requesting bids from other firms.</li> <li>• Reserve account sized to meet the 20-year inflated needs of the property as determined by an approved CNA.</li> <li>• Rural Development may require frontend loading in MPRs.</li> <li>• A new CNA may be required five years or later.</li> <li>• Reserve accounts established under an approved CNA may only be used for approved capital needs or purposes specifically authorized in the Section 515 transfer authorization or MPR Conditional Commitment, or as approved by RD for authorized reserve project servicing needs and purposes permitted by the borrower's loan agreement.</li> <li>• The minimum requirement per unit in Section 515 transfers is the greater of any Restricted Rent Program (LIHTC, HOME, etc.) requirement, or third-party Lender (if applicable) requirement that will be placed on the property upon completion of the transfer. The reserve account ending balance forecast must be positive for all 20 years of CNA.</li> <li>• MPR uses are restricted to those items shown on the approved CNA but withdrawals for transfers must follow HB-2-3560.</li> </ul>	<p>Requirements of the reserve account will be handled in accordance with 7 CFR 3560, section 3560.306 (e). Section 515 Reserve accounts including project capital accounts established in an RD Supervised Bank Accounts for specific RD approved purposes, cannot be pledged or assigned as additional security to any third party and will not be subordinated under the Section 515 Subordination Agreement.</p> <p>The Section 538 guaranteed Lender may be allowed to hold the funds on behalf of the borrower in a manner acceptable to RD on a case by case basis in a state or federally regulated financial institution. Release of funds will require approval of the Agency, Lender and Borrower. Request for release of reserve funds should be processed using RD Form 3560-12, <i>“Request for Authorization to Withdraw Reserve Funds”</i>.</p> <p>The project will maintain initial and ongoing reserve levels at the greater of the Section 515 or Section 538 minimum requirements.</p> <p>The Section 538 Regulatory Agreement should reflect the reserve requirements and levels.</p> <p><b>**The Section 515 regulatory guidance will be followed for ordering and adherence to the CNA.</b></p> <p>Reserve account funds will not be used to pay fees associated with the Section 538 guarantee (i.e. the annual guarantee fee).</p> <p>Follow 7 CFR 3560, for minimum two bids required when costs are more than \$5,000 or when IOI-involved bid is submitted directly to State Office prior to requesting bids from other firms.</p>

COLUMN A Program Requirements	COLUMN B Section 538 Requirements	COLUMN C Section 515 Requirements	COLUMN D Sections 538/515 Projects Recommended Approach
<b>14. Surplus Cash Distribution/ RTO</b>	Lender may release surplus cash to Borrowers annually with no restrictions on the amount. All requirements (HB-1-3565, 7.7 E) must be met prior to release of surplus cash.	<p>There is no statutory authority in the Section 515 program to allow for a distribution of surplus cash.</p> <p>Borrowers may earn a return on their investment, or in transfer situations, a new RTO as authorized in the transfer approval, in accordance with the terms of their Rural Development loan agreement or resolution if there is a positive net cash flow in the housing project operations. The authorized return may be taken by the Borrower after the housing project's fiscal year, provided that the balance of the reserve account is equal to or greater than required deposits minus authorized withdrawals.</p>	<p>Use Section 515 program requirements to define amount of the annual distributions. Lender will maintain any surplus funds from owner funded reserves (construction contingency, lease-up and O&amp;M Reserve) in a Section 538 Surplus Reserve Account separate from the Section 515 GOA meeting the requirements of 7 CFR 3560.306.</p> <p>Lender may release unused funds in this <b>Surplus Reserve Account</b> only if the requirements of HB-1-3565, Paragraph 7.7 E. have been met.</p> <p>Appraisals are required in <b>ALL</b> cases prior to approval to determine allowable equity payments and RTO.</p>
<b>15. Definition of TDC</b>	Total cost of project construction, financing fees, professional fees and profit.	The cost of construction, purchasing, improving, altering or repairing MFH and related facilities, and purchasing or improving the necessary land, including architectural, engineering, or legal fees and charges and other technical and professional fees and charges, but excluding fees, charges or commissions such as payments to brokers, negotiators or other persons for the referral of prospective applicants or solicitations of loans.	Use the Section 515 definition.
<b>16. Use-Restrictions</b>	The property must remain as affordable rental housing for the original loan term. The restrictive use covenants must be recorded.	Mandated Section 515 extended use restrictions apply to all program loans and may be extended for the full term of the loan for transfers and MPRs on project-by-project basis. Use restrictions are not liens and cannot be subordinated except to the applicable State Agency LIHTC/land use restriction agreement (LURAs) when necessary.	<p>Both the Section 515 and Section 538 use restrictions will be recorded. In general, Section 515 use restrictions are more restrictive than the Section 538 restrictions and will control during the term of the Section 515 loan.</p> <p>When the term of the Section 538 use restrictions are greater than the term of the Section 515 restrictions, they will survive the Section 515 restrictions.</p> <p>The period of the Restrictive-Use Covenant (RUC) in Section 515 transfers utilizing Section 538 funds to pay equity pursuant to 7 CFR 3560.406 will be for a term of 30-years from the closing date of the Rural Development transfer.</p>

