

## CHAPTER 6: PROJECT OCCUPANCY

### 6.1 INTRODUCTION

The purpose of this chapter is to present the occupancy rules for multi-family housing projects and the Agency's procedures for determining borrower compliance. Agency procedures for ensuring borrower compliance are summarized at the end of the chapter.

### SECTION 1: TENANT ELIGIBILITY REQUIREMENTS *[7 CFR 3560.152]*

### 6.2 GENERAL ELIGIBILITY—INCOME ELIGIBILITY

To be admitted to multi-family housing, applicants must meet basic requirements.

- Have income that does not exceed the limits defined by the Agency;
- Meet the program definition of an eligible household.

A borrower may determine an applicant ineligible for occupancy based on screening criteria other than those required by the Agency only if such criteria are included in the project's management plan. The screening criteria may not contain arbitrary or discriminatory rejection criteria but may consider an applicant's past rental and credit history and relations with other tenants.

### 6.3 INCOME REQUIREMENTS

Three different income limits are used to establish eligibility for Multi-Family Housing programs. The Agency determines the income limits and updates the limits whenever they are revised. Adjusted income should be compared with the below-listed income limits to determine the category in which each household falls:

- The very low-income limit is established at the Department of Housing and Urban Development (HUD) very low-income limit (generally 50 percent of the median income for the area, adjusted for household size);
- The low-income limit is established at the HUD low-income limit (generally 80 percent of the median income for the area, adjusted for household size); and
- The moderate-income limit is greater than the HUD established low-income limit but does not exceed the low-income limit by more than \$5,500 for each household size.

The borrower has the right to determine a minimum income level for households of various sizes for applicants who will not be receiving rental assistance. These guidelines must be administered consistently for all potential applicants.

## 6.4 [RESERVED]

## 6.5 DETERMINING AN ELIGIBLE HOUSEHOLD

Deciding who is a part of an applicant's household is an important, but not always simple, task. The word "household" applies to individuals and family members who intend to live in a unit.

### A. Defining a Household

A household is defined as the tenant or co-tenant and the persons or dependents living with a tenant or co-tenant but not including a resident assistant (or live in aide). Deciding who can be considered a household member affects many decisions the borrower must make, including:

- The number of bedrooms the family needs;
- The members' income that must be counted and the income limits that should be used;
- The extent to which the family qualifies for certain income deductions and certain preferences; and
- The household member who can sign legal documents.

### B. Who Can Be Counted as a Household Member?

A household may be made up of a variety of members and may have a specific definition. If a household member cannot be included when making the determination of household size for income limit purposes or for unit size determination, it will be noted below in the definitions. The following are definitions of members and types:

- **Dependent:** A dependent is a member of the family (which excludes foster children and foster adults) other than the family head or spouse who is under 18 years of age, or is a person with a disability, or is a full-time student.
- **Elderly household:** A household where the tenant or co-tenant (for cooperative housing the member or co-member) is at least 62 years old, or a person with disabilities, as defined below. An elderly family may include a person younger than 62 years of age. To receive an elderly family deduction, the person who is elderly, or disabled must be the tenant or co-tenant (for cooperative housing the member or co-member).
- **Foster adult.** A foster adult is 18 years of age or older and meets the definition of a foster adult under State law. They are generally unable to live independently due to a debilitating physical or mental condition.

- Foster adults are included as household members to determine the appropriate unit size.
- Foster adults are not included as household members for the purposes of determining income, deductions from income (disability expenses or medical expenses), or to determine household size for income limit eligibility.
- **Foster children, or State or Tribal kinship.** Eligible families may include foster children, or State or Tribal kinship living in the household, as long as they do not cause overcrowding.
  - Foster children, State or Tribal kinship are included as household members to determine the appropriate unit size.
  - Anticipated expenses for childcare for foster children under age 13 may be deducted from annual income if all other criteria for childcare deduction are met.
  - Foster children, State or Tribal kinship are not included as household members for the purposes of determining income, or deductions from income (disability expenses or medical expenses), or to determine household size for income limit eligibility.
  - When a member of the household is temporarily placed in foster care (as confirmed by the state child welfare agency) the member is still counted as a household member in the unit from which they are removed.
- **Person with Disabilities:** The term disability is considered equivalent to the term handicap. A person is considered to have a disability if either of the following two situations occur:
  - (1) As defined in section 501(b) of the Housing Act of 1949. The person is the head of household (or his or her spouse) and is determined to have an impairment which:
    - (i) Is expected to be of long continued and indefinite duration;
    - (ii) Substantially impedes the person's ability to live independently; and
    - (iii) Is of such a nature that such ability could be improved by more suitable housing conditions, or if such person has a developmental disability as defined in section 102(7) of the Developmental Disability and Bill of Rights Act (42 U.S.C. 6001(7)).
  - (2) As defined in the Fair Housing Act; the Americans with Disabilities Act; and section 504 of the Rehabilitation Act of 1973. The person has a physical or mental impairment which substantially limits one or more of such person's major life activities; a record of such impairment; or being regarded as having such an impairment. The term does not include current, illegal use of or addiction to a

controlled substance. As used in this definition, physical or mental impairment includes:

- (i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine;
- (ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance), and alcoholism;
- (iii) Major life activities means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;
- (iv) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities;
- (v) Is regarded as having an impairment means:
  - (A) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by the borrower or management agent as constituting such a limitation;
  - (B) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or
  - (C) Has none of the impairments described in this definition but is treated by another person as having such an impairment.

- **Remaining family members.** Remaining members of resident families are family members who stay in a unit after other members of the household leave. These members will be reevaluated for eligibility in accordance with Section 7 of this chapter. Agency regulations may require remaining tenants to move to a unit of appropriate size or exit the project.
- **Resident assistant (or live-in aide).** A person residing in a tenant's housing unit who is essential to the well-being and care of the persons who are elderly or have disabilities residing in the unit but is not obligated for the person's financial support

and would not be living in the unit except to provide the needed support services. While the resident assistant may be a family member, the resident assistant may not be a dependent of the household for tax purposes and is not subject to the eligibility requirements of a tenant or member. A resident assistant may function in any type of housing affected by this section. A resident assistant's income is not included in the household's determination of annual income. The resident assistant is counted as an occupant to determine unit size.

- **Student.** A student may be considered an eligible tenant when all of the following conditions are met:

- The student is of legal age in accordance with the applicable state law or is otherwise legally able to enter into a binding contract under state law;
- The person seeking occupancy:

(1) must meet the U.S. Department of Education's definition of an independent or must have established a household separate from the person's parents or legal guardians (for at least one year prior to application for occupancy), and is no longer claimed as a dependent by the person's parents or legal guardians pursuant to Internal Revenue Service regulations, and evidence (most recently filed tax return) is provided to this effect; or

(2) is claimed as a dependent by the person's parents or legal guardians and the student is eligible because the entire household is income eligible.

If eligible under item (1) above, the applicant must sign a written statement indicating whether or not the person's parents, legal guardians, or others provide any financial assistance, and this financial assistance is considered as part of current annual income and is verified in writing by the borrower.

- **Unborn child(ren).** An unborn child(ren) is included as a household member for determining unit size and household size for income limit purposes. However, a household cannot receive a dependent deduction for an unborn child. The same rules apply for a household that has been approved to adopt a child(ren).

## **6.6 ADDITIONAL REQUIREMENTS FOR ELDERLY HOUSING, CONGREGATE HOUSING, AND GROUP HOMES**

In addition to the requirements listed in Paragraph 6.2, applicants for elderly housing, congregate housing, or group homes must meet the additional requirements described below.

### **A. Elderly Housing and Congregate Housing**

To be admitted to elderly housing or congregate housing:

- Applicants and tenants must qualify as elderly or disabled.

- Nonelderly persons are eligible for occupancy as long as they are members of an elderly household and live in the same unit.
- Priority can be given to tenants who agree to participate in the services provided by a congregate housing facility.

## **B. Group Homes**

To be admitted to a group home:

- Applicants/tenants must need the special services provided by the group home.
- Applicants must demonstrate a need for such housing and cannot be required to be a part of an ongoing training or rehabilitation program.
- Applicants must be selected from the market area prior to considering applicants from other areas.

A group home may limit occupancy to a specific group of tenants (e.g., eligible elderly tenants, developmentally disabled or mentally impaired tenants) if it is outlined in the borrower's management plan.

## **6.7 INELIGIBLE TENANT WAIVERS**

The Agency may authorize the borrower in writing, upon receiving the borrower's written request with the necessary documentation, to rent vacant units to ineligible persons for temporary periods to protect the financial interest of the Government. Such ineligible tenant waiver(s) could include households that are over income, over housed or under housed (this list is not all inclusive). Likewise, this provision may extend to a cooperative. This authority will be for the entire project for periods not to exceed one year. Within the period of the lease, the tenant may not be required to move to allow an eligible applicant to obtain occupancy, should one become available. Age restrictions may not be waived. The Agency must make the following determinations:

- There are no eligible persons on a waiting list.
- The borrower provided documentation that a diligent but unsuccessful effort to rent any vacant units to an eligible tenant household has been made. Such documentation may consist of advertisements in appropriate publications, posting notices in public places, and in other places where persons seeking rental housing would likely make contact; holding open houses; and making appropriate contacts with public housing agencies and organizations, Chambers of Commerce, and real estate agencies. The borrower agrees to continue with aggressive efforts to locate eligible tenants and retain documentation of all marketing.
- The borrower agrees to publish a notice in the local newspaper to inform the public of the borrower's intent to temporarily rent apartments to all persons without regard to income restrictions.

- The borrower is temporarily unable to achieve or maintain a level of occupancy sufficient to prevent financial default and foreclosure and the Agency's approval of the waiver will be for a limited duration.
- That the lease agreement will not be more than 12 months and at its expiration will convert to a month-to-month lease. The monthly lease will require that the unit be vacated upon 30 days' notice when an eligible applicant is available.
- Tenants residing in Rural Rental Housing (RRH) units who are ineligible because their adjusted annual income exceeds the maximum for the RRH projects will be charged the RHS approved note rate rental rate for the size of unit occupied in a Plan II RRH project. In projects operated under Plan I, ineligible tenants will be charged rental surcharge of 25 percent of the approved note rate rental rate. Plan I and Plan II projects are defined in 7 CFR 3560.11. Agency staff can refer to the Multi-Family Information Systems Project Details screen to determine Plan type.

## SECTION 2: CALCULATING INCOME AND INITIAL CERTIFICATION

### 6.8 BORROWER AND APPLICANT/TENANT RESPONSIBILITY

Borrowers of all Rural Rental Housing properties must verify and document in the tenant's file all income, assets, expenses, deductions, family characteristics, and any other factors that affect family eligibility or level of assistance. This requirement excludes those residents of On Farm Labor Housing who are living in housing provided on a non-rental basis. With USDA guidance the borrower should develop verification and documentation procedures for the properties they manage and ensure that on-site property staff responsible for these functions are trained to understand and properly implement these procedures. Effective and efficient borrower, management agent, and property staff performance in this area is fundamental to obtaining the correct information needed for accurate rent determinations and assistance payments. The following are essential procedures to reduce the incidence of improper reporting.

- Applicants/tenants and their adult family members must sign consent forms to authorize the borrower to collect information to verify eligibility, income, assets, expenses, and deductions. Applicants and tenants who do not sign required consent forms will not receive assistance.
- Family members 6 years of age and older must provide the borrower with a complete and accurate social security number. For any members of the family who do not have a social security number, the applicant or family member must certify that the individual has never received a social security number.

#### **MINC Tip:**

For eligible household members without a social security number, management should submit the tenant data to MINC using all zeros. MINC will assign a system generated number to the household member, and management must use the assigned number on future transactions or until a valid social security number is available.



- Information received via third party verification should be reviewed and interpreted, and allowable deductions applied to determine the income used to calculate rent and rental assistance.
- The borrower must develop tracking and monitoring procedures to ensure that the required re-certifications are initiated and completed on time.
- The borrower must handle any information obtained to verify eligibility or income in accordance with the Privacy Act.

## 6.9 CALCULATION OF TENANT INCOME

Household income determinations will be calculated in accordance with 7 CFR 3560.153. Borrowers use tenant income information to: (1) help determine whether a household is eligible to reside in multi-family housing; (2) calculate the household's ability to pay rent; and (3) determine the amount of rental assistance the household is eligible to receive. This section provides guidance for calculating and verifying income for each of these purposes.

Form RD 3560-8 (Rev. 04-25) reflects income and asset calculation changes as a result of the Housing Opportunity Through Modernization Act (HOTMA). All tenant certifications effective July 1, 2025, or later must use the Form RD 3560-8 (Rev. 04-25) version of the form. The previous form was renamed Form RD 3560-8A (Rev 08-11) and must be used for tenant certifications effective prior to July 1, 2025.

### A. Key Concepts for Income Determinations

#### 1. *Income Definitions*

Two income definitions are used: annual income and adjusted income. Whenever income determinations are made, it is essential that borrowers use the correct income definition and consider income from the appropriate household members.

- **Annual income.** Annual income is used as the base for computing adjusted income. Income of all household members should be considered when computing annual income. Annual income includes all amounts, not specifically excluded in Attachment 6-A, received from all sources by each member of the household who is 18 years of age or older or is the head of household or spouse of the head of household, plus unearned income by or on behalf of each dependent who is under 18 years of age. *Form RD 3560-8, Tenant Certification* illustrates the calculation of annual income. Paragraph 6.9 B in this section provides additional information on calculating annual income.
  - **Earned income.** Earned income is income or earnings from wages, tips, salaries, other employee compensation, and net income from self-employment. Earned income does not include any pension or annuity, transfer payments (meaning payments made or income received in which no goods or services are being paid



for, such as welfare, social security, and governmental subsidies for certain benefits), or any such cash or in-kind benefits.

