

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

#### 7 CFR Part 3560

[Docket No. RHS-20-MFH-0017]

RIN 0575-AD17

#### Rental Assistance and Asset Management for the Multi-Family Housing Direct Loan Programs

**AGENCY:** Rural Housing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Rural Housing Service (RHS or the Agency) is proposing to amend its regulation to implement changes related to the development of a sustainable plan for the Rental Assistance (RA) program, including new Agency flexibilities in the managing of the RA distribution and integrate new asset management policies. The regulation changes are designed to provide flexibility, more economically utilize the RA, and to improve the efficiency in managing the assets in the Direct Loan portfolio.

**DATES:** Comments on the proposed rule must be received on or before November 23, 2020.

**ADDRESSES:** You may submit comments to this rule by utilizing the Federal eRulemaking Portal. Go to <http://www.regulations.gov> and, in the lower "Search Regulations and Federal Actions" box, select "Rural Housing Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select RHS-20-MFH-0017 to submit or view public comments and to view supporting and related materials available electronically. Information on using [Regulations.gov](http://www.Regulations.gov), including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Larson, Multi-Family Housing

Portfolio Management Division, Rural Housing Service, Stop 0782, 1400 Independence Avenue SW, Washington, DC 20250-0782.

#### SUPPLEMENTARY INFORMATION:

#### Background and Summary of Changes

The existing statutory authority for the Multi-Family Housing (MFH) programs was established in title V of the Housing Act of 1949, which gave authority to the RHS (then the Farmers Home Administration) to make housing loans to farmers. As a result of this Act, the Agency established single-family and multi-family housing programs. The MFH program is administered, subject to appropriations, by the U.S. Department of Agriculture (USDA) as authorized under Sections 514, 515 and 516 and 521 of the Housing Act of 1949, as amended (42 U.S.C. 1484, 1485, and 1486, and 1490). Over time, the sections of the Housing Act of 1949 addressing MFH have been amended a number of times. Amendments have involved issues such as the provision of interest credit, broadening definitions of eligible areas and populations to be served, participation of limited-profit entities, establishment of a rental assistance program, and imposition of a number of restrictive-use provisions and prepayment restrictions.

The Agency operates a multifamily rural rental housing direct loan program under section 515 and section 514 for farm labor housing. The Agency also provides grants under the section 516 farm labor housing program. The direct loan program employs a public-private partnership by providing subsidized loans at an interest rate of 1 percent to developers to construct or renovate affordable rental complexes in rural areas. This 1 percent loan keeps the debt service on the property sufficiently low to support below-market rents affordable to low-income tenants. Many of these projects also utilize low-income housing tax credit (LIHTC) proceeds. This program is typically used in conjunction with the RHS section 521 Rental Assistance (RA) program, which provides project-based rental assistance payments to property owners to subsidize tenants' rents to an affordable level. With rental assistance, tenants pay 30 percent of income toward their rent (including utilities). Some section 515 projects also utilize the U.S. Department of Housing and Urban

Development's (HUD's) section 8 project-based assistance, which enables additional very low-income families to be served.

The direct loan and grant programs under sections 514 and 516 provide low interest loans and grants to provide housing for farmworkers. These workers may work either at the borrower's farm ("on-farm") or at the borrower's or any other farm ("off-farm") so long as the tenants meet program eligibility requirements. Section 521 rental assistance is available for off-farm labor housing, but not on-farm labor housing. The Agency has decided to not provide RA to on-farm labor housing units because of its limited availability.

The Rural Housing Service (RHS) published a proposed rule on June 2, 2003 (68 FR 32872) to streamline and consolidate 14 regulations into 7 CFR part 3560. Part 3560 sets forth requirements, policies, and procedures for originating, processing, and servicing Rural Development's MFH direct loans and grants. An interim rule was published November 26, 2004 (69 FR 69032-69176) to implement those changes, with an effective date of February 24, 2005. The Agency received more than 2,800 comments on the Proposed Rule published in the **Federal Register** on June 2, 2003, (68 FR 32872). While the issues of concern tended to vary, the Agency noted that some issues were raised by more than one commenter. Topics discussed by five or more commenters were presented and organized by subpart within the interim rule published and addressed.

This proposed rule will amend the current interim rule in order to: (1) Implement programmatic changes related to development of a "sustainability plan" for the Rental Assistance (RA) Program, including new Agency flexibilities in managing the RA distribution; (2) integrate new asset management policies; and (3) incorporate technical corrections to clarify reference and formatting issues in the regulation.

#### Rental Assistance Changes

The changes proposed are designed to more economically utilize RA, reduce the program cost over time, and provide management flexibilities in the use of funds. The Agency has already implemented several measures to reduce the cost of RA within its already established regulatory authority, but

amendments to the regulation are needed to ensure effectiveness and true cost savings to the RA program. The Agency experienced dramatic funding reductions in Fiscal Year 2013, which has highlighted the need for adaptability in delivering RA to as many beneficiaries as possible.

This proposed rule establishes the historical practice of using unused Rental Assistance obligation balances from properties that have left the portfolio for renewal purposes. The Agency has actively used RA balances from properties that have paid off the Rural Development mortgage or natural maturity. These funds supplement the annual appropriation and make efficient use of inactive funds. Inclusion of this process in the regulation will increase transparency on the management of RA funds.

- This proposed rule would add language at § 3560.259(d) regarding the transfer of obligation balances from RA Agreements from properties whose mortgages have naturally matured.

The Consolidated Appropriations Act, 2019 (Pub. L. 116–6, February 2, 2019) for the Rental Assistance Program requires “. . . that rental assistance provided under agreements entered into prior to fiscal year 2019 for a farm labor multi-family housing project financed under section 514 or 516 of the Act may not be recaptured for use in another project until such assistance has remained unused for a period of 12 consecutive months.” Accordingly, the Agency is adding the 12-month term for transfer of unused RA in Section 514 Farm Labor Housing.

- Amending § 3560.259(a)(4) to clarify that when any rental assistance units have not been used for a 6-month period (for Section 515 properties) or 12 months (for Section 514 properties) they will be eligible for transfer.

This proposed rule also proposes to change the following additional RA provisions:

- Amending § 3560.11 definitions of *Domestic farm laborer*, *Management agreement* and *Management fee* to reflect requirements in the Consolidated Appropriations Act, 2018 (Pub. L. 115–141, March 23, 2018) permanently amending Section 514(f)(3)(A) of the Housing Act of 1949 (42 U.S.C. 1484(f)(3)(A)) that the FLH tenant eligibility includes “a person legally admitted to the United States and authorized to work in agriculture.”

- MFH borrowers had previously identified certain requirements within Rural Development’s regulations governing Supervised Bank Accounts that are difficult to obtain in the current commercial banking environment. This

is mainly due to the current modern electronic banking environment. Accordingly, this proposed rule would add a paragraph at § 3560.65 to allow the Agency to establish an escrow account to collect and disperse funds. This will allow the Agency to establish agency-held escrows which historically was provided for in the loan documents but was not addressed in the regulation.