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<b>17. Subordination of Section 515 Loan</b>	The Section 538 Loan Guarantee must be in first lien position.	Section 515 properties selected into the MPR program must use the Restrictive-Use Subordination Agreement approved by OMB No. 0575-0190 which is posted to the MPR Website. Subordinations of existing Section 515 loans in transfer authorization must comply with the Section 515 program transfer conditions currently published in HB-3-3560, Chapter 7.	<p>For Sections 515/538 properties participating in the MPR program, both the Subordination Agreement in HB-3-3560 dated December 17, 2008, PN 425 and any updates will be used along with the Restrictive-Use Subordination Agreement approved by OMB No. 0575-0190.</p> <p>A Section 515 loan may only subordinate to a Section 538 loan used for Section 515 purposes as defined in 515 program Handbooks and applicable RD guidance when it has been determined to be in the best interests of the Government and the tenants.</p>
<b>18. Appraisal</b>	Appraisal must be completed within the 12 months prior to the issuance of the loan guarantee. Refer to 3565.303 (d) (4) for appraisal exemption guidance.	In Section 515 transfers and MPR program transactions, any required appraisal must be completed as required by the transaction approval conditions. Acceptable appraisals for Section 515 property transactions must comply with HB-1-3560, Chapter 7 and 7CFR 3560 Subpart P.	<p>Appraisals will be completed in accordance with Section 538's 3565.303 for Section 538 loan approval and 7CFR 3560 Subpart P for Section 515.</p> <p>Tax Abatements cannot be used to determine value in an appraisal.</p> <p>Tax credit equity cannot be used to determine value in an appraisal.</p>
<b>19. Market Study</b>	A market study is required to support the appraisal.	Either a market study or a market survey, as appropriate is required to establish feasibility for any Section 515 transaction as required by the respective Section 515 handbook or NOFA.	For Section 515 projects that have been 90 percent or more occupied for the 3 consecutive years prior to submitting an application, a market study is not necessary unless specifically required as a condition of the Section 515 transfer or MPR approval.
<b>20. Cost Certification</b>	A cost certification is required that represents the actual cost of the work performed in connection with the construction. However, if a cost certification is prepared for any other funding source (e.g., an Agency providing LIHTC) then a copy of that cost certification is acceptable. An audited cost certification is required from IOI contractors.	Actual construction costs must be reported. In the instance of an IOI contractor the costs must be certified and audited as outlined on Form RD 1924-13, " <i>Estimate and Certificate of Actual Cost</i> " if required.	For projects with any Section 538 guarantee, use the Section 538 program cost certification requirements. However, if there is an IOI contractor the certified and audited costs will be presented in the format contained on Form RD 1924-13, " <i>Estimate and Certificate of Actual Cost</i> ".

<b>COLUMN A</b> <b>Program</b> <b>Requirements</b>	<b>COLUMN B</b> <b>Section 538 Requirements</b>	<b>COLUMN C</b> <b>Section 515 Requirements</b>	<b>COLUMN D</b> <b>Sections 538/515 Projects Recommended</b> <b>Approach</b>
<b>21. Single Asset Entity</b>	Borrowers must operate as a single asset ownership entity.	There is no restriction that borrowers must operate as a single asset ownership entity; however, all transfers and MPRs approvals provide project-specific conditions.	For Section 515 projects using Section 538 guaranteed loan funds, the Single Asset Entity restriction is waived.
<b>22. Rural Area Designation (Grandfathering)</b>	A Section 538 project for which a subsequent loan will be used to make necessary repairs or improvements to the property or to avert prepayment may be located in an area that has changed from rural to non-rural.	A project for which a subsequent loan or MPR tools will be used to make necessary repairs or improvements to the property, or to avert prepayment may be located in an area that has changed from rural to non-rural.	For subsequent loans in a Section 515 project whose acquisition and/or repair are financed by the Section 538 program, the “grandfathered” rule applies.
<b>23. Underwriting Requirements</b>		Section 515 transfers and MPR must comply with program the handbook and specific NOFA/NOSA requirements, and generally require review of the Section 538 program and any other third-party funding underwriting summaries to accurately complete the underwriting tools for approval.	Lenders are required to submit a matrix summarizing any differences between Section 515 underwriting and Section 538 underwriting.