- **Unearned income.** Unearned income is any annual income, as calculated under 24 CFR 5.609, that is not earned income.
- **Adjusted income.** Adjusted income is used to determine whether an applicant is income eligible to reside in multi-family rental housing or to receive rental subsidies. For guidance on calculating adjusted income, see Paragraph 6.9 C in this section.

## ***2. Projecting Income for a 12-Month Period***

Current income and family circumstances may be used to estimate the household's income over the next 12 months, unless there is verifiable evidence of a likely change in circumstances. Historical information may be used to estimate income that is anticipated to be received for 12 months.

<b>Example – Calculating Seasonal Income</b> (Options should be discussed with Tenant)	
<b>Option #1</b>	<b>Option #2</b>
<p>Assume a family member who currently has no income historically has seasonal income during the summer months and earns on an average of \$4,000 during that time. Confirm with the applicant that the same seasonal pattern is expected and use historical data to project income for the coming 12 months, which in this case would be \$4000 projected annual income.</p> <p>Gross Tenant Contribution (GTC):</p> <p><math>\\$4000/12 \text{ months} \times 30\% = \\$100/\text{month}</math> for 12 months</p>	<p>Assume a family member currently has seasonal income of \$1000 per month and is expected to last 4 months. Annualizing this income would be <math>\\$1000 \times 12 \text{ months} = \\$12,000</math>.</p> <p>Once the seasonal income ends, it is the tenant's responsibility to notify management and request a recertification of income.</p> <p>Note: this method would require at least two recertifications each year.</p> <p>Gross Tenant Contribution (GTC):</p> <p><math>\\$12,000/12 \text{ months} \times 30\% = \\$300 \text{ month}</math> during the months of earning seasonal income.</p>

### ***3. Income of Temporarily Absent Household Members***

Members may be temporarily absent from the household for a variety of reasons, such as temporary military duty activation, temporary employment, or students who live away from home during the school year. The income of these household members is considered when computing annual income. Households with a member permanently confined to a hospital or nursing home may choose to either include annual income attributable to such person, less deductions for which the person would qualify, or exclude the annual income attributable to such person and not take any deductions for which the person would qualify.

#### **Example—Temporarily Absent Member**

James Brown and his wife have applied for a unit. At the moment, James is working on a construction job on the other side of the state and comes home every other weekend. He earns \$600 per week and uses approximately one-third of that amount for temporary living expenses. The full amount of the income earned would be counted for annual income.

### ***4. Zero Income.***

It is the policy of Rural Development not to accept a tenant certification for an applicant or tenant with zero income unless all income is specifically exempted. Third party verifications may be obtained from the employer. If the tenant or applicant typically receives unemployment during periods of layoff, the unemployment income is included in the income calculation.

In cases where an applicant or tenant is claiming they have no household income, nor can the tenant or applicant anticipate a source of income, it will be necessary for the applicant or tenant to demonstrate financial capability to meet basic living expenses and the rental charge. This amount must include income for essential living expenses such as, food, clothing, diapers, transportation and any nonessentials items being paid such as telephone, television service, internet service, etc. The basis for this income must be documented in the file. Suggested guidance for the verification of zero income is found in Attachment 6-B.

The borrower must review the circumstances of the tenant quarterly to determine if circumstances have changed and document the tenant file. The borrower must remind the tenant that the lease specifically states that it is the tenant's responsibility to immediately report changes in income to management.

### ***5. Student Financial Assistance.***

For tenants/households receiving HUD Section 8 assistance (project based or Housing Choice Vouchers), the borrower must adhere to the specific Section 8 student financial assistance guidance for these tenants.

For all other tenants/households (non-Section 8) the borrower must adhere to the following guidance for including student financial assistance as household income.

All student financial assistance, not covered under section 479B of the Higher Education Act (HEA), that exceeds the actual covered costs of attending school must be included as income. This applies to both full-time and part-time students.

Types of HEA assistance include, but is not limited to:

- Federal Pell Grants
- Teach Grants
- Federal Work Study Programs
- Federal Perkins Loans
- Student financial assistance received under the Bureau of Indian Education
- Higher Education Tribal Grant
- Tribally Controlled Colleges or Universities Grant Program
- Employment training program under section 134 of the Workforce Innovation and Opportunity Act (WIOA).

### **Actual Covered Costs**

Includes: tuition, books, supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, and fees required and charged to a student by an institution of higher education.

For a student who is not the head of household, co-head, or spouse, actual covered costs also include the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

Utilize the following two step method to determine the amount of student financial assistance to include in the household's annual income, if any:

Step 1: Actual Covered Costs – HEA Assistance = Net Costs

Step 2: Non-HEA Assistance – Net Costs (from Step 1) = Amount to Include in Household's Annual Income Calculation (if the amount is negative, use \$0)

The following is not considered student financial assistance:

- Gifts, including gifts from family or friends; or
- Financial support provided to the student in the form of a fee for services performed (i.e. – work study or teaching fellowship that is not excluded under HEA).

## **B. Calculating Annual Income**

All income is included that is received from all sources by each member of the household who is 18 years of age or older or is the head of household or spouse of the head of household, plus unearned income by or on behalf of each dependent who is under 18 years of age, unless it is specifically excluded in 24 CFR 5.609(b).

Attachment 6-A, Annual Income Exclusions provides a list income sources that are excluded from annual income. Furthermore, item (1) of Attachment 6-A indicates HUD is required by federal statute to exclude certain items from annual income. HUD will publish a notice in the Federal Register to identify the benefits that qualify for this exclusion. Updates

will be published when necessary. (As of June 2025, the HUD published exclusions are found here: [Federal Register, Vol 89, No. 21, published January 31, 2024.](#))

Annual income includes “all amounts received,” not the amount that a family may be legally entitled to receive but did not receive. For example, a family’s child-support or alimony income must be based on payments received, not the amounts the family is entitled to receive based on any court or agency order.

Refer to Attachment 6-H for acceptable forms of verification.

### C. Calculating Adjusted Income

Adjusted income is used to determine eligibility for Multi-Family Housing programs, as well as eligibility for and the amount of payment subsidies under rental assistance.

Adjusted income is calculated by subtracting from annual income any of five deductions that apply to the household. Not all households are eligible for all deductions. Exhibit 6-1 summarizes these deductions. Attachment 6-C, Allowable Deductions, provides detail concerning allowable deductions. The remainder of this paragraph provides guidance on determining whether a family is eligible for each deduction and verifying and calculating these amounts.

<b>Exhibit 6-1</b>		
<b>Annual Income Allowable Deductions/Expenses</b>		
<b>Deduction/Expense</b>	<b>Elderly/Disabled Households</b>	<b>Nonelderly Households</b>
Dependent deduction	Yes	Yes
Childcare expenses	Yes	Yes
Disability assistance expenses	Yes	Yes
Elderly/Disabled household deduction	Yes	No
Health and Medical Care expenses	Yes	No

#### 1. *Dependent Deduction*

A deduction from annual income of \$480 (this [amount may be adjusted annually by HUD](#)) is made for each household member who qualifies as a dependent. Dependents are household members who are not the head or spouse and who are under 18 years of age, or is a person with a disability, or is a full-time student. If an applicant requests a deduction for dependents attending school full time, the applicant must provide documentation from the school that the dependent is enrolled as a full-time student.

Unborn children, foster children, foster adults, and State or Tribal kinship household members do NOT qualify for the dependent deduction.

## ***2. Deductions for Childcare Expenses***

Reasonable unreimbursed childcare expenses for the care of children under 13 years of age are deducted from annual income if: (1) the care enables a household member to work or go to school; (2) no other adult household member is available to care for the children; and (3) in the case of childcare that enables a household member to work, the expenses deducted do not exceed the income generated by that household member. If the childcare provider is a household member, the cost of the children's care cannot be deducted.

To qualify for the deduction, the applicant must:

- Identify the children who are receiving the childcare and the household member who can work, look for work, or attend school (full or part-time) as a result of the care;
- Demonstrate that there is no adult household member available or able to care for the children;
- Identify the childcare provider, the costs, and the hours of childcare provided (must coincide with the hours the household member works or goes to school); and
- If the expenses enable a household member to go to school, identify the educational institution. The household member need not be a full-time student.

A household may qualify for a childcare hardship exemption. See item (D) of this paragraph.

Refer to Attachment 6-H for acceptable forms of verification.

## ***3. Elderly/Disabled Household Deduction***

A single \$525 deduction (this [amount may be adjusted annually by HUD](#)) is made from annual income for any elderly household. (Refer to 7 CFR 3560.11 for definition of elderly household.)

In the case of a family where the deceased tenant or spouse was at least 62 years old or a person with disabilities, the surviving household members may continue to reside in a housing project after the death of the tenant or co-tenant, provided that the requirements in Paragraph 6.28 item E are met. Nonelderly or nondisabled surviving members of an elderly or disabled household are not entitled to the elderly household adjustment to income.

## ***4. Deductions for Disability Assistance Expenses (also referred to as Reasonable Attendant Care and Auxiliary Apparatus Expenses)***

Disability assistance expenses, for the care of a person with disabilities, in excess of ten percent of annual income may be deducted from annual income (unless the household qualifies for Phased-In Relief or General Relief as defined in item D of this paragraph).

Disability assistance expense is defined as reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a disabled family member and that are necessary to enable a family member (including the disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source. The disability assistance expenses cannot exceed the amount of income earned by the person who is able to work as a result of the expenses.

#### **Typical Disability Assistance Expenses**

- Care attendant to assist a person with disabilities with activities of daily living directly related to permitting the person with disabilities or another household member to work.
- Special apparatus, such as wheelchairs, ramps, and adaptations to vehicles or workplace equipment, if directly related to permitting the person with disabilities or another household member to work.

Along with other forms of documentation, to qualify for this deduction applicants must identify the person with a disability on the application. Refer to Attachment 6-H for acceptable forms of verification.

#### ***5. Deduction for Health and Medical Care Expenses (for elderly/disabled households only)***

Health and medical care expenses may be deducted from annual income for elderly households if the expenses (1) will not be reimbursed by insurance or another source; and (2) when combined with any disability assistance expenses are in excess of ten percent of annual income (unless the household qualifies for Phased-In Relief or General Relief as defined in item D of this paragraph).

Health and medical care expenses include costs incurred for the diagnosis, cure, mitigation, treatment or prevention of disease or payments for treatments affecting any structure or function of the body. Health and medical care expenses include medical insurance premiums and long-term care premiums that are paid or anticipated during the period for which annual income is computed. Refer to Attachment 6-H for acceptable forms of verification.

#### **Typical Medical Expenses**

- Services of physicians and other healthcare providers
- Services of hospitals and other healthcare facilities
- Medical premiums
- Prescription medicine
- Dental expenses
- Eyeglasses and eye examinations
- Medical or health products or apparatus (hearing aids, wheelchairs, etc.)
- Live-in or periodic medical care (e.g., visiting nurses or care attendants)
- Costs for an assistance animal and its upkeep
- Nonprescription medicine, bandages, syringes, continence shields, and other nonprescription items recommended by a physician
- Periodic payments on accumulated medical bills



If the household qualifies for the health and medical care expense deduction, expenses of all members are eligible. For example, if a household includes the head (grandmother, age 64), her son (age 37), and her granddaughter (age 6), the medical expenses of all three household members will be eligible.

One of the most challenging aspects of determining allowable health and medical care expenses is estimating a household's health and medical care expenses for the coming year. While some anticipated expenses can be documented easily (for example, Medicare or other health insurance premiums and ongoing prescriptions), others need to be estimated. The borrower should use historical information about medical bills to estimate future expenses. However, the estimates should be realistic. For example, if the household has a significant medical bill, the borrower will count only that portion of the bill that is likely to be paid during the coming year.

**Example – Calculating the  
Health and Medical Care Expense Deduction**

The Jensons are an elderly household with annual income of \$25,000 and anticipated medical expenses of \$3,000 that are not covered by insurance or another source. The allowable medical expenses would be:

Total medical expenses	\$3,000
(less) 10% annual income (\$25,000 x 0.10)	- <u>\$2,500</u>
Allowable medical expenses	\$500

#### **D. Temporary Relief and Hardship exemptions**

- 1. Financial hardship exemptions for Health and Medical care expense and disability assistance expense.*** Effective with the implementation of the Housing Opportunity Through Modernization Act (HOTMA), the threshold to deduct health and medical care expenses and disability assistance expenses has been increased from an excess of 3 percent to an excess of 10 percent of annual income. Families may be eligible for relief under one of two categories; phased-in relief or general relief, as defined below. A family receiving phased-in relief may request to receive general hardship relief instead; **once a family chooses to obtain general relief, a family may no longer receive the phased-in relief.**

##### **Phased-in Relief**

All households who received a deduction for unreimbursed health and medical care and/or disability assistance expenses based on their most recent tenant certification prior to July 1, 2025, will begin receiving the 24-month phased-in relief at their next annual recertification or interim recertification, whichever occurs first on or after July 1, 2025. Households who receive phased-in relief will have eligible expenses deducted that exceed 5 percent of annual income for 12 months. Twelve months after the 5 percent phase-in began, households will have eligible expenses deducted that exceed 7.5 percent of annual income for the immediately following 12 months. After the household has completed the 24 months phase-in at the lower thresholds as described above, the household will remain at the 10 percent threshold, unless the household qualifies for relief under the general hardship relief provision.



### Example – Phased-In Relief

Ms. Bell’s annual recertification is due on August 1, 2025. Her last annual recertification was effective August 1, 2024, and she received a deduction for unreimbursed health and medical expenses. She did not have any interim recertifications after her annual recertification was completed. For her annual recertification effective August 1, 2025, management determines that Ms. Bell’s annual income is \$10,000 and her unreimbursed health and medical expenses are \$1100 (11 percent of her annual income).

Since Ms. Bell was receiving a deduction for unreimbursed health and medical expenses on July 1, 2025, Ms. Bell is automatically eligible for the deduction pursuant to the phased-in relief provision. Management will apply the phased-in relief threshold to deduct the expenses that exceed 5 percent of her annual income which is \$600 (\$1100 - \$500) for this recertification.