- Current regulation allows for management agents to earn a management fee for the performance of certain tasks. The Agency intends to clarify that the performance of the agent in meeting the Management Certification requirements will be assessed in determining the allowable fee. This proposed rule would add language at § 3560.102 that performance assessments of management agents will be used when determining the allowable management fee. It will also specify what are allowable management fee expenses and require that management plans include a listing of the charges covered by the fee.

- Borrowers must comply with the requirements of the Fair Housing Amendments Act of 1988, and this section to meet their fair housing responsibilities. At § 3560.104, this proposed rule would raise the threshold for rental units from four units or more to five or more units. This will allow the Agency to align with the Affirmative Fair Housing Marketing Plan (AFHMP) as defined in 24 CFR part 200, subpart M.

- Current regulation does not contain a provision within RA eligibility for tenants that are delinquent on Agency Unauthorized Assistance Repayment Agreements and how should not be eligible to receive federal assistance. This proposed rule would change § 3560.254(c) to clarify that tenants are no longer eligible to receive RA if they are delinquent on their Unauthorized Assistance Repayment Agreement.

#### *Asset Management Changes*

The changes proposed in this rule are designed to improve the efficiency in managing the assets in the Direct Loan portfolio. These consist of properties financed under the Section 515 Rural Rental Housing Program and the Section 514 Farm Labor Housing Program. Since publication of the interim rule in 2004, management policies have changed in important areas and certain statutory provisions were not originally included in the interim rule.

Some of these changes are highlighted in:

- Management fees are an allowable expense to be paid from the housing project’s general operating account only

if the fee is approved by the Agency as a reasonable cost to the housing project and documented on the management certification. This proposed rule would change § 3560.102 to specify what are allowable management fee expenses and require that management plans include a listing of the charges covered by the fee. This will improve the use of the regulation by the borrower and Agency by specifying which expenses can be charged against property income and which must be paid out of the earned management fee.

- This proposed rule would change § 3560.156(c)(6) to add the Violence Against Women Reauthorization Act to the list of federal laws with which lease requirements must comply. Addition of the Violence Against Women Reauthorization Act (VAWA) to federal law compliance list. The Agency requires borrowers to provide a tenant lease that meets all federal and program regulation requirements. The VAWA and its amendments are added to the list of laws.

- MFH borrowers had previously identified certain procedures and requirements within Rural Development’s regulations governing Supervised Bank Accounts that are outdated, obsolete, and no longer feasible in the commercial banking environment as a means of withdrawing reserve account funds. This is mainly due to the current electronic banking operations. Section 3560.302(c)(5)(i) will be updated so that Borrowers are no longer required to obtain a collateral pledge if the amount of funds exceed the maximum limit covered by Federal Deposit Insurance. Funds exceeding the Federally insured limit under a Tax ID Number must be moved to a different qualified banking institution that will insure the funds unless the current financial institution provides additional surety such as a collateral pledge that may already be in place. The clarification of 7 CFR 3560.302(c)(5)(iv) will reinforce that all account funds will stay with the property until all outstanding loan balances are paid in full that are securing the property. Language will be added at § 3560.302(c)(5)(vii) to allow for all funds received and held in any account, except the tenant security deposit, membership fee, and patron capital accounts, are considered assets of the property and must be held in trust by the borrower for the loan obligations until used and serve as security, through transfers or assumptions of the Agency loan or grant until all outstanding loan balances are paid in full.

- Changes in § 3560.303 will also address property expenses are

monitored by the Agency to ensure they are proper and reasonable; but as expenses increase, more income is needed, which results in rent increases and additional cost to rental assistance. Since the interim rule was published, borrowers have sought clarification on how expenses should be treated. The Agency has provided periodic guidance to Servicing Officials and borrowers to ensure the appropriate use of project funds. This is in accordance with a recommendation from the Office of the Inspector General (OIG) in their audit "Review of Rural Rental Housing's Tenant and Owner Data using Data Analytics," Audit No. 04901-001-13. MFH properties rely on project income to maintain operations and provide safe, decent and sanitary housing for our residents. Rent increases are necessary at times to generate needed revenue to pay for ongoing maintenance, capital improvements, and immediate repairs, as well as to cover administrative costs associated with management of the property. To achieve these objectives, it is necessary and proper for Servicing Officials to thoroughly review budget submissions, ask questions, and seek documentation that support budget requests or actual expenses. Implementing this change will improve compliance, reduce unnecessary and unsupported expenses, and result in stronger, more financially stable properties.

- In § 3560.303(a)(1), the Agency will require that the annual project budget must include anticipated expenditures on the project's long-term capital needs as specified in § 3560.103(c) and will provide a metric for the Agency to determine current or future rent increase requests based on the Borrower's utilization of the reserve account. This will ensure that borrowers are utilizing project revenue for ongoing capital improvements needed to maintain compliance and reduced risk of the property.

- A change will be made to § 3560.303(c) to add payables as a priority for budget expenditures. This will allow for the Agency to ensure that all payables are being paid from project revenues in a timely manner and not accrued, without agency consent, causing increased costs and penalties and adding risk.

- In § 3560.303, the Agency will clarify what are allowable project expenses and provide for a comparable "reasonableness" test by the Agency. Generally, expenses charged to project operations for expenses, must be reasonable, typical, necessary and show a clear benefit to the residents of the property.

- In § 3560.303(b)(1)(vii), the Agency will add the requirements for a non-profit entity to pro-rate certain organizational reimbursable costs across all properties owned by that entity.

- MFH borrowers had previously identified certain procedures and requirements within Rural Development's regulations governing Supervised Bank Accounts that are outdated, obsolete, and no longer feasible in the commercial banking environment as a means of withdrawing reserve account funds. This is mainly due to the current electronic banking operations. Language will be amended at § 3560.306(e)(2) removing the requirement to countersign withdrawals from reserve accounts. This will allow for current electronic banking practices.

- Currently under use of reserve account Borrowers must only inform the Agency of planned uses of reserve accounts in their annual capital budget if known at budget planning time without utilization of an agency approved capital needs assessment. A change at § 3560.306(g) requiring that needed capital improvements, based on the needs identified in an Agency approved capital needs assessment, are completed within a reasonable timeframe. This will improve the management and delivery of the MFH program by establishing the authority to require borrower utilization of the reserve accounts as recommended in the Agency approved capital needs assessment (CNA).

#### *Technical Corrections*

Other technical changes (moving and consolidating sections, removing duplicative language, language clarifications) will make the regulation easier to use, and promote better compliance with program requirements by borrowers and management agents. The changes include:

- In § 3560.105(f)(10), a change to clarify that if an insurance deductible is met, there is no need to track with a replacement reserve account.

