

tenants of the requested rent increase at least 105 calendar days prior to the start of the housing project's fiscal year.

(i) The Agency will notify borrowers if the budget submission is incomplete.

(ii) The Agency will notify the borrower if the budget does not meet the requirements of paragraphs (a), (b), or (c) of this section or if the rent and utility allowance request has been denied in accordance with § 3560.205(f).

(iii) The rent increase is not approved until the Agency issues a written approval.

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

(5) Upon notification of the deficiencies, borrowers will have 10 calendar days to submit additional documentation. The Agency will notify the borrower if the budget has been accepted or rejected.

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

#### **§ 3560.304 Initial operating capital.**

(a) *Purpose.* To provide a source of capital for start-up costs, such as the purchase of equipment, operating, maintenance, and debt service expenses, borrowers are required to make an initial operating capital contribution to the general operating account as described in § 3560.64.

(b) *Authorized uses of initial operating capital.* Initial operating capital may be used only to pay for approved budgeted expenses.

(c) *Withdrawal of initial operating capital.* Initial operating capital funds may be withdrawn by a borrower if:

(1) The initial operating capital was provided from the borrower's own funds;

(2) The borrower requests the withdrawal after the second year of housing project operations and prior to the 13th year of operations;

(3) The housing project has had a 90 percent occupancy rate for a period of 12 months prior to the withdrawal request;

(4) The withdrawal will not affect the financial viability of the housing project;

(5) Contributions to the reserve account are at authorized levels;

(6) The withdrawal request will not result in rent increases; and

(7) There are no outstanding deficiencies in management's physical maintenance of the housing project.

#### **§ 3560.305 Return on investment.**

(a) *Borrower's return on investment.* Borrowers may receive a return on their

investment (ROI) in accordance with the terms of their loan agreement and the following:

(1) If there is a positive net cash flow in housing project operations, the ROI may be taken by the borrower immediately after the housing project's fiscal year, provided that the balance of the reserve account is equal to or greater than required deposits minus authorized withdrawals. If the annual financial reports indicate that an ROI should not have been taken, borrowers will be required to return any unauthorized ROI.

(2) If there is negative cash flow in housing project operations, the Agency may authorize the borrower to take the ROI only after the Agency has reviewed the housing project's annual financial reports and determines:

(i) Surplus cash exists in either the general operating account as defined in § 3560.306(d)(2) or the reserve account, if the balance is greater than the required deposits minus authorized withdrawals.

(ii) The housing project has sufficient funds to address identified capital or operational needs.

(b) *Unpaid return on investment.* An earned, but unpaid ROI for any previous year may be requested by the borrower and authorized by the Agency under the provisions of § 3560.305(a)(2) provided the current year's ROI has been paid first and a rent increase is not required to generate funds to pay the unpaid ROI.

#### **§ 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.

(b) *Financial management of the reserve account.* Borrower management of the reserve account is subject to the requirements of 7 CFR part 1902, subpart A regarding supervised bank accounts.

(c) *Funding of the reserve account.* Borrowers must make monthly payments to the reserve account in the amount established in loan documents, beginning with the first loan payment or a date specified in loan documents. Borrowers must continue these payments until the account reaches the total amount specified in the loan documents.

(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, exceeds 10 percent of the operating and maintenance expenses, including debt service to the Agency,

transfers to reserves, and a return to the borrower, including repayment of the borrower's contribution to initial operating capital, if it has not been repaid. 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 10 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, the Agency may require the borrower to reduce rents in the following year, use the surplus funds to address capital needs, reduce the debt service on the borrower's loan, or make a deposit in the housing project's reserve account, if the reserve account is not fully funded.

(3) At the end of the borrower's fiscal year, if the borrower is required to transfer surplus funds in the general operating account to the reserve account, the transfer does not change the required contributions to the reserve account in the following year. Funds transferred to the reserve in this manner may be counted towards the required contribution for the following year or years depending on the amount of the required transfer of surplus funds.

(e) *Resumption of payments.* When the account balance falls below the total amount specified in the loan or grant documents, borrowers must resume making monthly payments to the reserve account and continue until the required balance has been restored.

(f) *Account requirements.* Borrowers must establish and maintain the reserve account according to § 3560.64, § 3560.302(c)(6), and the following requirements.

(1) Reserve accounts must be deposited in interest-bearing accounts or securities with rates equal to or greater than passbook savings or checking accounts.

(2) Reserve accounts must be supervised accounts that require Agency countersignatures on all withdrawals.

(g) *Funds invested in securities.* In addition to the requirements specified in § 3560.305(f), the following requirements apply when reserve funds are invested in securities.

(1) Any securities in which reserves are invested must be backed by the federal or state government, or an Agency of the federal or state government, or be triple A rated tax-exempt bonds.

(2) The borrower must record the price actually paid for the securities. When designated as a reserve deposit,