Ms. Bell will receive the benefit of the unreimbursed health and medical expense deduction until August 1, 2026, when the threshold will be increased to 7.5 percent. Assuming her annual income remains \$10,000 and her medical expenses are still \$1100, she will be able to deduct \$350 (\$1100 - \$750).

Effective date of recertification	Annual income	Unreimbursed health & medical expenses	Phased-In percentage calculation	Allowable deduction amount for unreimbursed health and medical expenses
8/1/2025	\$10,000	\$1,100	5% x \$10,000 = \$500	\$1100 - \$500 = <b>\$600</b>
8/1/2026	\$10,000	\$1,100	7.5% x \$10,000 = \$750	\$1100 - \$750 = <b>\$350</b>
8/1/2027	\$10,000	\$1,100	10% x \$10,000 = \$1,000	\$1100 - \$1000 = <b>\$100</b>

Regardless of if an interim recertification is completed during the 24-month phased-in period, each phase will be for a period of 12 months. Verifications are valid for 120 days. If verifications are over 120 days old at the time of an interim recertification or the scheduled annual certification, all household information must be verified.

MFH owners and management agents **must** track the 24-month phased-in period for each eligible household, even if a household’s expenses go below the appropriate phased-in percentage, during the first or second 12-month phased-in period.

The phased-in relief must continue for households that transfer internally to another unit within the same MFH property. If a family moves from one RD property to another

RD property, the phased-in relief may continue. Owners must establish their own policy if they choose to continue the phased-in hardship relief for households who were eligible for relief as of July 1, 2025, and who are treated as new admissions at their property(s).

### General Relief

A household may be eligible for general relief related to health and medical care expense and/or disability assistance expense deductions. To receive general relief, a household must demonstrate that the household's unreimbursed health and medical care expenses or unreimbursed disability assistance expenses increased, or the household's financial hardship is a result of a change in circumstances that would not otherwise trigger a recertification.

General relief is available regardless of whether the household previously received an unreimbursed health and medical expense deduction or disability assistance expense deduction, are currently receiving phased-in hardship relief, or were previously eligible for either the general relief or phased-in relief.

#### **Examples of circumstances constituting a financial hardship:**

- The family is awaiting an eligibility determination for a federal, state, or local assistance program, such as a determination for unemployment compensation or disability benefits.
- The family's income decreased because of a loss of employment, death of a family member, or due to a natural or federal/state declared disaster.
- Other circumstances as determined by the housing provider.

If a household is eligible for general relief, the household will receive a deduction for the sum of eligible expenses that exceed 5 percent of annual income. The household's general relief hardship ends when the circumstances that made the household eligible for the relief are no longer applicable or after 90 days, whichever comes earlier. Owners may, at their discretion, extend the general relief for one or more additional 90-day periods while the household's hardship condition continues.

## 2. *Childcare hardship exemption*

When a household is no longer eligible to claim childcare expenses, but the household is unable to pay their rent because of the loss of the deduction, the household may apply for the childcare hardship exemption. A household may request a hardship exemption to continue receiving a child-care expense deduction in certain circumstances when the household no longer has a member that is working, looking for work, or seeking to further their education, and the deduction is necessary because the household is unable to pay their rent.

When a household requests a hardship exemption to continue receiving a child-care expense deduction that is ending, management must recalculate the household's adjusted income and continue the child-care deduction if the family demonstrates to management's satisfaction that the household is unable to pay their rent because of the loss of the child-care expense deduction and the child-care expense is still necessary even though the family member is no longer working, looking for work, or furthering their education. The hardship exemption and the resulting alternative adjusted income calculation must remain in place for a period of up to 90 days. Management must develop policies requiring households to report if the circumstances that made the household eligible for the hardship exemption are no longer applicable. Management, at their discretion, may extend such hardship exemptions for additional 90-day periods based on household circumstances.

### **Examples of scenarios where a childcare hardship exemption may be granted:**

- A household member loses their employment income and will be a full-time student within the next 90 days. They may need to pay childcare in order to keep their spot at the childcare center.
- Household member, or care of a family member, who has medical, or health treatments and childcare is needed.

### **Reminder**

Tenants must request an interim recertification whenever a change in household income of \$100 or more per month occurs.

Borrowers must recertify for household income changes of \$50 per month, if the tenant requests that such a change be made.

## 3. *Hardship policy requirements for general relief and childcare expense*

Management must establish policies for the purpose of determining eligibility for general hardship relief for the health and medical care expense deduction and for the child-care expense hardship exemption (i.e., when a family is unable to pay rent, triggering eligibility for a hardship exemption). Management must describe these policies in their Management Plan or Tenant Selection Plan, as applicable.

Some factors to consider when determining if the household is unable to pay rent may include determining that the rent, utility payment, and applicable expenses (child-care expenses or health and medical expenses) are more than 45 percent (for

example) of the household's adjusted income, or verifying whether the household has experienced unanticipated expenses, such as large medical bills, that have affected their ability to pay their rent. Management may use different percentage thresholds or methods for determining a household's inability to pay rent.

Management may extend hardship exemptions for additional 90-day periods if the hardship continues pursuant to management's hardship policies. This provision applies to families receiving hardship exemptions for the child-care expense deduction and general hardship relief for health and medical care expenses and disability assistance expenses. Policies for extending hardship relief for additional 90-day periods must be established in the property's Management Plan or Tenant Selection Plan.

Management is encouraged to communicate the availability of hardship exemptions and how to request a hardship to all applicants and households prior to complying with HOTMA. Additional notification requirements include:

- Management must promptly notify households in writing of the change in the determination of adjusted income and the household's rent resulting from the application of the hardship exemption. The written notice must inform the household of the dates that the hardship exemption will begin and expire and the requirement for the family to report to management if the circumstances that made the household eligible for relief are no longer applicable. The notice must also state that the household's adjusted income and tenant rent will be recalculated upon expiration of the hardship exemption.
- Management must promptly notify households in writing if they are denied either an initial hardship exemption or an additional 90-day extension of the exemption. The notification must specify the reason(s) for the denial.
- Management must notify the household if the hardship exemption is no longer necessary and will be terminated because the circumstances that made the household eligible for the exemption are no longer applicable. The notice must state the termination date and provide 30 days' notice of rent increase, if applicable.

## **6.10 EVALUATING APPLICANTS' ASSETS**

Assets can affect an applicant's ability to be qualified as an eligible tenant. Many types of assets generate income that must be included in the calculations of annual income. Attachment 6-D identifies certain types of assets that are excluded from net family assets.

Rural Development does not have an asset limitation or restriction on owning real property for household eligibility or rental assistance eligibility.

## A. Reporting Assets

Applicants must provide information about household assets at the time of application and whenever income is reverified. Applicants must provide sufficient information to enable the borrower to verify the asset information and compute the market and cash value of the asset.

Refer to Attachment 6-H for acceptable forms of verification.

## B. Asset Definitions

All assets are categorized as either real property or personal property. Personal property is further categorized as necessary personal property or non-necessary personal property.

Net family assets is the net cash value of all assets (non-necessary property and real property) owned by the family.

### 1. *Real property*

Real property has the same meaning as that provided under the state law in which the real property is located. Examples include a home or a piece of land.

Real property is not an asset if the household does not have effective legal authority to sell it. Examples include co-ownership situations where one party cannot unilaterally sell the real property, property that is tied up in litigation, or inherited property that is in dispute.

If real property, owned by the family, does not generate income or the income amount cannot be computed, the imputed asset income must be calculated. This applies if net family assets exceed \$51,600, adjusted annually for inflation.

### 2. *Personal property*

Personal property are asset items that are not real property. Personal property is separated into two categories:

- Necessary personal property. Necessary personal property is excluded from net family assets and are items essential to the family for the maintenance, use, and occupancy of the premises as a home; or they are necessary for employment, education, or health and wellness or assist a household member with a disability.

Items classified as necessary personal property are excluded from net family assets and any income from necessary personal property is excluded from household income.

Determining what is a necessary item of personal property is a highly fact-specific determination, and therefore it is incumbent on management to gather enough facts to qualify whether an asset is necessary or non-necessary personal property.

- Non-necessary personal property. Non-necessary personal property are items of personal property that do not qualify as necessary personal property. Examples of non-necessary personal property can be found in Exhibit 6-2.

Unless specifically excluded from non-necessary personal property (see Attachment 6-D), items classified as non-necessary personal property are included in net family assets. Any income from non-necessary personal property is included in household income.

<b>Exhibit 6-2</b>	
<b>Examples of non-necessary personal property. This is <u>not</u> an all-inclusive list.</b>	
•	Bank accounts or other financial investments (i.e. – checking account, savings account, stocks/bonds)
•	Recreational car/vehicle not needed for day-to-day transportation (campers, motorhomes, travel trailers, all-terrain vehicles (ATVs), utility terrain vehicles (UTVs)
•	Recreational boat/watercraft
•	Expensive jewelry without religious or cultural value, or which does not hold family significance (this does NOT include wedding or engagement rings)
•	Collectibles
•	Equipment/machinery that is not used to generate income for a business
•	Items such as gems/precious metals, antique cars, artwork, etc.

### C. Calculating Market and Net Cash Value

The market value of an asset is simply its dollar value on the open market. For example, the market value of \$2,000 in a savings account is \$2,000 and the market value of real estate is its appraised value. The net cash value of an asset is the market value, less reasonable expenses to convert the asset to cash. For example, the net cash value of stock worth \$5,000 would be \$5,000 less any broker's fee.

The increase in market value of an asset is relevant to the net cash value of the asset for the purpose of determining total net family assets and imputed income. An increase in market value is not considered as actual income for the asset.

#### Example – Calculating the net cash value of an asset

Ms. Smith owns a home with an estimated market value of \$90,000. To determine the net cash value of the home, management must subtract the reasonable costs incurred to sell the property. The cash value would be:

\$90,000	Market Value
- \$10,000	Mortgage balance
- \$ 5,400	6% real estate agent fee
- \$ 2,000	<u>Settlement costs</u>
\$72,600	Net Cash value

## **D. Retirement Assets**

Retirement assets are savings and investments that have been specifically designated as retirement funds. Not all retirement assets are considered. The value of any account under a retirement plan recognized as such by the Internal Revenue Service, including Individual Retirement Accounts (IRAs), employer retirement plans (e.g., 401(k), 403(b)), and retirement plans for self-employed individuals are excluded from net family assets.

## **E. Calculating Income from Assets**

For the purpose of computing annual income, the assets of all household members are considered. In addition, if any household member has disposed of assets for less than fair market value during the two years preceding the effective date of certification or recertification, the asset must be considered when calculating income from assets for annual income.

Income from assets is no longer determined based on the greater of actual or imputed income from the assets. Instead, both actual income and imputed income must be considered. (See Exhibit 6-3.)

### ***1. Actual income from assets and imputed income from assets***

Actual income from assets is always included in a family's annual income, regardless of the total value of net family assets.

Imputed income must be calculated for specific assets when three conditions are met:

- The value of net family assets exceeds the annual [HUD published Inflationary Adjusted Value](#);
- The specific asset is included in net family assets; and
- Actual asset income cannot be calculated/determined for the specific asset.

In cases where a household has net family assets that exceeds the annual [HUD published Inflationary Adjusted Value](#), if the actual income from assets can be computed for some assets but not all assets, then management must add up the actual income from the assets, where actual income can be calculated, then calculate the imputed income for the assets where actual income could not be calculated. After management has calculated both the actual income and imputed income, management must combine both amounts to account for income on net family assets.



<b>Exhibit 6-3</b> <b>Income from Assets Determination</b>			
<b>Net Family Assets Value</b>	<b>Actual Income</b>	<b>Imputed Income</b>	<b>Asset Income included in Annual Income Calculation</b>
Total Net Family Assets $\leq$ <a href="#"><u>HUD published Inflationary Adjusted Value</u></a>	Include	Not Applicable	Include Actual Income
Total Net Family Assets $>$ <a href="#"><u>HUD published Inflationary Adjusted Value</u></a> & actual income can be determined for ALL assets	Include	Not Applicable	Include Actual Income
Total Net Family Assets $>$ <a href="#"><u>HUD published Inflationary Adjusted Value</u></a> & actual income can be determined for SOME of the assets	Determine amount of actual income from those assets where actual income can be determined	Calculate amount of imputed income for all remaining assets (those where actual income cannot be determined)	Include Actual Income + Imputed Income
Total Net Family Assets $>$ <a href="#"><u>HUD published Inflationary Adjusted Value</u></a> & actual income cannot be determined from any of the assets	Not Applicable	Calculate amount of imputed income for all assets	Include Imputed Income

**Example 1 —Income from Assets for Annual Income Calculation**

The Brown household has the following assets.

A savings account valued at \$4,000 earning 4 percent interest annually.

The current balance\* in the checking account is \$300 (non-interest-bearing account).

The net cash value of the Browns' non-necessary personal property is \$4,300 (\$4,000 + \$300).

The non-necessary personal property assets do not exceed the 2025 HUD published Inflationary Adjusted Asset Value (\$51,600), and is therefore excluded from net family assets, but the actual income of \$160 is included as actual asset income that contributes towards determining household income.

	<b>Net Cash Value</b>	<b>Actual Income Earned (Form RD 3560-8, Line 16)</b>	<b>Imputed Income (based on 0.45% Passbook Savings Rate Form RD 3560-8, Line 17)</b>
Checking Account current balance*	\$300	\$0	Imputed income is not calculated since the total non-necessary personal property is less than the HUD published Inflation-Adjusted Asset Value.
Savings	\$4,000	\$160 (\$4,000 x 0.04)	
<b>Total</b>	<b>\$4,300</b>	<b>\$160</b>	<b>\$0</b>
<b>Net Family Assets (reported on Form RD 3560-8, Line 15)</b> Non-necessary personal property that does not exceed the HUD published Inflationary Adjusted Asset Value is excluded from Net Family Assets.	<b>\$0</b>		

\* Effective with HOTMA implementation, the current balance of a checking account is adequate verification.