- Section § 3560.152 incorporates changes related to "age" ineligibility.

- The Agency has updated the wording of "State Director" to "Leadership Designee" to allow for future staff flexibility.

- Update § 3560.152 by removing term "elderly units in mixed housing".

- Language will be changed in § 3560.154 to correct "sex" to "gender" and update policy on criminal activity for admissions.

- Update § 3560.205 to include the notification of all household members of rent change effective 30 days from date of notification.

- Section § 3560.252 will now include the Agency's housing voucher program to allow for the proper allowance of rental subsidies.

- In § 3560.402 the Agency will amend language that any loan servicing action will require DIAS accounts to be converted to the current Predetermined Amortization Schedule System (PASS) system of accounting.

#### **Executive Order 12866—Classification**

This proposed rule has been determined to be non-significant and; therefore, was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

#### **Authority**

The Rental Assistance Program (RA) is administered subject to appropriations by the U.S. Department of Agriculture (USDA) as authorized under Section 521 of Title V of the Housing Act of 1949 as amended.

#### **Environmental Impact Statement**

This document has been reviewed in accordance with 7 CFR part 1970, subpart A, "Environmental Policies." RHS determined that this action does not constitute a major Federal action significantly affecting the quality of the environment. In accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

#### **Regulatory Flexibility Act**

The rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The undersigned has determined and certified by signature on this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

#### **Executive Order 13132—Federalism**

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government. This rule does not impose substantial direct compliance costs on State and local Governments; therefore, consultation with States is not required.

**Executive Order 12988—Civil Justice Reform**

This rule has been reviewed under Executive Order 12988. In accordance with this rule: (1) Unless otherwise specifically provided, all State and local laws that conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before bringing suit in court that challenges action taken under this rule.

**Unfunded Mandate Reform Act (UMRA)**

Title II of the UMRA, Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal Governments and on the private sector. Under section 202 of the UMRA, Federal Agencies generally must prepare a written statement, including cost-benefit analysis, for proposed and Final Rules with “Federal mandates” that may result in expenditures to State, local, or tribal Governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires a Federal Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal Governments or for the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**Paperwork Reduction Act**

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number 0575–0189. This proposed rule contains no new reporting and recordkeeping requirements that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

**E-Government Act Compliance**

RHS is committed to complying with the E-Government Act by promoting the use of the internet and other information technologies in order to provide increased opportunities for citizen access to Government

information, services, and other purposes.

**Civil Rights Impact Analysis**

Rural Development has reviewed this rule in accordance with USDA Regulation 4300–4, Civil Rights Impact Analysis,” to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex or disability. After review and analysis of the rule and available data, it has been determined that implementation of the rule will not adversely or disproportionately impact very low, low- and moderate-income populations, minority populations, women, Indian tribes or persons with disability by virtue of their race, color, national origin, sex, age, disability, or marital or familiar status. No major civil rights impact is likely to result from this rule.

**Programs Affected**

The program affected by this regulation is listed in the Catalog of Federal Domestic Assistance under numbers 10.427—Rural Rental Assistance Payments.

**Executive Order 13175, Consultation and Coordination With Indian Tribal Governments**

This executive order imposes requirements on RHS in the development of regulatory policies that have tribal implications or preempt tribal laws. RHS has determined that the rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this rule is not subject to the requirements of Executive Order 13175. If tribal leaders are interested in consulting with RHS on this rule, they are encouraged to contact USDA’s Office of Tribal Relations or RD’s Native American Coordinator at: *AIAN@usda.gov* to request such a consultation.

**Executive Order 12372—Intergovernmental Consultation**

These loans are subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. RHS conducts intergovernmental consultations for each loan in accordance with 2 CFR part 415, subpart C.

**Non-Discrimination Statement**

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights

regulations and policies, the USDA, its Agencies, offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, familial/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA’s TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at: <http://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992, submit your completed form or letter to USDA by:

- (1) *Mail*: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410;
- (2) *Fax*: (202) 690–7442; or
- (3) *Email*: [program.intake@usda.gov](mailto:program.intake@usda.gov).

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**List of Subjects in 7 CFR 3560**

Accounting, Administrative practice and procedure, Aged, Conflict of interest, Government property management, Grant programs-housing and community development, Insurance, Loan programs-agriculture, Loan programs-housing and community development, Low and moderate-income housing, Migrant labor, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, 7 CFR part 3560 is proposed to be amended as follows:

**PART 3560—DIRECT MULTI-FAMILY HOUSING LOANS AND GRANTS**

■ 1. The authority citation for part 3560 continues to read as follows:

Authority: 42 U.S.C. 1480.

**Subpart A—General Provisions and Definitions**

**§ 3560.8 [Amended]**

■ 2. Amend § 3560.8 by removing the words “State Director” and adding in their place “Leadership Designee” in the last sentence of the paragraph.

■ 3. Amend § 3560.11 by:

- a. Removing the acronym “MFHMFH” wherever it appears in the section and adding “MFH” in its place; and
- b. Revising the definitions of “Domestic farm laborer”, “Management agreement”, and “Management fee” to read as follows:

**§ 3560.11 Definitions.**

\* \* \* \* \*

*Domestic farm laborer.* A person who, consistent with the requirements in § 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.

\* \* \* \* \*

*Management agreement.* A written agreement between a borrower and an IOI management agent or independent fee management agent setting forth the management agent’s responsibilities and fees for management services.

*Management fee.* The compensation provided to a management agent for services provided in accordance with an approved management certification, Form RD 3560–13, “Multi-Family Project Borrower’s/Management Agent’s Management Certification.”

\* \* \* \* \*

**Subpart B—Direct Loan and Grant Origination**

■ 4. Amend § 3560.65 by adding paragraph (d) to read as follows:

**§ 3560.65 Reserve account.**

\* \* \* \* \*

(d) The agency may establish an escrow account for the collection and disbursement of reserve account funds.

**§ 3560.72 [Amended]**

■ 5. Amend § 3560.72 by removing the words “State Director” and adding in their place “MFH Leadership Designee” in the second sentence of paragraph (b).

**Subpart C—Borrower Management and Operations Responsibilities**

■ 6. Amend § 3560.102 by:

- a. Revising paragraph (b);
- b. Adding paragraph (g)(1)(iv); and
- c. Revising paragraphs (i) and (j).

The revisions and addition read as follows:

**§ 3560.102 Housing project management.**

\* \* \* \* \*

(b) *Management plan.* Borrowers must develop and maintain a management plan for each housing project covered by their loan or grant. The management plan must establish the systems and procedures necessary to ensure that housing project operations comply with Agency requirements. The management plan should describe whether administrative expenses are to be paid from management agent fees or project operations, including a task list of charges covered by the fee as outlined in § 3560.102(i)(3)(i)(A). The management plan must meet the standards set out in this rule.

