

(b) *Forms of rental subsidies.* Rental subsidies may be in the form of:

- (1) Agency rental assistance;
- (2) HUD section 8 assistance, including project-based and vouchers;
- (3) Private rental subsidies; or
- (4) State or local government rental subsidies.

(c) *Multiple rent subsidies.* (1) Multiple types of rent subsidies may be used in the same MFH project.

(2) Tenants with subsidies from sources other than the Agency may be eligible for Agency rental assistance if the following conditions are met.

(i) The tenant qualifies for Agency rental assistance.

(ii) The rental subsidy the tenant is receiving is not a HUD voucher.

(iii) The rental subsidy being received by the tenant is less than the full amount of Agency rental assistance for which the tenant would qualify. In such cases, the Agency may provide the difference between the subsidy received by the tenant and the amount of Agency rental assistance for which the tenant qualifies.

(d) *Agency rental assistance (RA).* Agency RA is obligated to MFH projects on a rental unit basis. The obligation is composed of a number of rental units and associated dollar amounts of RA specified in a RA agreement with a borrower. The following types of Agency RA may be obligated to a housing project.

(1) *Renewal units.* RA may be assigned to a housing project to replace existing rental unit obligations because funds associated with the units have been fully disbursed.

(2) *New construction units.* RA may be provided in conjunction with initial Agency loans for construction or substantial rehabilitation of MFH projects.

(3) *Servicing units.* Additional RA may be provided to operational MFH projects as a part of the Agency's general loan servicing or preservation activities.

§ 3560.253 [Reserved]

§ 3560.254 Eligibility for rental assistance.

(a) *Eligible housing.* Housing projects eligible for Agency RA include the following types of projects.

(1) Housing projects that operate under an Interest Credit Plan II RA agreement.

(2) Housing projects financed with an Agency off-farm labor housing loan or grant. On-farm labor housing is not eligible for rental assistance.

(3) Housing projects financed with a direct or insured Rural Rental Housing loan approved prior to August 1, 1968, and operated under an interest credit agreement that identifies the housing project as a Plan RA project.

(4) Housing projects financed from Agency and other sources if the conditions of § 3560.66 are met.

(b) *Eligible units.* Borrowers may not request RA for rental units that the Agency determines are not habitable in accordance with § 3560.103.

(c) *Eligible households.* Households eligible for rental assistance are those:

(1) With very low-or low-incomes who are eligible to live in MFH;

(2) Whose net tenant contribution to rent determined in accordance with § 3560.203(a)(2) is less than the basic rent for the unit;

(3) Whose head of the household is a U.S. citizen or a legal alien as defined in § 3560.11;

(4) Who meet the occupancy rules established by the borrower in accordance with § 3560.155(e); and

(5) Who have a signed, unexpired tenant certification form on file with the borrower.

EFFECTIVE DATE NOTE: At 70 FR 8503, Feb. 22, 2005, in § 3560.254(c)(3), implementation of the words "Whose head of the household is a U.S. citizen or a legal alien as defined in § 3560.11." was delayed indefinitely.

§ 3560.255 Requesting rental assistance.

(a) *Submitting requests.* Borrowers seeking an allocation of rental assistance for MFH must request the rental assistance from the Agency as follows.

(1) *Renewal rental assistance.* To the extent sufficient funds are available, the Agency will automatically renew expiring rental assistance agreements at the existing number of units.

(2) *New construction units.* Loan applicants proposing to use Agency rental assistance must include their request for rental assistance in their loan proposal in accordance with § 3560.56.

§ 3560.256

(3) *Servicing units.* Borrowers requesting rental assistance must have tenants or eligible tenant applicants on a waiting list who are RA eligible.

(b) *Denial of requests.* (1) If a rental assistance request is denied due to the loan applicant's or borrower's ineligibility, the Agency will send the loan applicant or borrower written notification of the decision with an explanation of the denial.

(2) If a rental assistance request to renew expiring rental assistance agreements is denied because funding is not available, the Agency will notify the borrower and the borrower must notify the tenants of rent increases in accordance with their lease and state and local law. Tenants losing rental assistance due to a lack of Agency funding may quit the lease and vacate the housing without penalty in accordance with the terms of their lease.

(3) Loan applicants or borrowers determined to be eligible for RA as a result of an appeal or funding review will receive RA, if RA funding is available, beginning with the month following the date of the appeal or funding review decision or beginning in the first month that RA funding becomes available.

§ 3560.256 Rental assistance payments.

(a) *Borrower submission requirements.* The borrower must submit monthly requests for RA payments to the Agency based on occupancy as of the first day of the month previous to the month in which the request is being made.

(b) *Basis of RA requests.* Borrower requests for RA payments must be based on the difference between the basic rent plus utility allowances for each rental unit eligible for RA and the net tenant contribution of the tenant.

(c) *Payments to borrower.* Prior to making RA payments to a borrower, the Agency will deduct from the approved RA payment amount any unpaid loan payments, late fees, and other amounts which the borrower owes to the Agency.

(d) *Utility payments to tenants.* The borrower must pay tenants the difference between the utility allowance and the tenant's net contribution to rent when a tenant receiving RA is billed directly for utilities and the util-

7 CFR Ch. XXXV (1-1-08 Edition)

ity allowance exceeds the net tenant contribution to rent. Such utility payments to tenants must be made on a monthly basis.

(e) *Administrative errors.* Borrowers are responsible for correcting borrower errors made in regard to RA requests for payments. In accordance with subpart O of this part, borrowers will be required to repay the Agency for any unauthorized RA received or any unauthorized use of RA except in certain cases of tenant error or fraud.

§ 3560.257 Assigning rental assistance.

(a) *Priorities for rental assistance.* (1) Borrowers must use the following priorities when assigning available rental assistance.

(i) First priority is to eligible very low-income tenants paying the highest percentage of their adjusted annual income for Agency approved shelter costs.

(ii) Second priority, if the housing project has vacant rental units, is to eligible very low-income applicants on the waiting list.

(iii) Third priority is to eligible low-income tenants paying the highest percentage of their adjusted annual income for Agency approved shelter costs.

(iv) Fourth priority, if the housing project has vacant rental units, is to eligible low-income applicants on the waiting list.

(v) Fifth priority is to households which are residing in a rental unit for which they do not qualify on the basis of an occupancy waiver or other special approval situations.

(2) In order to provide rental assistance to the third, fourth, and fifth priority categories, a borrower must fully document either that there are no very low-income households on the housing project's waiting list or that occupancy by low-income households is limited as follows:

(i) For housing occupied on or after November 30, 1983, no more than 5 percent of the units in the housing are occupied by low-income households; or

(ii) For housing occupied before November 30, 1983, no more than 25 percent of the units in the housing are occupied by low-income households.