**Example 2 —Income from Assets for Annual Income Calculation**

The Cross family has a savings account valued at \$5,000 earning 1 percent annually.

The current balance\* in the checking account is \$500 (non-interest-bearing account).

Mrs. Cross' wedding ring valued at \$3,000

The net value of real property owned is \$60,000.

The net cash value of the Cross's non-necessary personal property is \$5,500 (\$5,000 + \$500). The wedding ring is necessary personal property, therefore excluded from net family assets.

The non-necessary personal property assets do not exceed the 2025 HUD published Inflationary Adjusted Asset Value (\$51,600), and is therefore excluded from net family assets, but the actual income of \$50 is included as actual asset income that contributes towards determining household income.

The net value of the real property is included in net family assets and exceeds the 2025 HUD published Inflationary Adjusted Asset Value (\$51,600). This real property has no actual income, therefore an imputed income for the asset must be determined.

	<b>Net Cash Value</b>	<b>Actual Income Earned <i>Form RD 3560-8, Line 16</i></b>	<b>Imputed Income (based on 0.45% Passbook Savings Rate <i>Form RD 3560-8, Line 17</i></b>
Checking Account current balance*	\$500	\$0	Imputed income is not calculated since the total non-necessary personal property is less than the HUD published Inflation-Adjusted Asset Value.
Savings	\$5,000	\$50 (\$5,000 x 0.01)	
Real Property	\$60,000		\$60,000 x .0045 = \$270
<b>Total</b>	<b>\$65,500</b>	<b>\$50</b>	<b>\$270</b>
<b>Net Family Assets (reported on <i>Form RD 3560-8, Line 15</i>)</b> Non-necessary personal property that does not exceed the HUD published Inflationary Adjusted Asset Value is excluded from Net Family Assets.	<b>\$60,000</b>		

\* Effective with HOTMA implementation, the current balance of a checking account is adequate verification.

## 2. *Assets Disposed of for Less than Fair Market Value*

Applicants who dispose of assets for less than fair market value have, in essence, voluntarily reduced their ability to afford housing. Therefore, assets disposed of for less than fair market value during the two years preceding a determination of annual income must be used in the annual income calculation. Assets disposed of for less than fair market value as a result of foreclosure, bankruptcy, divorce, or separation are not included in this calculation.

The amount of asset to be included in net family assets is the difference between the market value of the asset and the amount that was actually received (if any) in the disposition of the asset.

### **Example—Valuing a Disposed Asset**

An applicant sold a property to a relative for \$15,000 on July 1, 2024. The property was valued at \$30,000 and had no loans against it.

Market value	\$30,000
(Less) Settlement costs	\$2,000
<u>(Less) Sales price</u>	<u>\$15,000</u>
Cash value of disposed asset	\$13,000

The \$13,000 would be counted as an asset for any annual income determination conducted until July 1, 2026. Even though there would be no actual income from this asset, the \$13,000 would be used to establish net family assets to determine the amount to be counted as annual income.

## 6.11 VERIFICATION REQUIREMENTS

Management must verify all income, assets, expenses, deductions, family characteristics, and circumstances that affect family eligibility or level of assistance. Management must establish a verification procedure to review applicant information. The procedure must ensure accurate determinations of eligibility and respect the confidentiality of all information on applicants and residents.

Attachment 6-H provides acceptable forms of verification. Attachment 6-I, Eligibility, Income, and Deduction Checklist, provides a sample checklist.

Each applicant must provide the household information needed to enable management to make income and eligibility determinations. Most of this information should be provided on the application, but some additional follow-up with the applicant may be required. Management must verify information provided by the applicant prior to admission and prior to submission of *Form RD 3560-8 Tenant Certification* to the Agency.

### **A. Authorization to Release Information**

Each applicant must provide an authorization to release information so management can verify required household information. By signing an authorization to release information form, the applicant or resident gives permission to management to ask questions about and verify information related to the household that affect eligibility and the amount the household must pay. Applicants must sign the form as a condition of admission and continued occupancy.

A form must be signed by the household head and all other household members whose income, assets, or other circumstances require verification. The borrower must ask applicants/residents to execute the form even in cases where the person has not reported any income. As long as management retains the form with original signatures in its file, a photocopy of the authorization may be provided to verification sources.

## **B. Third-Party Verifications**

Verifications are valid for 120 days from the date of receipt.

When it is not immediately possible to obtain the written verification from the income source, other reliable third-party data the person possesses which indicates gross income may be used.

Third-party verification of income is required whenever it is possible or available. This may include tenant-provided documentation (generated by a third-party source), including but not limited to, pay stubs, payroll summary reports, employer notice/letter of hire/termination, Social Security benefit award letter, child support pay stubs, child support summary reports, welfare benefit letters and/or printouts, and unemployment monetary benefit notices. Owners must consider if the documentation is current, complete, and unaltered by the tenant.

Income verification is required for tenants of Off-Farm Labor Housing—domestic laborers including year-round, seasonal, or migrant farmworkers. Income verification is not required for tenants of On-Farm Labor Housing.

Refer to Attachment 6-H for acceptable forms of verification.

## **C. Social Security Numbers**

Prospective tenants must provide the borrower with Social Security Numbers for every tenant or co-tenant in the household. The borrower may use Social Security Numbers to verify income information that is provided. Social Security Numbers must be collected only once for each resident. Refer to Attachment 6-H for acceptable documentation of Social Security Numbers.

## **D. Wage Matching Requirement**

If permitted by State law, the Agency may implement and utilize income matching of tenants. See Chapter 9 of the HB-2-3560 for more information.

## **E. Tenant File Documentation**

Borrowers must retain executed tenant certification forms and any supporting documentation in the tenant file for at least 3 years or until the next Agency monitoring visit or compliance review, whichever is longer. See Attachment 6-J, Required Tenant File Documentation, for a list of required documentation that must be retained in each tenant file.

## 6.12 THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940

Rural Housing Service is required to provide tenants the benefits of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended.

The Soldiers' and Sailors' Relief Act of 1940 was established to protect those who serve the United States in the Armed Forces. The Act applies to all persons on active duty including reserve component service members called to active duty.

A tenant, co-tenant or spouse may terminate a lease covering premises occupied as a dwelling at any time following the date of the beginning of the period of the military service. The termination will be in writing and delivered to the property manager or the management firm in person or by mail; following the date of the beginning of the military service (a set of appropriate military orders should accompany the termination letter). However, the lease termination will not be effective until 30 days after the first date on which the next rental payment is due. Example: next rent payment date is March 1; termination will be effective March 30.

Guardians who were not originally listed as tenants, but are so designated by the tenant or co-tenant, will be permitted to reside in the unit to care for minors while the tenant or co-tenant is absent due to military service. The term "guardian" means immediate family member, relative or friend.

The Act does not relieve the recently activated military person or that persons' household from meeting financial obligations. However, the Act does protect the soldier's dependent(s) left behind (occupying family dwellings) from undue eviction or distress.

A. Should eviction be necessary for violation of lease requirements, the Act provides opportunity for a stay of eviction for up to three consecutive months. Under no circumstance are borrowers entitled to take eviction matters into their own hands or to inform tenants that they must move because they no longer can afford the rent. The borrower may give the tenant notice of lease violation and termination for repeated late payment or nonpayment of rent in normal fashion, but evictions require court action. Evictions, three-month stays and relief actions are within the discretion of the court. Borrowers may not evict affected tenants without prior court approval.

B. All tenants affected by the Soldiers' and Sailors' Civil Relief act are to be recertified (upon receipt of their military orders) in accordance with 7 CFR Part 3560, in order to reflect their true rent contribution. Recertification should include all income such as severance pay, salary, reservist pay, housing allowance, etc. Hazard duty pay is not counted. Upon completion of tenant recertification, rents will be increased or decreased. Tenant recertification may be processed by the co-tenant, spouse or guardian during the period of military service.

Example: If a tenant was contributing \$275.00 (basic rent) per month towards rent, and their salary has decreased or increased due to leaving a previous position for military service, the new contribution towards rent may be significantly decreased or increased. If a tenant's salary decreased so low that their rent contribution falls below

basic rent, the Rental Assistance (RA) allowance will increase. If no RA is available for the unit, the tenant, like other tenants without RA, will pay the basic rent.

C. Single soldiers should be encouraged to place their personal belongings and furnishings in storage for safekeeping. Monthly rents would be due as scheduled. However, if a single tenant elects to leave their belongings in the apartment, they should be encouraged to grant a power of attorney to a competent person and provide the manager with pertinent information concerning this person. If a single person does leave their furniture on the premises and rent is delinquent, the borrower should make application to the court for authorization to act.

### **SECTION 3: OCCUPANCY POLICIES [7 CFR 3560.155] AND OCCUPANCY RULES [7 CFR 3560.157]**

#### **6.13 OCCUPANCY POLICIES [7 CFR 3560.155]**

The purpose of the occupancy policy in a multi-family property is to establish:

- Unit density standards; and
- Procedures for assigning units.

The Agency must concur with the borrower's occupancy policies prior to initial occupancy of the project and in all future modifications. In reviewing the policies, the Agency must assure that the standards follow state and local laws and that they appear reasonable based on the unit size and type. The Agency will review compliance with the policies during the compliance review. In a situation where the MFH Servicing Official believes management is in violation of the occupancy policies, the Agency must state the violation as a finding and require the borrower to resolve the problem in a specified time frame. If a household is residing in the property and is out of compliance with the occupancy policy, the borrower must follow procedures outlined in Paragraph 6.30 for tenants in violation of occupancy policies.

#### **A. Unit Density Standards**

Occupancy policies set standards regarding the number of people that can be adequately housed in a unit of a particular size. In developing the occupancy policy for each unit, the borrower must take into account the following:

- State and local codes regarding the number of persons permitted to dwell in a unit of a particular size;
- The size of the rooms in the particular unit;
- Procedures for sizing households for different unit types (how to consider temporarily absent household members); and



- The order in which the property will house eligible applicants and rehouse existing tenants.
- A tenant who is disabled will not be considered over housed if the tenant requests an additional room for a live-in aide or an apparatus related to the tenant's disability.

For some properties, state and local codes regarding occupancy standards may not exist. In these cases, the borrower should make a judgment as to how many people may be adequately housed, basing it on the square foot size and layout of the unit. For example, some properties may have several sizes of two-bedroom units. If one size is 600 square feet and the second size is 900 square feet, the borrower may have different occupancy policies for the different unit sizes.

Number of Bedrooms	Occupancy Density Range	
	Minimum	Maximum
0	1	1
1	1	2
2	2	4
3	3	6
4	4	8
5	5	10

## B. Procedures for Assigning Units

Occupancy policies also establish the order in which eligible applicants and existing tenants will be housed or rehoused.

Borrowers are required to comply with Section 5 of this chapter in selecting and assigning applicants to new units or relocating over- or under- housed existing tenants. However, it is important that these requirements are detailed in the borrower's occupancy policies, so that it is clear to new applicants and existing tenants how a vacant unit will be assigned.

## 6.14 OCCUPANCY RULES [7 CFR 3560.157]

The purpose of the occupancy rules is to establish the basis for the tenant and management relationship. Prior to Agency approval of occupancy rules, borrowers must provide written certification from their attorney that the housing project's occupancy rules are consistent with applicable Federal, state, and local laws, as well as Agency requirements, and the requirements of all programs participating in the housing project.

In situations where the tenant is in violation of the occupancy rules and the tenant fails to correct the problem, the borrower should proceed to evict the tenant for material noncompliance with the lease. In the event that an eviction action is filed with the court, the tenant should set up an escrow account for the rent.

## A. Basic Rules

Exhibit 6-4 lists the basic items that borrowers must address in the occupancy rules for their projects.

Occupancy rules for each project will be in writing, attached to each tenant's lease upon initial occupancy, and posted in a central location (such as a central mail location) so that tenants may easily access the information. The Agency must concur with any modification to these rules prior to implementation. Proper notice must be provided to the tenant at least 30 days prior to implementation and in accordance with the requirements of Section 8 of this chapter.

### Exhibit 6-4

#### Required Items for Multi-Family Housing Occupancy Rules

At minimum, the occupancy rules must address:

- \* An explanation of the tenant's rights and responsibilities under the lease or occupancy agreement;
- \* An explanation of the tenant's rights, protections, and responsibilities under VAWA (See Attachment 6-K, Section I)
- \* The rent payment or occupancy charge policies;
- \* The policies regarding periodic inspection of units;
- \* The system for responding to tenant complaints;
- \* The maintenance request and work-order procedures;
- \* The project services and facilities available to tenants or members;
- \* The office locations, hours, and emergency telephone numbers;
- \* The restrictions on storage and prohibitions on abandoning vehicles in the project area;
- \* The policies regarding guests that become household members;
- \* Other requirements related to the subsidy provided to the tenant from non-Agency sources; and
- \* The procedures tenants must follow to request reasonable accommodations.

## B. Pets

For each elderly designated multi-family housing project the borrower must have established project rules permitting elderly or disabled tenants to keep commonly accepted household pets.

Borrowers must not prohibit elderly households from keeping domestic animals in their unit; however, the borrower may require the household to pay a pet deposit.

Pet rules must not:

- Prohibit, prevent, restrict, or discriminate against any tenant who owns or keeps a pet in their apartment unit, with respect to continued occupancy in the project unless the approved project pet rules are violated;
- Prohibit, prevent, restrict, or discriminate against any applicant who owns a pet with respect to obtaining occupancy in the project; and
- Charge an extra monthly rental charge for pets.

Borrowers with existing projects must consult with the tenants of the project when revising pet rules and retain documentation on how the consultation process was conducted.

Borrowers with new projects will establish pet rules prior to occupancy but may revise those rules based on tenant comments and suggestions received after rent-up begins.

Pet rules will be reasonable and will be written to consider at least the following factors:

- Limit on number of pets based on unit size;
- Pet size;
- Type of pet;
- Potential financial obligations of tenants who own or keep pets;
- Standards of pet care;
- Pet exercise areas;
- State and local animal laws or ordinances; and
- Liability insurance.