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \*

(iv) Any borrower’s entity control, or interest held or possessed by a person’s spouse, parent, child, grandchild, or sibling or other relation by blood or marriage is attributed to that person for this determination.

\* \* \* \* \*

(i) *Management fees.* Management fees will be an allowable expense to be paid from the housing project’s general operating account only if the fee is approved by the Agency as a reasonable cost to the housing project and documented on the management certification. Management fees must be developed in accordance with the following:

(1) The management fee may compensate the management entity for the following costs and services:

(i) Supervision by the management agent and its staff (time, knowledge, and expertise) of overall operations and capital improvements of the site.

(ii) Hiring, supervision, and termination of on-site staff.

(iii) General maintenance of project books and records (general ledger, accounts payable and receivable, payroll, etc.). Preparation and distribution of payroll for all on-site employees, including the costs of

preparing and submitting all appropriate tax reports and deposits, unemployment and workers’ compensation reports, and other IRS- or state-required reports.

(iv) In-house training provided to on-site staff by the management company.

(v) Preparation and submission of proposed annual budgets and negotiation of approval with the Agency.

(vi) Preparation and distribution of the Agency forms and routine financial reports to borrowers.

(vii) Preparation and distribution of required year-end reports to the Agency.

(viii) Preparation of requests for reserve withdrawals, rent increases, or other required adjustments.

(ix) Arranging for preparation by outside contractors of utility allowance analysis.

(x) Preparation and implementation of Affirmative Fair Housing Marketing Plans as well as general marketing plans and efforts.

(xi) Review of tenant certifications and submission of monthly rental assistance requests, and coverage. Submission of payments where required.

(xii) Preparation, approval, and distribution of operating disbursements; oversight of project receipts; and reconciliation of deposits.

(xiii) Overhead of management agent, including:

(A) Establish, maintain, and control an accounting system sufficient to carry out accounting supervision responsibilities.

(B) Maintain agent office arrangements, staff, equipment, furniture, and services necessary to communicate effectively with the properties, to include consultation and support to site-staff, the Agency and with the borrowers.

(C) Postage expenses unrelated to site operation.

(D) Expense of telephone and facsimile communication, unrelated to site operations.

(E) Direct costs of insurance (fidelity bonds covering central office staff, computer and data coverage, general liability, etc.) directly related to protection of the funds and records of the borrower. Insurance coverage for agent’s office and operations (Property, Auto, Liability, E&O, Casualty, Workers Compensation, etc.)

(F) Central office staff training and ongoing certifications.

(G) Maintenance of all required profession and business licenses and permits. (This does not include project site office permits or licenses.)

(H) Travel of agent staff to the properties for on-site inspection, training, or supervision activities.

(I) Agent bookkeeping for their own business.

(xiv) Attendance at meetings (including travel) with tenants, owners, and the Agency or other governmental agency.

(xv) Development, preparation, and revision of management plans, agreements, and management certifications.

(xvi) Directing the investment of project funds into required accounts.

(xvii) Maintenance of bank accounts and monthly reconciliations.

(xviii) Preparation, request for, and disbursement of borrower's initial operating capital (for new projects) as well as administration of annual owner's return on investment.

(xix) Account maintenance, settlement, and disbursement of security deposits.

(xx) Working with auditors for initial Agency annual financial reports.

(xxi) Storage of records, to include electronic records, and adherence to records retention requirements.

(xxii) Assist on-site staff with tenant relations and problems. Provide assistance to on-site staff in severe actions (eviction, death, insurance loss, etc.).

(xxiii) Oversight of general and preventive maintenance procedures and policies.

(xxiv) Development and oversight of asset replacement plans.

(xxv) Oversight of preparation of section 504 reviews, development of plans, and implementation of improvements necessary to comply with plans and section 504 requirements.

(2) Management fees may consist of a base per occupied revenue producing unit fee and add-on fees for specific housing project characteristics. Management entities may be eligible to receive the full base per occupied unit fee for any month or part of a month during which the unit is occupied.

(i) Periodically, the Agency will develop a range of base per occupied unit fees that will be paid in each state. The Agency will develop the fees based on a review of housing industry data. The final base for occupied unit fees for each state will be made available to all borrowers.

(ii) Periodically, the Agency will develop the amount and qualifications to receive add-on fees. The final set of qualifications will be made available to all borrowers.

(3) Identifying the Type of Administrative Expense. Management Plans and Agreements must describe if

administrative expenses are to be paid from the management fee or paid for as a project cost.

(i) A task list should be used to identify which services are included in the management fee, which services are included in project operations, and which are pro-rated along with the methodology used to pro-rating of expenses between management agent fees and project operations. Some property responsibilities are completed at the property and some offsite. Agent responsibilities may be performed at the property, the management office, or at some other location.

(ii) Disputes may arise as to who performs certain services. The management plan and job descriptions should normally provide sufficient clarity to avoid or resolve any such disputes; however, sometimes clarifications and supporting materials may be required to resolve disputes. The decision must be made based on the most complete evaluation of the facts presented.

(j) *Management certification.* (1) As a condition of approval of project management, including borrowers who self-manage, borrower and management agents must execute an Agency-approved certification certifying that:

(i) Borrowers and management agent agree to operate the housing project in accordance with the management plan;

(ii) Borrowers and the management agent will comply with Agency requirements, loan or grant agreements, applicable local, state and Federal laws and ordinances, and contract obligations, will certify that no payments have been made to anyone in return for awarding the management contract to the management agent, and will agree that such payments will not be made in the future;

(iii) Borrowers and the management agent will comply with Agency notices or other policy directives that relate to the management of the housing project;

(iv) Management agreement between the borrower and management agent complies with the requirements of this section;

(v) Allowable management fees are assessed and paid out of the housing projects' general operating account. Borrowers and management agents will comply with Agency requirements regarding management fees as specified in paragraph (i) of this section, and allocation of management costs between the management fee and the housing project financial accounts specified in § 3560.302(c)(3);

(vi) The borrower and the management agent will not purchase goods and services from entities that

have an identity-of-interest (IOI) with the borrower or the management agent until the IOI relationship has been disclosed to the Agency according to paragraph (g) of this section, not denied by the Agency under paragraph (d)(3) of this section, and it has been determined that the costs are as low as or lower than arms-length, open-market purchases; and

(vii) The borrower and the management agent agree that all records related to the housing project are the property of the housing project and that the Agency, OIG, or GAO may inspect the housing records and the records of the borrower, management agent, and suppliers of goods and services having an IOI with the borrower or with a management agent acting as an agent of the borrower upon demand.

(2) A certification will be executed each time new management is proposed and/or a management agreement is executed or renewed. Any amendment to a management certification must be approved by the Agency and the borrower.

\* \* \* \* \*

■ 7. Amend § 3560.104 by revising paragraph (b)(1) to read as follows:

**§ 3560.104 Fair housing.**

\* \* \* \* \*

(b) \* \* \*

(1) Borrowers with housing projects that have five or more rental units must prepare and maintain an Affirmative Fair Housing Marketing Plan (AFHMP) as defined in 24 CFR part 200, subpart M.

