

These changes would allow swifter and more consistent action to address troubled projects. For example, focusing action for the agency and the borrower. This would help to avert more serious problems in the long term and allow agency staff to concentrate their efforts on other portfolio management issues.

Management and Disposition of Real Estate Owned Properties

The proposed rule consolidates current regulations regarding real estate owned (REO) property and clarifies the specific requirements that apply to multifamily housing properties. Current regulations address many different types of REO properties acquired by USDA, including MFH properties. Often, the guidance provided is generic or relates to non-MFH properties. The proposed rule would provide specific guidance to MFH properties, taking into consideration the physical condition of the property, occupancy status of the property by eligible program tenants, and determinations of whether the property is still needed under the program.

The proposed rule also adds flexibility to the agency's requirements for selling the property. The change allows the sale to be conducted taking into account local market conditions. It also provides the field offices several options in selling REO properties, giving them authority that previously rested with the national office. With more options and flexibility, processing and sales times will be reduced.

Farm Labor Housing

The proposed regulation consolidates separate program regulations for the Farm Labor Housing Program along with separate regulations for the other MFH programs. It does, however, maintain separate subparts for off-farm labor housing and on-farm labor housing. This was necessary to preserve the distinction between off-farm labor housing consisting of multi-unit housing operated by nonprofit corporations or public bodies who receive loans or both loans and grants under the 514 and 516 programs, and on-farm labor housing consisting of single or small multi-family housing operated by farm operators who receive only loans. Several statutory changes to the Farm Labor Housing Program have been made over the past 4 years. The current regulations have been modified to incorporate those changes prior to the drafting of this proposed rule. As those changes are currently in place, they are not addressed again in this analysis. No further program changes other than regulation consolidation are included.

Office of Rental Housing Preservation

Recent changes to the 1949 Housing Act required the establishment of an Office of Rental Housing Preservation within RHS for handling matters relating to the preservation on the agency's MFH portfolio. RHS recently established this office within its Multi-Family Housing Portfolio Management Division. The office has a Director of the Office and a Senior Loan Specialist. Additional positions within the office are to be filled.

The Office of Rental Housing Preservation has already taken steps to enhance the agency's consistency in the review of prepayment requests and the offer of incentives by making a single entity responsible for coordinating all preservation actions. The proposed rule recognizes the establishment of this office and defines its responsibility to coordinate, direct and monitor the RHS' multifamily housing preservation activities. This addition to the rule complies with the statute and clarifies the role of the national office in the preservation process.

Unauthorized Assistance

When tenants receive unauthorized assistance through their own error, the agency has a duty to try to recapture the assistance. Under current regulations, much of this responsibility is put on project owners. The process is both time consuming and burdensome. Furthermore, project owners as well as RHS, have only limited ability to collect unauthorized assistance and, in many cases, the cost of pursuing unauthorized assistance has outweighed the funds collected.

Recognizing these circumstances, the proposed rule relieves project owners of the responsibility of recovering unauthorized assistance due to tenant error once the tenant has moved out. It also provides for RHS to determine whether or not unauthorized assistance should be pursued. These changes give the agency greater flexibility to apply resources cost effectively toward cases that most deserve to be pursued, and relieve project owners of the burden of pursuing tenants who no longer live in their projects. The proposed rule also brings RHS into compliance with the Debt Collection Improvement Act by allowing the use of collection agencies and offsets to collect unauthorized assistance from project owners and tenants.

Changes in Definitions

Basic Rent

Under the current regulations, basic rent is determined on the basis of

operating the project with payments of principal and interest on a loan to be repaid over a 30-year or longer period at 1 percent per annum and covering budgeted project expenses. Basic rent also means basic occupancy charge. This definition does not take into consideration conventional rents for comparable units, and in effect, does not put any limitation on operating costs and rents.

The definition under the proposed regulation is similar to the definition shown above. However, it also takes into consideration, if appropriate, a return on the borrower's equity in a project. Further, the proposed definition states that basic rent must not exceed conventional rents for comparable units at the time the rent is established. This will prevent project rents from becoming excessively high and will cap the amount of RA that the agency is required to provide.

Disability

Agency regulations currently have separate definitions for the terms "Individual with disability" and "Individual with handicap." The definition of the term "Individual with disability" is, in large part, taken from section 501(b) of the Housing Act of 1949. The definition of the term "Individual with handicaps" is taken from the Fair Housing Act. Other civil rights laws, such as the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, utilized the term "disability" rather than handicap; however, they define it in the same manner as the Fair Housing Act defines handicap.

Rather than having two separate terms, the Agency will only use the term "Disability" and it will be considered equivalent to the term "Handicap." If a person meets either the Housing Act of 1949's definition of handicap or the Fair Housing Act's definition of handicap, they will be considered to be disabled.

Participation With Other Funding or Financing Sources

7 CFR 3560.66 encourages participation from public and private sources. The section 515 policy of restricting rental assistance to basic rents that do not exceed what they would have been had the Agency provided full financing is still maintained. Because the Agency is delivering financing at 1 percent, this provision would be difficult for an applicant to meet under the most aggressive leveraging or other low-interest loan funds financing package. Therefore, the Agency is inviting comment as to whether it would serve