Pet rules must allow the borrower or project manager authorization to remove from the project any pet whose conduct or condition is duly determined to constitute a nuisance or threat to the health or safety of other tenants or members in the project or persons in the surrounding community.

Regardless of the occupancy rules established for the project, the borrower must adhere to the following:

- Borrowers must not prohibit animals that provide assistance to the disabled from residing in the unit with the person to whom the animal is providing assistance.
- Borrower may not require the household to pay a pet deposit for a service/assistance/companion animal.

### **C. Tenant Organizations**

In developing and implementing the occupancy rules, borrowers must not infringe on the rights of tenants to organize an association of tenants. The project manager (or designated management representative) should be available and willing to work with a tenant organization.

Borrowers may not unreasonably withhold the use of community rooms or other available space within the project when requested by:

- A resident organization in connection with the representational functions of the organization; or
- Residents seeking to organize or to collectively consider any matter pertaining to the operation of the project.

### **D. Community Rooms**

In developing the occupancy rules, borrowers must not place unreasonable restrictions on tenants that desire to use community rooms for their enjoyment.

## **SECTION 4: MARKETING AND APPLICATION PROCESSING** *[7 CFR 3560.104 and 7 CFR 3560.154]*

### **6.15 [RESERVED]**

### **6.16 APPLICATION REQUIREMENTS AND PROCESSING**

The purpose of the tenant application process is to collect enough information regarding the household status to determine applicant eligibility for the specific property. This information should also be comprehensive enough for the borrower to make a determination about waiting list placement.

#### **A. Application Forms**

Borrowers may develop their own application form in accordance with the requirements of Exhibit 6-5. The borrower must retain application forms for at least three years or until the next Agency supervisory visit or compliance review, whichever is longer.

**Exhibit 6-5****Minimum Requirements for a Tenant Application**

- \* Name and present address;
- \* Household income information, including all information from sources that would be counted in calculating annual income, adjusted income, and assets; and consent to release wage matching data to RHS and the borrower;
- \* Number of household members, including all members who would live in the dwelling unit, even those who would only live there on a part-time basis, and their birthdates;
- \* Indication of a need for a handicap accessible unit and/or disability adjustments to income;
- \* Applicant certification that the unit will serve as the household's primary residence;
- \* Social Security Number for all members of the household;
- \* Signature and date;
- \* Race, ethnicity, and sex; and
- \* Disclosure notice.

Borrowers using application forms must establish a section at the end of the form, below the signature and date block, to collect race/national origin/sex information. Properties with layered financing may have additional program requirements when gathering demographic information. To meet the requirements of Federal Register Vol. 62 No. 210, Revision to the Standards for the Classification of Federal Data on Race and Ethnicity, the data collection needs to appear as follows:

“The information regarding race, ethnicity, and sex designation solicited on this application is requested in order to assure the Federal Government, acting through the Rural Housing Service, that the Federal laws prohibiting discrimination against tenant applications on the basis of race, color, national origin, religion, sex, familial status, age, and disability are complied with. You are not required to furnish this information, but are encouraged to do so. This information will not be used in evaluating your application or to discriminate against you in any way. However, if you choose not to furnish it, the owner is required to note the race, ethnicity, and sex of individual applicants on the basis of visual observation or surname.”

Ethnicity:

Hispanic or Latino \_\_\_\_\_

Not Hispanic or Latino \_\_\_\_\_

Race: (Mark one or more)

1 American Indian/Alaska Native \_\_\_\_\_

2 Asian\_\_\_\_\_

3 Black or African American\_\_\_\_\_

4 Native Hawaiian or Other Pacific Islander\_\_\_\_\_

5 White\_\_\_\_\_

Sex: Male\_\_\_\_\_ Female\_\_\_\_\_

The race and the ethnicity of each applicant shall be recorded on the waiting list. This information shall be collected for statistical purposes only and must not be used when making eligibility determinations or in any other discriminatory manner. The information shall be recorded using the race and ethnicity codes that are utilized on Form RD 3560-8 Tenant Certification.

Borrowers must establish and maintain a specific place and time where applications will be accepted. This information should be posted in a central location on the property. It must also be documented in the Management Plan and to the greatest extent possible communicated through outreach and marketing efforts.

Applicants are to be provided a list of any additional information that must be submitted with the application for the application to be considered complete (an application will be considered complete without verification of the applicant information). The list of information must be restricted to the same items for all Agency-assisted properties of a particular type, such as a family or elderly complex.

## **B. Application Fees**

Application fees are discouraged, but when used, any fee charged to an applicant must be limited to the cost of actual services incurred for obtaining necessary information associated with completing applicant eligibility.

## **C. Maintaining Waiting Lists**

When an applicant has submitted an application form the borrower must place the applicant on the waiting list. All applications, incomplete, complete, eligible, or ineligible, will be placed on the list. The waiting list will document the final disposition of all applications (rejected, withdrawn, or placed in a unit).

The date and time a complete application was submitted will be recorded on the waiting list and will establish priority for selection from the list. If an applicant submits an incomplete application, they must be notified in writing within 10 days of the items that are

needed for the application to be considered complete, and that priority will not be established until the additional items are received.

### ***1. Electronic Waiting Lists***

Electronic waiting lists must have a mechanism for maintaining the date and time of each applicant's placement on and selection from the waiting list and a way to document changes made to the list. If an electronic waiting list is used, borrowers must periodically print out electronic waiting lists or preserve backup copies showing how the waiting list appeared before and after the removal of each name. The following are examples of methods that borrowers might use to track inputs to the electronic waiting list and changes to it:

- Use a data backup function to record the time and date of entry of new applications and changes to existing records in the electronic waiting list.
- Print a record of the appearance of the waiting list as often as necessary to show each applicant's placement on and selection from the list. The time and the date of the printout should appear on the report. The owner can file this information in the tenant file and in a central waiting list file.
- Whenever status changes occur, such as changes in family composition and unit size, record the change with an explanation, and print the re-sorted list.

To the extent possible, the borrower should use electronic safeguards, such as assigning waiting list password access only to individuals responsible for maintaining the system. Ideally, a system should record the username, and the time, date, and action entered whenever a record is changed or entered in the electronic waiting list.

### ***2. Selecting Applications from the Waiting List***

Once an applicant has submitted a complete application, the date and time must be recorded on the waiting list to establish priority for selection. Selection from the waiting list will be made according to date and time in the following order:

- Very low-income applicants;
- Low-income applicants; and
- Moderate-income applicants.

See paragraph 6.3 for information regarding how to determine the specific income level of an applicant.

Within 10 calendar days of receipt of a complete application, the borrower must notify the applicant in writing that they have been selected for immediate occupancy, placed on a waiting list, or rejected.



The procedures used by the borrower to purge the project's waiting list must be described in the project's management plan. These procedures must be based on the length of the waiting list or the extent of time the applicant will be expected to wait for housing.

## **6.17 REJECTION OF APPLICATIONS**

Borrowers will deny admission for criminal activity or alcohol abuse by household members as detailed in 24 CFR 5.854, 5.855, 5.856, and 5.857.

The Direct Result provision prohibits Borrowers from rejecting admission to an applicant based on an adverse factor, if the adverse factor is determined to be a direct result of the fact that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. (See VAWA Attachment 6-K Section F.)

Borrowers are required to notify all applicants in writing of their ineligibility. If applicants are determined to be ineligible, the rejection letter must outline the reason for rejection of the application and their right to respond to such decision in accordance with 7 CFR 3560.154 and 7 CFR 3560.160. The rejection letter must advise the applicants of their right to respond to the decision within 10 calendar days, as well as the right to a hearing in accordance with 7 CFR 3560.160, which must be made available to the applicant upon request. If the project is located in an area with a high concentration of non-English-speaking individuals, the letter must be in English and the non-English language that is prevalent in the area. When an applicant is rejected due to credit bureau reporting information, the source of the credit bureau must be revealed to the applicant in accordance with the Fair Credit Reporting Act. Forms HUD-5380 and HUD-5382 will be provided to adult applicants whose applications are rejected.

## **6.18 AGENCY REVIEW AND MONITORING OF APPLICATION PROCESSING**

In reviewing the application process used by the borrower, the Agency should review the following:

- Is adequate documentation available to determine compliance with applicant processing requirements?
- Are applicants properly informed of where and when applications may be obtained and submitted?
- Are applicants properly notified of their rights and protections under VAWA (VAWA Lease Addendum, HUD-5380 and HUD 5382 forms distribution)?
- Does the application provide the borrower with adequate information to determine the applicant's place on the waiting list?
- Is there an element in the application process that discourages targeted populations from submitting an application? If so, will modifying the application process encourage targeted, but underserved populations to apply?

- Are applications processed in a timely manner?
- Are ineligible applicants adequately notified of their rights to a review under Section 8 of this chapter?

MFH Servicing Officials will review the application during the supervisory visit and/or compliance review to ensure that adequate information is being obtained and that the above-listed questions are answered to the satisfaction of the Agency.

## **SECTION 5: TENANT SELECTION AND UNIT ASSIGNMENT** ***[7 CFR 3560.154 and 7 CFR 3560.155]***

### **6.19 ASSIGNING AN AVAILABLE UNIT**

Once a unit becomes available, the borrower must decide who is entitled to that unit based on a variety of factors.

Eligible tenants residing in the property who are either under- or over-housed receive priority over new applicants if relocating them into the newly vacant unit would bring the household into compliance with the occupancy policy for the property. If there are no such over- or under-housed existing tenants, the borrower must select a new applicant from the waiting list to fill the newly vacant unit. The borrower must use the project's occupancy policy to review applicants on the waiting list who are eligible based on the unit size. From that universe, the borrower must then determine, based on income levels and priorities, which applicant is entitled to the unit. The order in which applicant households are entitled to housing depends on two factors:

- The income level of the household; and
- The priorities for which the household may qualify.

When an applicant first submitted an application, the borrower made an initial determination as to whether the household was very low-, low-, or moderate-income. Based on this assessment, the applicant was assigned to the very low-, low-, or moderate-income waiting list. When looking for the next eligible tenant for the vacant unit, the borrower must first go to the very-low income waiting list. If there are no applicants on the very low-income waiting list who qualify for the vacant unit based on the property's occupancy policy, then the borrower may go to the low-income waiting list. Only if there are no eligible applicants for the unit on the low-income waiting list may the borrower select an eligible applicant from the moderate-income waiting list.

## 6.20 PRIORITIES FOR UNITS

### A. Exceptions to Income Standard Assignment Policies

While the basic standard is to house all very low-income applicants prior to low- and then moderate-income applicants, there are situations where this process may be bypassed. However, an individual in one of the situations identified below would not be eligible for housing before applicants on the waiting list for a lower income category.

- If the unit is a handicapped accessible unit, then an eligible household that needs the features of that unit will receive priority over all other applicants, regardless of income. If more than one applicant needs the features of the handicapped accessible unit, then applicants who are very low-income would have priority, followed by low- and then moderate-income households.
- In congregate housing facilities, applicants who qualify for and agree to utilize the services provided by the facility will be housed over all other applicants on the waiting list. Where there is more than one applicant that meets this criterion, the applicants meeting this condition will be ranked by very low-, low-, and moderate-income and housed in accordance with the occupancy policies established at the property.
- Borrowers with projects receiving low-income housing tax credits (LIHTCs), may leave a housing unit vacant if they are required to rent the available unit to an LIHTC-eligible applicant, and none of the applicants on the waiting list meet the applicable LIHTC eligibility requirements.

#### Example— Exceptions

Project B has two handicap-accessible units. There are three disabled individuals who need the features of the handicap-accessible units on the waiting list: one moderate income and two low-income. The property has a waiting list of 20 very low-income applicants. The borrower must rent the two handicap-accessible units to the two low-income applicants.

Project Z is a congregate housing facility and has a vacant one-bedroom unit. There are three individuals eligible for a one-bedroom unit on the waiting list: two very low-income applicants and one low-income applicant. All qualify for congregate care services. Only one of the very low-income applicants, however, would agree to use the congregate care facilities. The borrower would have to offer one of the vacant units to the very low-income applicant who agrees to use the services and the other unit to the low-income applicant who agrees to use the services.

- Letter of Priority Entitlement (LOPE), *Handbook Letter 201*. A letter issued by the Agency providing a tenant with priority entitlement to rental units in other Agency-

financed housing projects for 120 days from the date of the LOPE. Persons receiving a VAWA LOPE, displaced by Agency action, or displaced persons in a Federally declared disaster area have priority over all other applicants of the individual applicant's income group.

**Example**

Project C has a vacant three-bedroom apartment. There are no applicants eligible for a three-bedroom unit on the very low-income waiting list. There are 20 applicants eligible for a three-bedroom unit on the low-income waiting list. A holder of a LOPE applies for occupancy at the project. The applicant is low-income and qualifies for a two-bedroom unit. Despite the number of applicants on the waiting list, the borrower must offer the available unit to the LOPE holder, and the LOPE holder agrees to move to the appropriate-size unit when one becomes available.

- Borrowers who have adopted an admission or waiting list priority for victims of domestic violence, dating violence, sexual assault, or stalking who are non-RD tenants referred by other federal, state, or local housing agencies, or a partnering service organization. Such victims may receive priority over all other applicants of the individual applicant's income group. (See Attachment 6-K Section Q.)

**B. Assignment of Rental Units Accessible to Individuals with Disabilities**

Eligibility requirements for fully accessible units are contained in 7 CFR 3560.154(g)(1)(i) and 3560.155(b). If a rental unit accessible to individuals with disabilities is available and there are no applicants that require the features of the unit, the borrower may rent the unit to a non-disabled tenant under the following conditions:

- The borrower must include a provision in the lease requiring the tenant to vacate the unit within 30 days of notification to an appropriately sized vacant unit within the project. Additionally, the lease clause must ensure that the household may remain in the rental unit with accessibility features until an appropriately sized vacant unit within the project becomes available and then must move or vacate within 30 days of notification from borrower;
- The unit has been marketed as an accessible unit;
- Outreach has been made to organizations representing the disabled; and
- Marketing of the unit as an accessible unit continues after it is rented to a tenant who is not in need of the special design features.