\* \* \* \* \*

■ 8. Amend § 3560.105 by revising paragraphs (c)(4) and (f)(10) to read as follows:

**§ 3560.105 Insurance and taxes.**

\* \* \* \* \*

(c) \* \* \*

(4) If the best insurance policy a borrower can obtain at the time the borrower receives the loan or grant contains a loss deductible clause greater than that allowed by paragraph (f)(9) of this section, the insurance policy and an explanation of the reasons why more adequate insurance is not available must be submitted to the Agency prior to loan or grant approval.

\* \* \* \* \*

(f) \* \* \*

(10) Deductible amounts (excluding flood, windstorm, earthquake and sinkhole insurance or mine subsidence insurance) must be accounted for in the replacement reserve account, unless the deductible does not exceed the maximum deductible allowable as

indicated in 3560.105(f)(9)(i). Borrowers who wish to increase the deductible amount must deposit an additional amount to the reserve account equal to the difference between the Agency's maximum deductible and the requested new deductible. The Borrower will be required to maintain this additional amount so long as the higher deductible is in force.

\* \* \* \* \*

**Subpart D—Multi-Family Housing Occupancy**

■ 9. Amend § 3560.152 by revising paragraph (c) heading and introductory text, and paragraphs (c)(1) introductory text and (e)(2)(iv) to read as follows:

**§ 3560.152 Tenant eligibility.**

\* \* \* \* \*

(c) *Requirements for elderly housing, congregate housing, and group homes.* In addition to the requirements of paragraph (a) of this section, the following occupancy requirements apply to elderly housing and congregate housing or group homes:

(1) For elderly housing and congregate housing, the following provisions apply:

\* \* \* \* \*

- (e) \* \* \*
(2) \* \* \*

(iv) 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 paragraph (e)(2)(iii) of this section will be charged overage, as specified in § 3560.203(c) and lost rental assistance. Unauthorized assistance, if any, will be handled in accordance with subpart O of this part.

\* \* \* \* \*

■ 10. Amend § 3560.154 by revising paragraphs (a)(9) introductory text and (j) to read as follows:

**§ 3560.154 Tenant selection.**

(a) \* \* \*

(9) Race, ethnicity, and gender designation. The following disclosure notice shall be used:

\* \* \* \* \*

(j) *Criminal activity.* Borrowers will deny admission for criminal activity or alcohol abuse by household members in accordance with the provisions of 24 CFR 5.854, 5.855, 5.856, and 5.857.

- 11. Amend § 3560.156 by:
■ a. Revising paragraph (c)(1);
■ b. Adding paragraph (c)(6)(v); and
■ c. Revising paragraphs (c)(15) and (16).

The revisions and addition read as follows:

**§ 3560.156 Lease requirements.**

\* \* \* \* \*

(c) \* \* \*

(1) Leases for tenants who hold a Letter of Priority Entitlement (LOPE) issued according to § 3560.660(c) and are temporarily occupying a unit for which they are not eligible must include a clause establishing the tenant's responsibility to move when a suitable unit becomes available in the housing project.

\* \* \* \* \*

(6) \* \* \*

(v) The Violence Against Women Reauthorization Act of 2013 and any amendments thereto.

\* \* \* \* \*

(15) Leases, including renewals, must include the following language:

"It is understood that the use, or possession, manufacture, sale, or distribution of an illegal controlled substance (as defined by local, State, or federal law) while in or on any part of this apartment complex premises or cooperative is an illegal act. It is further understood that such action is a material lease violation. Such violations (hereafter called a "drug violation") may be evidenced upon the admission to or conviction of the use, possession, manufacture, sale, or distribution of a controlled substance (as defined by local, state, or Federal law) in any local, state, or Federal court.

The landlord may require any lessee or other adult member of the tenant household occupying the unit (or other adult or non-adult person outside the tenant household who is using the unit) who commits a drug violation to vacate the leased unit permanently, within timeframes set by the landlord, and not thereafter to enter upon the landlord's premises or the lessee's unit without the landlord's prior consent as a condition for continued occupancy by the remaining members of the tenant's household. The landlord may deny consent for entry unless the person agrees to not commit a drug violation in the future and is either actively participating in a counseling or recovery program, complying with court orders related to a drug violation, or has successfully completed a counseling or recovery program.

The landlord may require any lessee to show evidence that any non-adult member of the tenant household occupying the unit, who committed a drug violation, agrees not to commit a drug violation in the future, and to show evidence that the person is either actively seeking or receiving assistance through a counseling or recovery program, complying with court orders

related to a drug violation, or has successfully completed a counseling or recovery program within timeframes specified by the landlord as a condition for continued occupancy in the unit.

Should a further drug violation be committed by any non-adult person occupying the unit the landlord may require the person to be severed from tenancy as a condition for continued occupancy by the lessee.

If a person vacating the unit, as a result of the above policies, is one of the lessees, the person shall be severed from the tenancy and the lease shall continue among any other remaining lessees and the landlord. The landlord may also, at the option of the landlord, permit another adult member of the household to be a lessee.

Should any of the above provisions governing a drug violation be found to violate any of the laws of the land the remaining enforceable provisions shall remain in effect. The provisions set out above do not supplant any rights of tenants afforded by law."

(16) Leases for rental units accessible to individuals with disabilities occupied by those not needing the accessibility features must establish the tenant's responsibility to move to another unit within 30-days of written notification that the unit is needed by an eligible qualified person with disabilities who requires the accessibility features of the unit. 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.

■ 12. Amend § 3560.158 by revising paragraph (d)(3) introductory text to read as follows:

**§ 3560.158 Changes in tenant eligibility.**

\* \* \* \* \*

(d) \* \* \*

(3) After the death of a tenant or co-tenant in elderly housing, the surviving members of the household, regardless of age but taking into consideration the conditions of paragraph (d)(1) of this section, may remain in the rental unit in which they were residing at the time of the tenant's or co-tenant's death, even if the household is over housed according to the housing project's occupancy rules except as follows:

\* \* \* \* \*

■ 13. Amend § 3560.159 by revising paragraph (c) to read as follows:

**§ 3560.159 Termination of occupancy.**

\* \* \* \* \*



(c) *Other terminations.* Should occupancy be terminated due to conditions which are beyond the control of the tenant, such as a condition related to required repair or rehabilitation of the building, or a natural disaster, and prior to expiration of the disaster declaration, the tenants who are affected by such a circumstance are entitled to benefits under the Uniform Relocation Act and may request a Letter of Priority Entitlement (LOPE) from the Agency. If tenants need additional time to secure replacement housing, the Agency may, at the tenant's request, extend the LOPE entitlement period.