COLUMN A Program Requirements	COLUMN B Section 538 Requirements	COLUMN C Section 515 Requirements	COLUMN D Sections 538/515 Projects Recommended Approach
<p><b>24. Reporting Requirements:</b> a) <b>Annual Financial Reports</b></p> <p>b) <b>Affirmative Fair Housing Marketing Plan</b></p> <p>c) <b>Management Plan</b></p>	<p>a) The Lender must obtain from the Borrower, on an annual basis, an audited annual financial statement conducted in accordance with accepted government auditing standards. The audit must be sent to the Agency within 90 days of the end of the property's fiscal year.</p> <p>b) The Borrower must prepare and comply with the Affirmative Fair Housing Marketing Plan (AFHMP) and all other Fair Housing requirements. AFHMP submitted with the NOFA Response and/or application must be reviewed, approved and signed by the Agency. If the property has interest credit, the AFHMP must be approved and signed by the Agency at least every five years. Annually, the Lender must review and certify that the AFHMP is in compliance with the Agency's regulations. This certification and a copy of the AFHMP will be included in the annual audit of the property. In accordance with the Unnumbered Letter dated April 6, 2017, the Borrower must update the AFHMP accordingly.</p> <p>c) The lender must approve the borrower's management plan and assure that the borrower is in compliance with Agency standards regarding property management.</p>	<p>a) Borrowers must submit annual financial reports in accordance with 7 CFR 3560.308.</p> <p>b) Borrowers with housing projects that have five or more rental units must prepare and maintain an AFHMP as defined in 24 CFR part 200, subpart M.</p> <p>c) Borrowers must develop and maintain a Management Plan for each housing project covered by their loan or grant. The Management Plan must establish the systems and procedures necessary to ensure that housing project operations comply with Agency requirements.</p>	<p>To comply with all applicable project management and loan requirements, borrowers must submit annual financial reports in accordance with 7 CFR 3560.308 and in accordance with 7 CFR 3565. The report must be conducted in accordance with generally accepted government auditing standards.</p> <p>To avoid having to generate multiple audits and at the lender's discretion, lenders may request the same report that the borrower submitted to RD. The lender may use this report for their informal review of the project's financial condition. The lender must review the audit in accordance with 7 CFR 3565 and submit the corresponding report which details the lender's review of the report, noting the financial and physical condition of the property. If only one audited financial is to be used for both programs, the audit must meet both the Section 515 and the Section 538 requirements.</p> <p>Lenders may use the same approved AFHMP that the Borrower is currently using for the project. The annual reporting requirements for the Section 538 must remain in place.</p> <p>The same Management Plan may be used for Section 515 and Section 538, Lender must ensure that the Section 538 program requirements are included in the Management Plan. In instances where the requirements may differ, the most stringent requirement must be met.</p>
<p><b>25. Portfolio vs. Consolidation</b></p>	<p>If projects are located in different market areas, the deal must be structured as portfolio sale with all projects underwritten as separate properties.</p> <p>If projects are located in the same market area, the deal may be structured as consolidation.</p> <p>Consolidation-all buildings will operate as one project, under one Management Plan and one NOFA response/application will be submitted.</p> <p>For areas in which separate counties or cities are considered the same market area, the Fair Market Rents must be the same.</p>	<p>If there are 2 or more projects located in different market areas, the deal must be structured as portfolio sale.</p> <p>If there are 2 or more projects located in the same market area, the deal may be structured as a project consolidation.</p> <p>For areas in which separate counties or cities are considered the same market area, the Fair Market Rents must be the same.</p>	<p>If projects are located in different market areas, the deal must be structured as portfolio.</p> <p>If projects are located in the same market area, the deal may be structured as consolidation.</p> <p>For areas in which separate counties or cities are considered the same market area, the Fair Market Rents must be the same.</p>

<b>COLUMN A</b> <b>Program</b> <b>Requirements</b>	<b>COLUMN B</b> <b>Section 538 Requirements</b>	<b>COLUMN C</b> <b>Section 515 Requirements</b>	<b>COLUMN D</b> <b>Sections 538/515 Projects Recommended</b> <b>Approach</b>
<b>26. Favorable Financing</b>	The Lender determines the favorable financing in accordance with industry practices.	Section 538 loan may be included as favorable financing when the Section 515 appraiser documents the 538 loan demonstrates measurable favorable value to the market value for the term of the 515 indebtedness.	Section 515 interest credit subsidy is not considered as favorable financing for the Section 538 program.
<b>27. Rent Increases</b>	Rent goes into effect with issuance of the guarantee.	Rent increase begins after construction or the rehabilitation is complete.	Follow the guidelines for Section 515, rent increases will not go into effect until the construction or the rehabilitation is complete.
<b>28. Annual Guarantee Fee</b>	The guarantee fee is calculated as a percentage of the sum of the note principal disbursed for all approved draws multiplied by the percentage of the guarantee. Although the fee is paid by the Lender, it may be passed on to the Borrower.	Not applicable.	The fee should be reflected on the annual budget using RD Form 3560-7 on Part II, Line 32, " <i>Other Administrative Expenses</i> ". For combination deals, the fee should not be included in the interest rate.