**C. Set-aside Unit Preferences at properties with other funding sources**

Recapitalization and rehabilitation for an aging affordable housing property often requires locally awarded funding sources such as Low-Income Housing Tax Credits (LIHTC). To receive consideration for these funding sources, owners must often commit

to setting aside a small number of units with a preference for a certain population, for example, residents with disabilities or residents coming from homelessness.

Given the prevalence of set-asides and preferences in state and locally awarded funding, RD will allow owners and management agents to include a set-aside or preference for a specific population in their occupancy policy and management plan, under the following conditions:

- The set-aside or preference must be part of the owner's effort to recapitalize and perform needed rehabilitation with the goal of long-term preservation of affordable housing in rural communities, either as part of a state's Qualified Allocation Plan (QAP) so the property can compete and receive a LIHTC award, or as a requirement imposed by other third-party funding sources.
- The set-aside or preference must not violate any provisions of the Fair Housing Act and must not violate any state or local discrimination laws.
- The set-aside or preference units shall consist of no more than 20% of the units at the property.
- The set-aside or preference must not result in unreasonable vacancies at the project. If set-aside units are vacant for longer than 90 days, owners must request an exception to rent the units to Agency qualified tenants, if allowed by third-party funding sources.
- The set-aside or preference must be clearly documented in the property's management plan and occupancy policy, the edits to which must be approved by the Agency.
- With prior RD review and concurrence, a Use Agreement that restricts a certain number of units may be executed.
- A separate waiting list may be utilized for the set-aside or preferences, in accordance with the third-party funding source or the set-aside governing Agency.
- The Housing and Urban Development (HUD) lease may be used for the set-aside or preference units/tenants if required by the third-party funding source or set-aside governing Agency. The HUD lease cannot be used for non-set-aside or non-preference units/tenants.
- Owners must continue to meet all RD reporting requirements.
- Participants must continue to use the RD budget-based rent structure on ALL units. Borrowers are responsible for funding any gap between basic rent and any restricted set-aside or preference rent collected from the tenant when basic rent exceeds the restricted rent.

If the number of set-asides or preferences change, the owner must advise the RD servicing specialist of the change.

Borrowers receiving HUD Section 8 project-based assistance may establish preferences in accordance with HUD regulations. The use of such preferences must be documented in the project's management plan.

## **6.21 AGENCY MONITORING AND REVIEW OF UNIT ASSIGNMENT**

The selection and assignment of units is one of the most important aspects to managing a property. Borrowers and management agents must assure onsite management staff are well versed in Agency policy and guidance regarding this subject or require the borrower to modify the management plan to reflect increased training in this area. The MFH Servicing Official will review the waiting lists and completed applications to ensure that:

- Units which are not needed to relocate existing tenants are first offered to eligible very low-income families; and
- Units are offered to households in accordance with the borrower's occupancy policy.

If the MFH Servicing Official finds that the borrower or the agent is failing to follow Agency policy in assigning available units, the MFH Servicing Official may require the borrower to modify the management plan to clearly reflect Agency policy and/or enhance the training of management staff responsible for assigning units.

## **SECTION 6: DWELLING LEASES [7 CFR 3560.156]**

### **6.22 OVERVIEW OF DWELLING LEASES**

A lease between the borrower and the tenant is required to be executed before any tenant occupies a unit in a multi-family housing project. This section will provide information regarding how the borrower will develop that lease and what action is needed by the Agency before the lease may be used. The Agency must approve the lease before the borrower enters into a lease agreement with any tenant.

### **6.23 DEVELOPMENT OF A LEASE**

The borrower is responsible for the development of the tenant lease that will be used at the property. This lease must contain the required items, provisions and clauses outlined in **Attachment 6-E** and must be free of prohibited clauses listed in **Attachment 6-F**. It must also be in compliance with state and local laws. If there are conflicting requirements between Federal, state, and local laws, the borrower must notify the Agency of the conflict and request guidance. Once a lease is developed by the borrower, the borrower's attorney must certify that the lease is in compliance with the requirements of 7 CFR 3560.156 and **Attachments 6-E** and **6-F** prior to submission of the lease to the Agency for approval. The Agency must approve with all leases proposed for use at an Agency-related property, prior to the use of that lease.

## **6.24 EXECUTION OF THE LEASE WITH THE TENANT**

Prior to the occupancy of any unit by an applicant, the applicant and the borrower must execute a lease that has been approved by the Agency. Once a lease has been executed with the applicant, they are entitled to occupy the unit so long as they remain eligible and comply with lease renewal requirements. Expiration of the lease is not of itself grounds for a termination of tenancy.

## **6.25 AGENCY REVIEW AND MONITORING OF LEASE REQUIREMENTS**

The management agent must review and monitor the implementation of the lease with the applicant/tenant to ensure that they are properly informed of their rights and responsibilities under the lease. During the compliance review process, the Agency will assure:

- The occupancy rules are attached to the initial lease;
- The applicant understands their rights to the tenant grievance process under HUD Section 8 and 7 CFR 3560.160; and
- The applicant understands the process for relaying information such as maintenance requests and income information to management and the responsibility to do so in a timely manner.
- The adult applicants understand their rights, protections, and responsibilities under the VAWA Lease Addendum and have received Forms HUD-5380 and HUD-5382. (See Attachment 6-K Section I, paragraph 5.)

If the MFH Servicing Official determines the borrower is failing to provide adequate information regarding the rights and responsibilities of the tenant and the management agent, the MFH Servicing Official will require the borrower to improve the management plan and training of onsite staff.

## **SECTION 7: TENANT RECERTIFICATION AND CHANGES IN ELIGIBILITY [7 CFR 3560.152 and 7 CFR 3560.158]**

The recertification process developed in this section is designed to ensure a tenant remains eligible to reside in multi-family housing. As household status changes, the size of the unit needed by the household or the amount of rent that they are obligated to pay may change. This section discusses when a recertification is required and what action the borrower is required to take if a household is determined ineligible to continue residing at the property.

## **6.26 REQUIREMENTS TO RECERTIFY TENANTS**



## A. The Annual Recertification Process

Each time a resident is recertified, the certification is good for one year, unless Paragraph B Interim Recertification Process requires a recertification to be completed more frequently. At the end of the year the certification will expire, and the borrower is required to recertify the household. In most cases, the effective date of the recertification is the first day of the month following the expiration of the current certification. If the owner/management agent or tenant fail to recertify timely, the effective date will be the first of the month after the recertification has been executed by the owner/management agent and the tenant.

Using the procedures outlined in Section 1 of this chapter, the borrower will complete a new certification. The key steps to this process include:

### 1. *Notifying the tenant of the recertification requirement*

At least 75 to 90 days prior to the date that the certification expires, the borrower must notify the tenant in writing that they must be recertified to remain eligible to continue residence at the property. This letter will also include what information the borrower needs from the household to complete the recertification process.

If the household fails to respond to the letter, the borrower should issue a second letter 30 days prior to the date which the certification expires informing the tenant of:

- The information needed to recertify;
- The time frame in which the new certification must be submitted to the Agency; and
- The consequences for failure to comply with the recertification process.

### 2. *Execution of the annual recertification*

Upon receiving the information regarding household size and income from the tenant, the borrower will verify the information and the borrower and the tenant will complete a new *Form RD 3560-8*. This form will document the calculation of annual income and adjusted income (in accordance with Section 1 of this chapter) and the calculation of the tenant payment (in accordance with Chapters 7 and 8). Management agents must give each adult household member the VAWA Form HUD-5380, “Notice of Occupancy Rights” and the Form HUD-5382, “Certification of Domestic Violence” with acknowledgement of receipt. (See Attachment 6-K Section I.)

## B. Interim Recertification Process

Tenants and borrowers must execute *Form RD 3560-8*, Tenant Certification form establishing the tenant’s eligibility prior to occupancy. In addition, tenant households must be recertified and must execute a tenant certification form at least annually or whenever a change in household income of \$100 or more per month occurs. Borrowers

must recertify for household income changes of \$50 per month, if the tenant requests that such a change be made.

### ***1. Tenant Requirements***

- Tenants must provide borrowers with the necessary income and other household information required by the Agency to determine eligibility.
- Tenants must authorize borrowers to verify information provided to establish their eligibility or determination of tenant contribution.
- Tenants must report all changes in household status that may affect their eligibility to borrowers.
- Tenants who fail to comply with tenant certification and recertification requirements will be considered ineligible for occupancy and will be subject to unauthorized assistance claims, if applicable, as specified in 7 CFR part 3560, subpart O.

### ***2. Borrower Requirements***

- Borrowers must verify household income and other information necessary to establish tenant eligibility for the requested rental unit type, in a format approved by the Agency, prior to a tenant's initial occupancy and prior to annual or other recertifications.
- Borrowers must review all reported changes in household status and assess the impact of these changes on the tenant's eligibility or net tenant contribution.
- Borrowers must submit initial or updated tenant certification forms to the Agency within 10 days of the effective date of an initial certification or any changes in a tenant's status. The effective date of an initial or updated tenant certification form will always be a first day of the month.
- Since tenant certifications are used to document interest credit and rental assistance eligibility and are a basic responsibility of the borrower under the loan documents, borrowers who fail to submit annual or updated tenant certification forms within the time period specified in this paragraph, will be charged overage, as specified in 7 CFR 3560.203(c) and lost rental assistance. Unauthorized assistance, if any, will be handled in accordance with 7 CFR part 3560, subpart O.
- Borrowers must give each adult household member the VAWA Form HUD-5380, "Notice of Occupancy Rights" and the Form HUD-5382, "Certification of Domestic Violence" at every recertification, with acknowledgement of receipt. (See Attachment 6-K Section I.)
- Borrowers must submit tenant certification forms to the Agency using a format approved by the Agency.

- Borrowers must retain executed tenant certification forms and any supporting documentation in the tenant file for at least 3 years or until the next Agency supervisory visit or compliance review, whichever is longer.

The Agency maintains the right to independently verify tenant eligibility information.

Tenants will remain ineligible to receive RA when they are delinquent on their Unauthorized Assistance Repayment Agreement until such time as the delinquency is cured.

### **C. Submission of the Certification to the Agency**

Once the borrower and the tenant execute a certification, it must be submitted to the Agency within 10 days of the effective date of the certification. In order for a certification to be valid, it must be signed and dated by all parties on or before the effective date and maintained in the tenant file. If a borrower fails to submit an executed certification within 10 days of the effective date, it will result in monetary penalties (overage) to the borrower as established in Chapter 7.

## **6.27 AGENCY REVIEW AND MONITORING OF THE RECERTIFICATION PROCESS**

### **A. Agency Review**

The recertification process is designed to ensure that Agency programs are serving income-eligible households on an ongoing basis. MFH Servicing Officials review of the recertification process should be designed to ensure that recertifications are executed in a timely manner. The MFH Servicing Officials will make the following assessments:

- Are tenants receiving the proper notice—at least 75-90 days in advance of the expiration of the current certification?
- Are adult household members acknowledging receipt of the forms HUD-5380 and HUD-5382? (See Attachment 6-K Section R.)
- Does the recertification notice provide the tenant with a list of the information needed for the completion of the recertification process?
- Are borrowers accurately determining when an interim recertification is needed?
- Are interim recertifications being executed on a timely basis (i.e., no later than 30 days from the time the information is provided to the borrower)?
- Is the borrower completing the verification of information on a timely basis?

If the MFH Servicing Official concludes that the borrower is deficient in recertifying existing tenants, the Agency must require the borrower and the management agent to

modify existing practices and procedures to ensure a timelier delivery of recertifications to the Agency. This could include:

- Modification of the management plan to incorporate stronger or more specific procedures with regard to recertifications.
- Enhanced training for onsite staff in processing Agency certifications.
- Stronger enforcement of the penalties for tenants who fail to comply with the recertification process.
- Requiring the borrower to replace the management agent.

## **B. Management Agent Interactive Network Connection (MINC)**

MINC is the mechanism by which borrowers submit tenant certifications to the Agency electronically on a monthly basis.

For projects with eight units or more, all borrowers will be required to submit tenant certifications through MINC. The Agency may make an exception to this requirement if the borrower submits documentation that the costs associated with electronic submission of tenant certifications would pose a financial hardship to the project.

If the borrower is using MINC, certifications must be submitted by the tenth of the month for which they are due. For instance, if the borrower is submitting certification due in May with an effective date of May 1, the certifications must be electronically transmitted to the Agency by May 10. If for any reason the borrower is unable to transmit the certifications electronically during a given month, the borrower must submit the hard copies of the certifications to the Agency for receipt by the tenth of the month.

If the Agency approved a MINC waiver for a project with less than 8 units, borrowers must submit hard copies of certifications to the Agency for receipt by the tenth of the month.

Regardless of the transmission method used—MINC or hard copies—if the Agency does not receive certifications by the tenth of the month in which they are due and the borrower has not submitted an overage waiver for Agency consideration, the borrower will be subject to overage penalty.

**Attachment 6-G** provides guidance on acquiring automation support/software for MINC or other automation needs, along with a listing of software providers who have an interest in interfacing with MINC.

## **6.28 INELIGIBLE TENANTS**

Ineligible tenants are those who, upon recertification, fail to meet either the income or the occupancy requirements for the unit and property that they currently occupy.

Regulations require that tenants who are no longer eligible to reside at the property be

given notice that they must vacate the property within 30 days or at the end of their lease, whichever is longer.

In two specific situations, borrowers may permit ineligible households to reside at the project with prior Agency approval:

- The waiting list for the specific unit type has no eligible tenants; or
- The required time period for vacating the unit would create a hardship on the household.