\* \* \* \* \*

#### Subpart E—Rents

■ 14. Amend § 3560.205 by revising paragraph (e) to read as follows:

##### § 3560.205 Rent and utility allowance changes.

\* \* \* \* \*

(e) *Approval.* If the Agency approves a rent or utility allowance increase request on which the comments were solicited, tenants or members receiving notice of a proposed rent or utility allowance change in accordance with 3560.205(d)(2) shall be notified of the rent or utility allowance change to be effective 30 calendar days from the date of the notification.

\* \* \* \* \*

■ 15. Amend § 3560.207 by revising paragraph (b) to read as follows:

##### § 3560.207 Annual adjustment factors for Section 8 units.

\* \* \* \* \*

(b) *Establishing rents in housing with HUD rent assistance.* Borrowers will set basic, note, and HUD contract rents for housing receiving HUD project-based Section 8 assistance, as specified in § 3560.202(c).

\* \* \* \* \*

#### Subpart F—Rental Subsidies

■ 16. Amend § 3560.252 by:

■ a. Redesignating paragraphs (b)(2) through (4) as paragraphs (b)(3) through (5) respectively, and adding new paragraph (b)(2); and

■ b. Revising paragraph (c)(2) introductory text.

The addition and revision read as follows:

##### § 3560.252 Authorized rental subsidies.

\* \* \* \* \*

(b) \* \* \*

(2) Agency housing vouchers;

\* \* \* \* \*

(c) \* \* \*

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

\* \* \* \* \*

■ 17. Amend § 3560.254 by revising paragraph (c) to read as follows:

##### § 3560.254 Eligibility for rental assistance.

\* \* \* \* \*

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

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

(2) Whose net tenant contribution to rent determined in accordance with § 3560.203(a)(1) is less than the basic rent for the unit;

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

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

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

(6) Who is not delinquent on any Federal debt, including unauthorized assistance repayment agreements.

■ 18. Revise § 3560.258 to read as follows:

##### § 3560.258 Terms of agreement.

(a) *Term of agreement.* Rental assistance agreements will have a term of the later of 12 months from the first disbursement of the obligation or when funds under the agreement are exhausted.

(b) *Replacing expiring obligations.* Rental assistance agreements may be renewed in accordance with § 3560.255(a)(1).

■ 19. Amend § 3560.259 by revising paragraphs (a)(3) and (4) and adding paragraph (d) to read as follows:

##### § 3560.259 Transferring rental assistance.

(a) \* \* \*

(3) After a liquidation, prepayment or natural maturity;

(4) To the extent permitted by law, when any rental assistance units have not been used for a 6-month period (Section 515) or a 12-month period (Section 514 or 516); or

\* \* \* \* \*

(d) Agency use of obligation balances. In lieu of transferring rental assistance units, the Agency may elect to utilize the remaining obligation balances of units identified in 3560.259(a)(2) and (3) for renewal purposes.

#### Subpart G—Financial Management

■ 20. Amend § 3560.302 by revising paragraphs (c)(3)(ii) and (iii) and

paragraphs (c)(5)(i), (ii) and (iv) to read as follows:

##### § 3560.302 Accounting, bookkeeping, budgeting, and financial management systems.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(ii) Real estate tax and insurance account (if not part of the general operating account or unless escrowed by the Agency);

(iii) Reserve account (unless escrowed by the Agency in accordance with 3560.65);

\* \* \* \* \*

(5) \* \* \*

(i) All housing project funds must be held only in financial institution accounts insured by an agency of the Federal Government or held in securities meeting the conditions in this subpart.

(ii) Funds maintained in an institution may not exceed the limit established for Federal deposit insurance. Funds exceeding the Federally insured limit under a Tax ID Number must be moved to a different qualified banking institution that will insure the funds unless the current financial institution provides additional surety such as a collateral pledge that may already be in place.

\* \* \* \* \*

(iv) All funds received and held in any account, except the tenant security deposit, membership fee, and patron capital accounts, are considered assets of the property and must be held in trust by the borrower for the loan obligations until used and serve as security, through transfers or assumptions for the Agency loan or grant until all outstanding balances are satisfied.

\* \* \* \* \*

■ 21. Revise § 3560.303 to read as follows:

##### § 3560.303 Housing project budgets.

(a) *General requirements.* (1) Using an Agency-approved format, borrowers must submit to the Agency for approval a proposed annual housing project budget prior to the start of the housing project's fiscal year. The capital budget section of the annual project budget must include anticipated expenditures on the project's long-term capital needs as specified in 7 CFR 3560.103(c) and will assist the Agency on utilization of the reserve account for current or future rent increase requests.

(2) Budget projections regarding income, expenses, vacancies, and contingencies must be realistic given the housing project's history, current circumstances, and market conditions.



(3) Borrowers must document that the operating expenses included in the budget accurately reflect reasonable and necessary costs to operate the housing project in a manner consistent with the objectives of the loan and in accordance with the applicable Agency requirements.

(4) Borrower must submit supporting documentation to justify housing project utility allowances.

(5) Upon Agency request, borrowers must submit any additional documentation necessary to establish that applicable Agency requirements have been met.

(b) *Allowable and unallowable project expenses.* Expenses charged to project operations, whether for management agent services or other expenses, must be reasonable, typical, necessary and show a clear benefit to the residents of the property. Services and expenses charged to the property must show value added and be for authorized purposes.

(1) *Allowable expenses.* Allowable expenses include those expenses that are directly attributable to housing project operations and are necessary to carry out successful operations.

(i) Housing project expenses must not duplicate expenses included in the management fee as defined in § 3560.102(i).

(ii) Actual costs for direct personnel costs of permanent and part-time staff assigned directly to the project site. This includes managers, maintenance staff, and temporary help including their:

- (A) Gross salary;
- (B) Employer Federal Insurance Contributions Act (FICA) contribution;
- (C) Federal unemployment tax;
- (D) State unemployment tax;
- (E) Workers compensation insurance;
- (F) Health insurance premiums;
- (G) Cost of fidelity or comparable insurance;

(H) Leasing, performance incentive or annual bonuses that are clearly provided for by the site manager salary contract;

(I) Direct costs of travel to off-site locations by on-site staff for property business or training; and/or

(J) Retirement benefits.

(iii) Legal fees directly related to the operation and management of the property including tenant lease enforcement actions, property tax appeals and suits, and the preparation of all legal documents.

(iv) All outside account and auditing fees, if required by the Agency, directly related to the preparation of the annual audit, partnership tax returns and 401-K's, as well as other outside reports and year-end reports to the Agency, or other governmental agency.

(v) All repair and maintenance costs for the project including:

(A) Maintenance staffing costs and related expenses.

(B) Maintenance supplies.

(C) Contract repairs to the projects (e.g., heating and air conditioning, painting, roofing).

(D) Make ready expenses including painting and repairs, flooring replacement and appliance replacement as well as drapery or mini-blind replacement. (Turnover maintenance).

