

§ 3560.708 Unauthorized assistance received by tenants.

(a) Tenant actions that require tenant repayment of unauthorized assistance received by tenants include, but are not limited to:

(1) Knowingly or mistakenly misrepresenting income, assets, adjustments to income, or household status to the borrower as required under subpart D of this part; or

(2) Failure to properly report changes in income, assets, adjustments to income, or household status to the borrower as required in subpart D of this part.

(b) Borrower actions that require borrower repayment of unauthorized assistance received by tenants include, but are not limited to:

(1) Incorrect determination of tenant income or household status by the borrower, resulting in rental assistance or interest credit that are not allowable under the provisions of subparts D, E, and F of this part; or

(2) Assignment of rental assistance to a household that is ineligible under the requirements of subpart F of this part.

(c) When it is determined that a tenant has received unauthorized assistance, the borrower shall notify the tenant and the Agency through the procedure specified in § 3560.704.

(d) Borrowers may not charge tenants for or use housing project funds to pay amounts due to the Agency as a result of unauthorized assistance to tenants through borrower error.

(e) Borrowers must notify the Agency of all collections from tenants as repayments for unauthorized assistance and must remit or credit the amounts collected to applicable housing project accounts.

(f) When rental assistance was improperly assigned to a tenant, whether due to borrower or tenant fraud or borrower or tenant error, the rental assistance benefit must be canceled and reassigned.

(1) Before a borrower notifies a tenant of rental assistance cancellation, the borrower must request Agency approval. If the Agency determines that the unauthorized rental assistance was received by the tenant due to borrower fraud or error, the borrower must give the tenant 30 days notice, in writing, that the unit was assigned in error and that the rental assistance benefit will be canceled effective on date that the next monthly rental payment is due after the end of the 30-day notice period.

(2) Tenants also must be notified, in writing, that they may cancel their lease without penalty at the time the rental assistance is canceled. Tenants must be offered an opportunity to meet with a

borrower to discuss the rental assistance cancellation.

§ 3560.709 Demand letter.

(a) If a borrower fails to respond to an unauthorized assistance determination notice or fails to agree to a repayment schedule, the Agency will send the borrower a demand letter specifying:

(1) The amount of unauthorized assistance to be repaid and the basis for the unauthorized assistance determination; and

(2) The actions to be taken by the Agency if repayment is not made by a specified date.

(b) If a tenant fails to respond to the unauthorized assistance determination notice or fails to agree to a repayment schedule, the borrower will send the tenant a demand letter specifying:

(1) The amount of unauthorized assistance to be repaid and the basis for the unauthorized assistance determination;

(2) The actions to be taken if repayment is not made by a specified date, including termination of tenancy; and

(3) The appeal rights of the tenant as specified in § 3560.160.

(c) A demand letter may be sent to a borrower or tenant, in lieu of an unauthorized assistance determination notice, when the evidence documenting the unauthorized assistance determination is deemed to be conclusive by the Agency in the case of initial demands on a borrower, or by the borrower in the case of an initial demand by a borrower on a tenant, or by the Agency in the case of demands on a tenant made initially by the Agency or upon referral by a borrower for Agency collection servicing efforts.

§§ 3560.710–3560.749 [Reserved]**§ 3560.750 OMB control number. [Reserved]****Subpart P—Appraisals****§ 3560.751 General.**

This subpart sets forth appraisal policies for Agency-financed multi-family housing consisting of five or more rental units. Agency-financed housing project's with fewer than five rental units may be appraised in accordance with the Agency's single family housing appraisal policies established under 7 CFR 3550.62.

§ 3560.752 Appraisal use, request, release, and review.

(a) *Appraisal uses.* The Agency will use appraisals to determine whether the security offered by an applicant or borrower is adequate to secure a loan or

to determine appropriate servicing or preservation decisions. Appraisals used for Agency decision-making may be no more than 12 months old unless the Agency and the applicant or borrower mutually agree to the use of an appraisal more than 12 months old.

(b) *Appraisal requests.* Appraisal requests must be in writing and must specify the intended use of the appraisal and the value basis on which the housing project and related facilities are to be appraised.

(1) The appraisal request must indicate whether the housing project and related facilities are to be appraised on a "value-in-use" basis or a "market value" basis.

(i) A request for a "value-in-use" appraisal means the appraisal will take into consideration any subsidies or use restrictions imposed on the property by a financing source. A value-in-use appraisal will take into consideration any interest credits, tax credits, tax rebates, rent subsidies, grant funds, or other forms of assistance related to the housing, including subsidies or use restrictions imposed by the Agency or any other government or non-government source.

(ii) A request for a "market value" appraisal means the appraisal will take into consideration the price which a property should sell for in a competitive and open market with no subsidies or use restrictions. The appraisal will assume a fair sale with the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus such as a foreclosure or other legal action that forced a sale of the property. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(A) Both parties are well informed or well advised and acting in what they consider their best interest;

(B) A reasonable time is allowed for exposure in the open market;

(C) Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and,

(D) The price represents consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(2) The appraisal request must indicate whether the "as-is" or the "as-improved" value of the housing is to be calculated.

(i) *As-is* value means the value of the housing and the related facilities in the condition in which the housing exists at the time the appraisal is conducted. If