#### **A. Continuation of Tenancy—Tenants Who Fail to Comply with the Occupancy Policy**

In some situations, a tenant may be ineligible based on the size of the unit currently occupied but could become eligible if they relocated to a unit of a different size (either larger or smaller) within the property. In this situation, a tenant may continue tenancy as an ineligible tenant, but the borrower should relocate the household to the proper unit size as soon as a unit of that size becomes available.

In some cases, a household may require a unit size that is unavailable at the property. In this situation the tenant would be considered ineligible and required to vacate the property within 30 days or at the end of their lease, whichever is longer.

#### **B. Continuation of Tenancy—Tenants Who Fail to Comply with the Income Requirements for the Property**

In most cases, if tenant certifications indicate that they no longer comply with the income limits set for the property, tenants must be notified about vacating the property in 30 days or at the end of their lease, whichever is longer.

Elderly households with incomes above the moderate-income level may occupy projects with an Agency loan approved prior to 1968 with a loan agreement that does not restrict occupancy by income.

Households who are elderly, disabled, and living in a full-profit plan development are not required to move or pay an increased rent if household income increases above moderate income.

#### **C. Cooperative Members**

Any persons who are eligible members of a cooperative will not be considered ineligible or subsequently deprived of their membership by reason of no longer meeting the income-eligibility requirements as defined in 7 CFR 3560.152.

#### D. Remaining Household Members

Members of a household residing in a multi-family housing project may continue to occupy the unit after the departure of the original tenant, regardless of age, provided that:

- They are eligible with respect to income;
- They were either a cotenant or member of the household, have the legal capacity to sign the lease, and are U.S. citizens or qualified aliens\*;

**\*Effective date note:** At 70 FR 8503, February 22, 2005, in 7 CFR 3560.152(a)(1), implementation of the words “Be a United States citizen or qualified alien, and” was delayed indefinitely.

- They occupied the unit with the original tenant at the time the original tenant died or departed;
- They sign a new tenant certification establishing their own tenancy; and
- They have the legal ability to sign a lease for the rental unit, except where a legal guardian may sign when the tenant or member is otherwise eligible.

Remaining household members that are over housed must move to a suitably sized rental unit within 30 days of its availability. If a suitably sized unit does not exist at the property, the tenant will be required to vacate the property in accordance with Paragraph 6.28 A.

#### E. Surviving Household Members

Members of an elderly household residing in an elderly project may continue to occupy the unit after the death of the original tenant, regardless of age, provided that:

- They are eligible with respect to income;
- They were either a co-tenant or member of the household and have the legal capacity to sign the lease;
- They occupied the unit with the original tenant at the time the original tenant died or departed;
- They sign a new tenant certification establishing their own tenancy; and
- They have the legal ability to sign a lease for the rental unit, except where a legal guardian may sign when the tenant or member is otherwise eligible.

Nonelderly or nondisabled surviving members of an elderly or disabled household are not entitled to the elderly household adjustment to income.

Surviving household members who are over housed may remain in the unit but must move to a suitably sized rental unit within 30 days of its availability, unless with prior approval of the Agency, the required time period for vacating the rental unit would create a hardship on the household. If a suitably sized unit is not available, surviving household members may remain in the rental unit according to the housing project's occupancy policies. Continued occupancy of the rental unit will not be allowed when:

- The rental unit has accessibility features for individuals with disabilities;
- The household no longer has a need for such accessibility features; and
- The housing project has a tenant application from an individual with a need for the accessibility features.
  - If the housing project does not have a tenant application from an individual with a need for the accessibility features, the household may remain in the rental unit until the housing project receives an application from an individual in need of the accessibility features, at which point, the household will be required to move within 30 days; and
  - If a suitably sized unit is not available in the project within 30 days, the tenant may remain in the unit with accessibility features until a unit becomes available and must then move within 30 days.

#### **F. Agency Review and Monitoring of Ineligible Tenants**

For an ineligible tenant to remain at the property beyond the allowable time frame of 30 days or the end of the lease, whichever is longer, the borrower must obtain written permission from the Agency. In granting such permission, the Agency should assure that one of two criteria exist:

- The waiting list for the specific unit type has no eligible tenants; or
- The required time period for vacating the unit would create a hardship for the household.

In reviewing whether the borrower is following the requirements to remove ineligible tenants the Agency should check to ensure:

- The borrower is requesting approval for ineligible tenants to remain on the property in a timely manner.
- The borrower is properly documenting any reason for which an ineligible tenant is being allowed to continue to reside in the property (i.e. Agency approval, surviving member of elderly household, income eligible and waiting for appropriate-size unit).
- The borrower is providing proper notice to tenants regarding the time frames for vacating the property.



## 6.29 LEASE VIOLATIONS

Borrowers may require tenants in violation of occupancy policies or rules or the terms of their lease to vacate the property in accordance with the terms of their lease agreement. However, borrowers must provide notice to such tenant in a format that is in compliance with state and local laws and is approved by the Agency.

## 6.30 TERMINATION OF OCCUPANCY

### A. Tenants in Violation of the Lease

In accordance with the lease, a borrower may terminate or refuse to renew a tenant's lease for material noncompliance with the lease or occupancy policies or rules or for other good cause.

Borrowers must not terminate occupancy solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of the household or any guest or other person under the control of the tenant, if the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking. Good cause for purposes of occupancy terminations does not include an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking where the tenant or affiliated individual of the tenant is a victim or threatened victim of such incident. The Direct Result provision prohibits Borrowers from terminating tenancy based on an adverse factor, if the adverse factor is determined to be a direct result of the fact that the tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. (See Attachment 6-K Section F)

Material noncompliance with lease provisions or occupancy rules includes actions such as:

- Violations of lease provisions or occupancy rules that are substantial and repeated;
- Nonpayment or repeated late payment of rent or other financial obligations due to the borrower; and
- Admission to or conviction for use, attempted use, possession, manufacture, sale or distribution of an illegal controlled substance. Such activity must have occurred on the project's premises by the tenant, a member of the tenant household, or any other person under the tenant's control at the time of the activity.

For purposes of terminating a tenant's occupancy, good cause includes actions by the tenant or member of the tenant's household that:

- Threaten the health and safety of other persons or the right of other persons to peaceful enjoyment of their dwelling;

- Result in substantial physical damage causing an adverse financial effect on the housing or other persons' property; and
- Are actions prohibited by state or local law.

If the borrower terminates the tenant's lease, the borrower must document in writing in the tenant's file:

- The incidences related to the lease; and
- That the tenant was given notice prior to the termination that the tenant's activities would result in occupancy termination.

Prior to terminating a lease, the borrower must give the tenant written notice of the violation and give the tenant an opportunity to correct the violation. Subsequently, termination may only occur when the incidences related to the termination are documented and there is documentation that the tenant was given notice prior to the initiation of the termination action that their activities would result in occupancy termination. Forms HUD-5380 and HUD-5382 will be provided to adult tenants when occupancy is terminated.

## **B. Other Lease Terminations**

A landlord may terminate occupancy for conditions beyond the tenant's control, such as:

- Required repair or rehabilitation of the building; or
- Natural disaster prior to the expiration of the disaster declaration.

Under these circumstances, the affected tenants may request a LOPE from the Agency. The LOPE will provide the tenant with priority entitlement to rental units in other Agency-financed projects for 120 days from the date of the LOPE. If a tenant needs additional time to secure replacement housing, the Agency may, at the tenant's request, extend the LOPE entitlement period. Tenants that are displaced due to circumstances beyond their control are entitled to benefits under the Uniform Relocation Act.

## **SECTION 8: TENANT GRIEVANCE PROCEDURES [7 CFR 3560.160]**

This section presents the process for resolving tenant grievances. Every step of the process will be explained with the responsibilities of each party involved. Topics covered in this section include when to file a complaint, the hearing process, requirements governing the hearing, and the hearing decision. It is important to note that a resolution that is in the best

interest of everyone should have gone through the entire grievance process before a final decision was made.

Tenants or prospective tenants may file a grievance in writing with the borrower in response to a borrower action, or failure to act, in accordance with the lease or Agency regulations that results in a denial, significant reduction, or termination of benefits or when a tenant or prospective tenant contests a borrower's notice of proposed adverse action.

### **6.31 NOTICE OF ADVERSE ACTION**

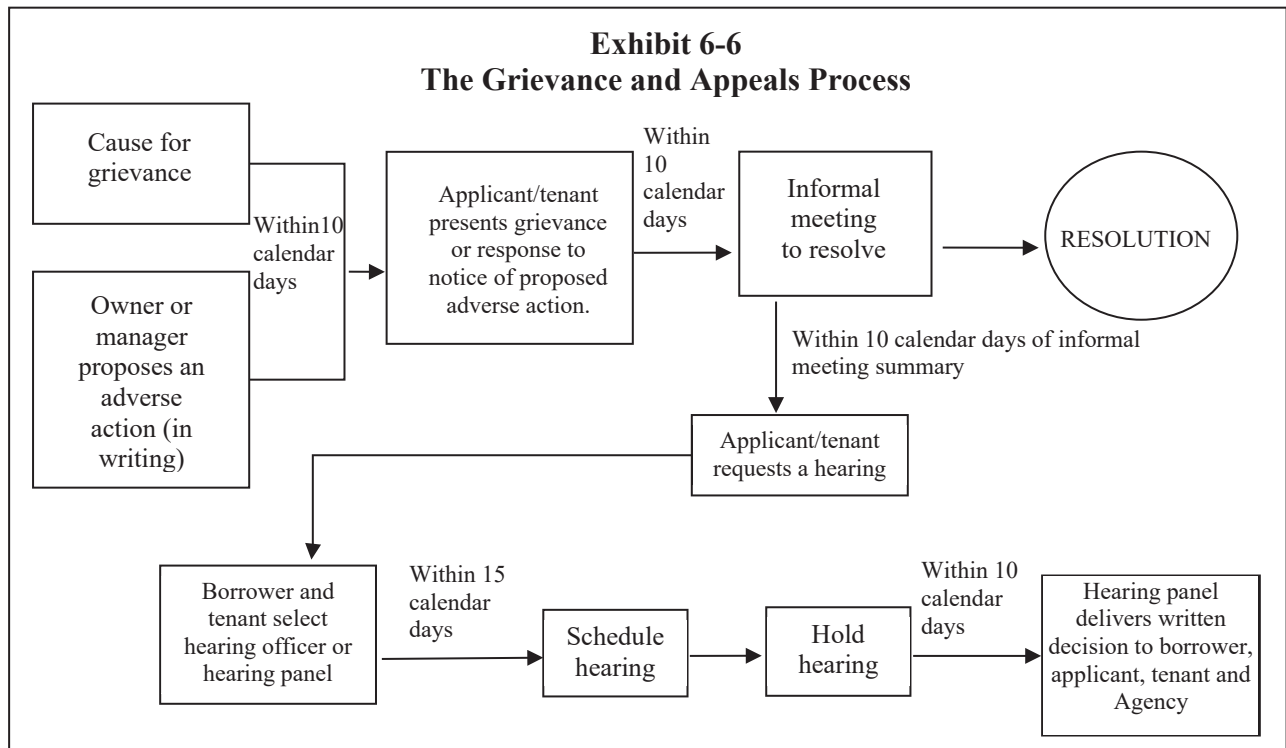
In the case of a proposed action that may have adverse consequences for tenants or prospective tenants such as denial of admission to occupancy and changes in the occupancy rules or lease, the borrower must notify the tenant or prospective tenant in writing. The notice must give specific reasons for the proposed action. The notice must also advise the tenant or prospective tenant of "the right to respond to the notice within 10 calendar days after date of the notice" and of "the right to a hearing in accordance with 7 CFR 3560.160 (f), which is available upon request." The notice must contain the information specified in 7 CFR 3560.160 (a)(2). For housing projects in areas with a concentration of non-English-speaking individuals, the notice must be in English and the non-English language.

### **6.32 OVERVIEW OF THE PROCESS**

The grievance process should always begin with an informal meeting between the grieved party and the borrower/management agent. It is the Agency's belief that the best way to resolve grievances is through an informal meeting between the two parties.

Borrowers must offer to meet with tenants or prospective tenants to discuss the grievance within 10 calendar days of receiving the grievance. If an informal meeting is held, the borrower must provide a summary of the meeting to the tenant within 10 calendar days of the meeting date. The Agency encourages borrowers and tenants or prospective tenants to make an effort to reach a mutually satisfactory resolution to the grievance at the meeting.

Within 10 calendar days after receipt of the summary of any informal meeting, if the tenant or prospective tenant desires a hearing, a written request for a hearing must be submitted to the borrower. The parties will select a hearing panel or hearing officer to govern the hearing. Within 10 calendar days after the hearing, all parties are informed of the decision. Exhibit 6-6 provides an example of the grievance process.



### 6.33 WHEN IS A TENANT GRIEVANCE LEGITIMATE?

It is important for the management agent to determine if a tenant or prospective tenant's grievance is within the requirements established for the program. For example, "I want to file a complaint because the manager does not speak to me," is not a legitimate grievance. On the other hand, a complaint that the building manager fails to maintain the property according to the Agency guidelines would be a legitimate grievance. Exhibit 6-7 lists the circumstances in which a tenant may or may not be able to file a complaint.