(E) Preventive maintenance expenses including occupied unit repairs and maintenance as well as common area systems repairs and maintenance.

(F) Snow removal.

(G) Elevator repairs and maintenance contracts.

(H) Section 504 and other Fair Housing compliance modifications and maintenance.

(I) Landscaping maintenance, replacements, and seasonal plantings.

(J) Pest control services.

(K) Other related maintenance expenses.

(vi) All operational costs related to the project including:

(A) The costs of obtaining and receiving credit reports, police reports, and other checks related to tenant selection criteria for prospective residents.

(B) Photocopying or printing expense related to actual production of project brochures, marketing pieces, forms, reports, notices, and newsletters are allowable project expenses no matter what location or point of origin the work is performed including outsourcing the work to a professional printer.

(C) All bank charges related to the property including purchases of supplies (e.g., checks, deposit slips, returned check fees, service fees).

(D) Costs of site-based telephone including initial installation, basic services, directory listings, and long-distances charges.

(E) All advertising costs related specifically to the operations of that project. This can include advertising for applicants or employees in newspapers, newsletters, social media, radio, cable TV, and telephone books.

(F) Postage expense to mail out rental applications, third-party (asset income and adjustments to income) verifications, application processing correspondence (acceptance or denial letters), mailing project invoice payments, required correspondence, report submittals to various regulatory authorities for the managed property are allowable project expenses no matter what location or point of origin the mail is generated.

(G) State taxes and other mandated state or local fees as well as other relevant expenses required for operation of the property by a third-party governmental unit. Costs of continuation financing statements and site license and permit costs.

(H) Expenses related to site utilities.

(I) Site office furniture and equipment including site-based computer and copiers. Service agreements and warranties for copiers, telephone systems and computers are also included (if approved by the Agency).

(J) Real estate taxes (personal tangible property and real property taxes) and expenses related to controlling or reducing taxes.

(K) All costs of insurance including property liability and casualty as well as fidelity or crime and dishonesty coverage for on-site employees and the owners.

(L) All bookkeeping supplies and recordkeeping items related to costs of collecting rents on-site.

(M) All office supplies and copies related to costs of preparing and maintaining tenant files and processing tenant certifications to include electronic storage.

(N) Public relations expense relative to maintaining positive relationships between the local community and the tenants with the management staff and the borrowers. Chamber of Commerce dues, contributions to local charity events, and sponsorship of tenant activities, are examples.

(O) Tax Credit Compliance Monitoring Fees imposed by HFAs.

(P) All insurance deductibles as well as adjuster expenses.

(Q) Professional service contracts (audits, owner-certified submissions in accordance with § 3560.308(a)(2), tax returns, energy audits, utility allowances, architectural, construction, rehabilitation and inspection contracts, capital needs assessments (CNA) etc.)

(R) Training for on-site staff provided by outside training vendors. Association dues to be paid by the project should be related to training for site managers or management agents. To the extent that association dues can document training for site managers or management agents related to project activities by actual cost or pro-rata, a reasonable expense may be billed to the project.

(S) Legal fees if found not guilty of civil lawsuits, commercially reasonable legal expenses and costs for defending or settling lawsuits.

(vii) With prior Agency approval, cooperatives and nonprofit organizations may use housing project funds to reimburse actual asset management expenses directly

attributable to ownership responsibilities. Such expenses may include:

(A) Errors and omissions insurance policy for the Board of Directors. The cost must be prorated if the policy covers multiple Agency housing properties.

(B) Board of Director review and approval of proposed Agency's annual operating budgets, including proposed repair and replacement outlays and accruals. The cost must be prorated if the policy covers multiple Agency housing properties.

(C) Board of Director review and approval of capital expenditures, financial statements, and consideration of any management comments noted. The cost must be prorated if the policy covers multiple Agency housing properties.

(D) Long-term asset management reviews. The cost must be prorated if the policy covers multiple Agency housing properties.

(viii) Agency approved Third Party debt service for the project.

(2) *Unallowable expenses.* Housing project funds may not be used for any of the following:

(i) Equity skimming as defined in 42 U.S.C. 543(a);

(ii) Purposes unrelated to the housing project;

(iii) Reimbursement of inaccurate or false claims;

(iv) Court ordered settlement agreements, court ordered decrees, legal fees, or other costs that result from the filing of civil rights complaints or legal action alleging the borrower, or a representative of the borrower, has committed a civil rights violation. It is inappropriate to charge for legal services to represent any interest other than the borrower's interest (*i.e.*, representing a general partner or limited partner to defend their individual owner interest is not allowable);

(v) Fines, penalties, and legal fees where the borrower or a borrower's representative has been found guilty of violating laws, including, but not limited to, civil rights, and building codes. Charging for payment of penalties including opposition legal fees resulting from an award finding improper actions on the part of the owner or management agent is generally an inappropriate project expense. The party responsible generally pays such expenses for violating the standards or by their insurance carriers;

(vi) Association dues unless related to training for site managers or management agents. To the extent that association dues can document training for site managers or management agents

related to project activities by actual cost or pro-ration, a reasonable expense may be billed to the project;

(vii) Pay for bonuses or monetary performance awards to site managers or management agents that are not clearly provided for by the site manager salary contract;

(viii) Billing for parties or gifts to management agent staff;

(ix) Billing for practices that are inefficient such as routine use of collect calls from a site manager to a management agent office;

(x) Billing the project for computer hardware, some software, and internal connections that are beyond the scope and size reasonably needed for the services supplied (*i.e.*, purchasing equipment or software for use by a site manager that is clearly beyond that needed to support project operations). Note that computer learning center activities benefiting tenants are not covered in this prohibition; or

(xi) Costs of tenant services.

(c) *Priorities.* The priority order of planned and actual budget expenditures will be:

(1) Senior position lienholder, if any;

(2) Operating and maintenance expenses, including taxes and insurance;

(3) Agency debt payments;

(4) Reserve account requirements;

(5) All accounts payable;

(6) Other authorized expenditures; and

(7) Return on owner investment.

(d) *Determining if expenses are reasonable.* Generally, expenses charged to project operations, whether for management agent services or other expenses, must be reasonable, typical, necessary and show a clear benefit to the residents of the property. Services and expenses charged to the property must show value added and be for authorized purposes. If such value is not apparent, the service or expense should be examined.

(1) Administrative expenses for project operations exceeding 23 percent, or those typical for the area, of gross potential basic rents and revenues (*i.e.*, referred to as gross potential rents in industry publications) highlight a need for closer review for unnecessary expenditures. Budget approval is required, and project resources may not always permit an otherwise allowable expense to be incurred if it is not fiscally prudent in the market.

(2) Excessive administrative expenses can result in inadequate funds to meet other essential project needs, including expenditures for repair and maintenance needed to keep the project in sound physical condition. Actions

that are improper or not fiscally prudent may warrant budget denial and/or a demand for recovery action.

(e) *Agency review and approval.* (1) The Agency will only approve housing project budgets that meet the requirements of paragraphs (a) through (d) of this section.

(2) If no rent change is requested, borrowers must submit budget documents for Agency approval 60 calendar days prior to the start of the housing project's fiscal year. The Agency will notify borrowers if the budget submission does not meet the requirements of paragraphs (a) through (d) of this section. The borrower will have 10 days to submit the additional material.

(3) If a rent change is requested, the borrower must submit budget documents to the Agency and notify tenants of the requested rent change at least 90 calendar days prior to the start of the housing project's fiscal year.

(i) The Agency will notify borrowers if the budget submission does not meet the requirements of paragraphs (a) through (d) of this section, or if the rent and utility allowance request has been denied in accordance with § 3560.205(f). The borrower will have 10 days to submit the additional material to address any issues raised by the Agency.

(ii) The rent change is not approved until the Agency issues a written approval. If there is no response from the Agency within the 30-day period, the rent change is considered automatic. The following budgets are not eligible for automatic approval:

(A) Budgets with rent increases above \$25 per unit; and

(B) Budgets that are submitted late or that miss other deadlines set by the Agency.

(4) If the Agency denies the budget approval, the Agency will notify the borrower in writing.

(5) If budget approval is denied, the borrower shall continue to operate the housing project on the basis of the most recently approved budget.

■ 22. Amend § 3560.306 by:

■ a. Revising paragraphs (a), (b), (d), and (e)(2);

■ b. Redesignating paragraphs (g)(2) through (5) as paragraphs (g)(3) through (6) respectively, and adding new paragraph (g)(2); and

■ c. Redesignating paragraph (j)(2) as paragraph (j)(3) and adding new paragraph (j)(2).

The revisions and additions read as follows:

**§ 3560.306 Reserve account.**

(a) *Purpose.* To meet the major capital expense needs of a housing project,

borrowers must establish and maintain a reserve account, unless escrowed by the Agency.

(b) *Financial management of the reserve account.* Unless otherwise approved by the Agency, borrower management of the reserve account is subject to the requirements of 7 CFR part 1902, subpart A regarding supervised bank accounts.

(d) *Transfer of surplus general operating account funds.* (1) The general operating account will be deemed to contain surplus funds when the balance at the end of the housing project's fiscal year, after all payables and priorities, exceeds 20 percent of the operating and maintenance expenses. If the borrower is escrowing taxes and insurance premiums, include the amount that should be escrowed by year end and subtract such tax and insurance premiums from operating and maintenance expenses used to calculate 20 percent of the operating and maintenance expenses.

(2) If a housing project's general operating account has surplus funds at the end of the housing project's fiscal year as defined in paragraph (d)(1), the Agency will require the borrower to use the surplus funds to address capital needs, make a deposit in the housing project's reserve account, reduce the debt service on the borrower's loan, or reduce rents in the following year. At the end of the borrower's fiscal year, if the borrower is required to transfer surplus funds from the general operating account to the reserve account, the transfer does not change the future required contributions to the reserve account.

(e) \* \* \* (2) Reserve accounts must be supervised accounts that require the Agency to approve all withdrawals; except, this requirement is not applicable when loan funds guaranteed by the Section 538 GRRH program are used for the construction and/or rehabilitation of a direct MFH loan project. Direct MFH loan borrowers, who are exempted from the supervised account requirement, as described in this section, must follow Section 538 GRRH program regulatory requirements pertaining to reserve accounts. In all cases, Section 538 lenders must get prior written approval from the Agency before reserve account funds involving a direct MFH loan project can be disbursed to the borrower.

(g) \* \* \* (2) Borrowers should include any needed capital improvements based on

the needs identified in an Agency approved Capital Needs Assessment (if obtained) are completed within a reasonable timeframe.

(j) \* \* \* (2) The Agency will allow for an annual adjustment to increase reserve account funding levels by Operating Cost Adjustment Factor (OCAF) as published by HUD annually. This will require a modification to the Loan agreement and the increase documented with budget submission as outlined in § 3560.303.

**Subpart I—Servicing**

■ 23. Amend § 3560.402 by revising paragraph (b) to read as follows:

**§ 3560.402 Loan payment processing.**

(b) *Required conversion to PASS.* Borrowers with Daily Interest Accrual System (DIAS) accounts must convert to PASS with any loan servicing action.

**Subpart L—Off-Farm Labor Housing**

**§ 3560.576 [Amended]**

■ 24. Amend § 3560.576 by removing the words "State Director's" and adding in their place "MFH Leadership Designee's" in paragraph (e).

**Subpart N—Housing Preservation**

**§ 3560.656 [Amended]**

■ 25. Amend § 3560.656 by removing the word "will" and replacing it with "may" in paragraph (a) introductory text.

**Elizabeth Green,**

*Acting Administrator, Rural Housing Service.*

[FR Doc. 2020-18192 Filed 9-22-20; 8:45 am]

**BILLING CODE 3410-XV-P**

**DEPARTMENT OF JUSTICE**

**Executive Office for Immigration Review**

**8 CFR Parts 1003, 1208, and 1240**

[EOIR Docket No. 19-0010; A.G. Order No. 4843-2020]

**RIN 1125-AA93**

**Procedures for Asylum and Withholding of Removal**

**AGENCY:** Executive Office for Immigration Review, Department of Justice.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Justice ("Department" or "DOJ") proposes to amend the Executive Office for Immigration Review ("EOIR") regulations governing asylum and withholding of removal, including changes to what must be included with an application for such relief for it to be considered complete and the consequences of filing an incomplete application, changes establishing a 15-day filing deadline for aliens applying for asylum in asylum-and-withholding-only proceedings, and changes related to the 180-day asylum adjudication clock.

**DATES:** Written or electronic comments must be submitted on or before October 23, 2020. Written comments postmarked on or before that date will be considered timely. The electronic Federal Docket Management System will accept comments prior to midnight Eastern Time at the end of that day.

**ADDRESSES:** If you wish to provide comments regarding this rulemaking, you must submit comments, identified by the agency name and referencing RIN 1125-AA93 or EOIR Docket No. 19-0010, by one of the two methods below.

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the website instructions for submitting comments.

• *Mail:* Paper comments that duplicate an electronic submission are unnecessary. If you wish to submit a paper comment in lieu of an electronic submission, please direct the mail/shipment to: Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2616, Falls Church, VA 22041. To ensure proper handling, please reference the agency name and RIN 1125-AA93 or EOIR Docket No. 19-0010 on your correspondence. Mailed items must be postmarked or otherwise indicate a shipping date on or before the submission deadline.

**FOR FURTHER INFORMATION CONTACT:** Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2616, Falls Church, VA 22041, telephone (703) 305-0289 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

**I. Public Participation**

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this rule via one of the methods and by the deadline stated above. All comments must be submitted in English, or accompanied