<b>Exhibit 6-7</b> <b>Tenant Complaints—Allowable Circumstances</b>	
<i>A complaint may <b>NOT</b> be filed if:</i>	<i>A complaint <b>MAY</b> be filed if:</i>
<ul style="list-style-type: none"> <li>* There is a proposed rent change that is authorized by the Agency.</li> <li>* A tenant or prospective tenant believes that they have been discriminated against. If a person believes that discrimination has occurred, they should file a complaint with the USDA's Office of Civil Rights or the Secretary of HUD.</li> <li>* A project has formed a tenant's association, and all parties involved have agreed to use this association as a method of settling grievances.</li> <li>* There are changes in the rules that are required by the Agency and proper notice has been given.</li> <li>* The tenant is in violation of the lease and those violations result in termination of tenancy.</li> <li>* Disputes between tenants that do not involve the borrower/management agent.</li> <li>* Displacement or other effects as a result of prepayment.</li> </ul>	<ul style="list-style-type: none"> <li>* There is a modification of the lease, change in the rules, or changes in the rent that are not authorized by the Agency.</li> <li>* The borrower/management agent fails to maintain the property in a manner that is decent, safe, and sanitary.</li> <li>* The borrower violates a lease provision or occupancy rule.</li> <li>* Denial of admission to the project by a prospective tenant.</li> </ul>

### 6.34 BORROWER/MANAGEMENT AGENT RESPONSIBILITIES

The borrower/management agent is responsible for providing all tenants and prospective tenants with decent, safe, and sanitary housing. The following is a list of grievance responsibilities of the borrower/agent:

- Post in a conspicuous place in a common area: "Justice for All" poster, HUD equal housing opportunity poster including the Spanish version if there are Hispanic Limited English Proficiency tenants or applicants, current affirmative fair housing marketing plan, the tenant grievance and appeal procedure, housing project occupancy rules, office hours and phone number, and emergency hours and phone number.
- Maintain copies of the tenant grievance procedures at the housing project's management office.
- Provide all tenants with a summary of their rights at the time the lease is signed.
- If a tenant has limited English proficient (LEP), the borrower/agent must provide the summary of their rights, grievance procedures, and any other documents that pertain

to the tenant's rights, in the non-English language. As well as a notice to include the telephone number and address of USDA's Office of Civil Rights and the appropriate Regional Fair Housing and Enforcement Agency.

## **6.35 THE HEARING PROCESS**

### **A. Request for a Hearing**

- Each hearing process must begin with the request for a hearing. The tenant or prospective tenant must present their request to the borrower in writing within 10 calendar days after the receipt of the summary of the informal meeting. The request must contain the following information:
  - The reason for the grievance or contest of the borrower/management agent's proposed action;
  - The action relief sought; and
  - Additional information.
- If the tenant or prospective tenant's request for a hearing is not received within the given time, the borrower or management agent's decision will become final.

### **B. Scheduling the Hearing**

The hearing must be scheduled within 15 calendar days after the receipt of the tenant's request for a hearing. If a hearing officer or hearing panel must be selected, the hearing will be scheduled within 15 calendar days after the selection or appointment of a hearing officer or hearing panel. It is the responsibility of the two parties to agree upon a place and time that is mutually convenient to hold the hearing. If the two parties cannot agree on a place and time, it will become the responsibility of the hearing officer or hearing panel to make the decision.

### **C. Selection of the Hearing Officer or Hearing Panel**

The two parties must select a hearing officer. If the hearing officer cannot be agreed upon, the two parties will choose members to serve on the hearing panel. The hearing panel should consist of three members. The tenant and the borrower/management agent will each select one person to the panel. It is then the responsibility of the two chosen members to select a third member to the panel. If within 30 days from the time the request for the hearing was submitted a hearing officer or hearing panel has not been selected, the borrower/management agent must inform the Agency. The Agency will select a hearing officer. The selected hearing officer or panel may contact the Agency for guidance on their responsibilities for conducting the hearing.

Some helpful information that should be remembered by all parties involved in the process when selecting a hearing officer or hearing panel includes:

- Hearing panel members should be impartial, disinterested persons.
- The hearing officer cannot be a person previously considered by the tenant or borrower/management agent.
- The hearing officer cannot be an Agency staff member.
- The hearing officer may not receive any payment unless that payment is made by the Agency.

To minimize time and the level of effort, a borrower/management agent may ask the Agency to have a standing hearing panel for each project that they manage. If a standing panel is chosen, the above-listed process will have to be forfeited in lieu of the following process.

- A hearing panel consists of three members: one tenant panelist, one borrower/management agent panelist, and a chair.
- Tenants will get to nominate and vote for their panel members. A meeting must be held to allow the tenants the opportunity to choose two members to serve on the standing panel; one member will serve as the alternate. All residents should be notified of the time, date, and place where the election is going to take place. The borrower is responsible for ensuring that the notice is placed in a conspicuous place, within 2 weeks of the time the person is expected to start serving as a panel member. The meeting must also be held in a place that is convenient and accessible to the tenants.
- The borrower/management agent is responsible for selecting one or two members to serve on the standing panel. If two members are chosen, one will serve as the alternate.
- The third and “mutual” member of the panel will serve as the chair for the panel. The other two interested parties will elect the chairperson. Each party will only have the opportunity to give one vote, even if two people were elected to serve on the panel.
- Each member will serve on the panel for one year, with the opportunity for reelection. All members of the standing panel must be willing to render their services without compensation.

#### **D. Examination of Records**

At a reasonable time before the hearing, the borrower/management agent must allow the tenant the opportunity to examine all files that are going to be used during the hearing. Documents can be examined and copied if:



- The tenant is willing to cover any expenses that may be incurred;
- The document, record, or policy is one that will be used during the hearing process; and
- The document, record, or policy is not subject to any laws or confidentiality agreements that prohibit reproduction.



### **E. Escrow Deposits**

Tenants may establish escrow accounts if a grievance involves a rent increase not authorized by the Agency or if the borrower/management agent is not maintaining the property in a decent, safe, and sanitary manner. The escrow account will allow the tenant the opportunity to make timely rent payments without having the borrower/management agent receive the payment until the grievance has been settled. To maintain an escrow account, tenants must adhere to the following rules:

- All deposits must continue until the grievance is resolved;
- The institution that the escrow account is established in must be a Federally insured institution;
- All deposits must be made on time—failure to do so will terminate the entire grievance process and all sums will be due immediately; and
- Tenants must make all receipts of deposit available for examination by the borrower/management agent.

## **6.36 REQUIREMENTS GOVERNING THE HEARING**

The hearing is an informal proceeding at which evidence is presented to a hearing officer or hearing panel. The hearing must be designed to ensure that the rights of all parties involved are protected. The hearing must protect:

- The right of both parties to be represented by counsel or another person(s) chosen as their representative;
- The right of the tenant or prospective tenant to a private hearing unless a public one is requested;
- The right of the tenant or prospective tenant to present oral and written evidence and arguments in support of their grievance, and to cross-examine and refute the evidence of all witnesses on whose testimony or information the borrower or management agent relies; and

- The right of the borrower or management agent to present oral and written evidence and arguments in support of the decision, to refute evidence relied upon by the tenant or prospective tenant, and to confront and cross-examine all witnesses in whose testimony or information the tenant or prospective tenant relies.

During the hearing, each party must present evidence to support their position. All participants at the hearing must conduct themselves in an orderly manner. Participants that cannot conduct themselves in an orderly manner may be excluded from the proceedings or may cause the hearing panel or hearing officer to make a decision that is not in favor of the disorderly party.

If the tenant or prospective tenant or borrower/management agent fails to appear at a scheduled hearing, the hearing officer or hearing panel may choose to postpone the hearing for no more than 5 days or may determine that the absent party has waived their right to a hearing under this subpart. If the determination is made that the absent party has waived their rights, the hearing officer or hearing panel will make a decision on the grievance. All parties involved in the hearing must be informed in writing of the hearing panel's decision.

## **6.37 THE HEARING DECISION**

It is the responsibility of the hearing officer or hearing panel to prepare and submit a written decision to both parties within 10 calendar days after the hearing. The hearing officer or hearing panel must provide a copy of the decision to the Agency and the reasons for making that decision. The decision should be based on the facts that were presented during the hearing. The decision is final unless the tenant or prospective tenant and the borrower/management agent are notified within 10 calendar days by the Agency that the decision is not in compliance with Agency regulations. This contingent form of approval should be noted in the decision letter. Upon receipt of the letter, the borrower and the tenant must comply with the directives specified in the decision.

## **SECTION 9: SPECIAL REQUIREMENTS FOR LABOR HOUSING [7 CFR 3560 SUBPART L AND M]**

While the Agency-sponsored Labor Housing programs have similar requirements in many respects to the Rural Rental Housing programs, because the target populations that these programs serve vary, there are some differences in program rules.

This section is designed to highlight these differences with regard to the occupancy rules. Unless otherwise noted below, the requirements throughout this chapter also apply to Labor Housing projects.

## 6.38 OFF-FARM LABOR HOUSING

### A. Eligible Tenants

Labor Housing tenants must meet all of the following criteria in order to be defined as an eligible tenant for the purposes of residing in labor housing:

- **Occupational.** An eligible household must include a tenant or co-tenant who is a domestic farm laborer, a retired or disabled domestic farm laborer, or must be a surviving household of a deceased domestic farm laborer.

A domestic farm laborer is a person who, consistent with the requirements in 7 CFR 3560.576(b)(2), receives a substantial portion of his or her income from farm labor employment (not self-employed) in the United States, Puerto Rico, or the Virgin Islands and either is a citizen of the United States or resides in the United States, Puerto Rico, or the Virgin Islands after being legally admitted for permanent residence, or a person legally admitted to the United States and authorized to work in agriculture. This definition may include the immediate family members residing with such a person.

- **Income.** The household must meet the definition of income eligibility as defined in Section 1 of this chapter and receive a substantial portion of income from farm labor employment. To determine if a substantial portion of income is from farm labor employment, the following measures will be used.
  - For housing rented to farm laborers and owned by public bodies, public or private nonprofit organizations, and limited partnerships charging rent:
    - Actual dollars earned from farm labor by domestic farm laborers other than migrant farmworkers must equal at least 65 percent of the annual income limits indicated for the Standard Federal regions.
    - For migrant farmworkers living in seasonal housing, actual dollars earned from farm labor by a domestic farm laborer must equal at least 50 percent of annual income limits indicated for the Standard Federal regions.
    - An alternate measure for determining substantial portion of income when actual earnings are not available may be the duration of time a farm laborer worked on a farm or other farming enterprise as a domestic farmworker during the preceding 12 months. To be considered as substantial the farm laborer must have worked at least 110 whole days in farm work. For purposes of this section one whole day is the equivalent of at least 7 hours. When using a period of more than 1 year, a yearly average must amount to at least 110 days per year.
  - For housing owned by a farmer, family-farm partnership, family-farm corporation, or an association of farmers which was initially provided on a non-

rental basis, a substantial portion of income is earned when housing is provided by the owner as part of employment compensation for farm labor.

- When a natural disaster has occurred, such as a drought, flood, freeze, etc., figures for the 12 months preceding such disaster will be used to determine substantial portion of income.
- The tenant who qualifies as a domestic farm laborer residing in a property with a nonrestrictive farm labor clause in the mortgage covenants must not have adjusted income which exceeds the moderate-income limit for the appropriate household size and appropriate geographical area.
- **Occupancy.** The household must remain in compliance with the borrower's occupancy policy as established in Section 3 of this chapter.

If a household, upon recertification, is not in compliance with any of the above criteria, then it will be defined as an ineligible tenant and will be covered by Section 7.

## B. Occupancy Priorities

When a borrower of a labor housing project is selecting the appropriate applicant for a vacant unit from the waiting list, the selection will be regulated by the following priorities:

- **First priority** must be given to eligible active farm laborer households, with first priority going to very low-income households, next to low-income households, and last to moderate-income households.
- **Second priority** must be given to retired or disabled domestic farm laborer households who were active in the local farm labor market area at the time of retirement or becoming disabled, with first priority going to very low-income households, next to low-income households, and last to moderate-income households.
- **Third priority** must be given to other retired or disabled domestic farm laborer households who were not active in the local farm labor market at the time of retiring or becoming disabled. Occupancy priority will be given first to very low-income households, next to low-income households, and last to moderate-income households.

**Example**

A Farm Labor Housing property has a vacant two-bedroom unit. On the waiting list, there are seven applicants eligible for a two-bedroom unit.

- A. One applicant is a very low-income disabled farm laborer household from the local farm market area;
- B. One applicant is a low-income active farm labor household;
- C. One applicant is a low-income retired farm laborer household from another state;
- D. One applicant is a very low-income retired farm laborer household from the local farm market area;
- E. One applicant is a very low-income disabled farm laborer household from another county; and
- F. One applicant is a very low-income active farm labor household.

The borrower must offer the vacant unit to these applicants in the following order.

- 1. First to the very low-income active farm labor applicant (F);
- 2. Second to the low-income active farm labor applicant (B);
- 3. Third to the very low-income disabled farm laborer household from the local farm market area (A);
- 4. Fourth to the low-income retired farm laborer household from the local farm market area (D);
- 5. Fifth to the very low-income disabled farm laborer household from outside the local farm market area (E); and
- 6. Sixth to the low-income retired farm laborer household from another state (C).

**C. Projects with Diminished Need**

When there is a diminished need for housing by persons or families who are eligible to reside in labor housing, units may be made available to persons or families eligible for occupancy under Section 1 of this chapter. Tenants admitted under this exception may occupy the labor housing until such time the units are again needed by persons or families eligible under Paragraph 6.38A of this section. As the basis for Agency approval or disapproval of the borrower's determination of diminished need, the borrower must submit a current analysis of need and demand to the Agency, identical to the market analysis that is required of loan applicants in the loan origination process. The borrower's determination and the MFH Servicing Official's recommendation should be forwarded to the appropriate Leadership Designee for approval.

## **6.39 ON-FARM LABOR HOUSING**

### **A. Eligible Tenants**

The income restrictions and occupancy priorities listed throughout this chapter do not affect the occupancy of on-farm labor housing. This housing is owned by farm owners and is for the purpose of providing decent, safe, and sanitary housing to the specific farmer's employees. Occupancy of on-farm labor housing owned by farm owners is restricted to employees of the farmer or is governed by an employment contract with the farmer.

### **B. Ineligible Tenants**

For on-farm labor housing, ineligible occupants will include:

- The immediate relatives of the borrower(s); and
- Anyone who is not employed in domestic farm labor.

Ineligible tenants may occupy housing owned by farm owners, on a short-term basis, with the permission of the Agency. The permission of the Agency must be for a limited duration.

*This page intentionally left blank*