

Housing Programs Unique to Rural Areas

By Lisa Krisher and Susan Reif

The supply of public housing in rural areas tends to be limited because rural cities and towns lack the resources to support such units. Even with a Section 8 voucher, given the prevalence of substandard units that fail to meet health and safety requirements, finding housing in rural areas can be difficult. To increase the supply of affordable housing in rural areas, Congress created programs that the U.S. Department of Agriculture (USDA) administers through the Rural Housing Service (RHS). The Section 502 program enables low-income residents of rural areas to become homeowners, while the Section 504 program funds repair and improvement of rural homes.¹ The Section 515 program subsidizes the rental and creation of rural multifamily housing.²

Section 502 Homeownership Program

The Section 502 program provides loans to construct, purchase, rehabilitate, or refinance single-family homes in rural areas.

RHS makes insured loans directly to the borrower or guarantees commercial loans against default.

Eligibility. To receive loans, applicants must have very low or low incomes; not own or reside in safe, decent, sanitary housing; be unable to obtain commercial financing (but have a credit history that shows an ability and willingness to repay debts); agree to live in the dwelling; meet citizenship or eligible noncitizen requirements, and be willing and able to repay the loan.³ A Section 502 borrower's average annual income is \$17,000. The ability to repay is calculated differently from (and is often confused with) the calculation of adjusted income used to determine income eligibility.⁴ If a client's application is denied for lack of repayment ability, advocates should make certain that RHS calculated correctly.⁵ If it did, the applicant or advocate may argue for loan approval by showing that the applicant met similar housing costs for a significant period in the past with similar income, that another family member with

¹ 42 U.S.C. §§ 1471–72 (2002); 7 C.F.R. pt. 3550 (2002).

² 42 U.S.C. §§ 1485, 1491a. For more in-depth information on all these programs, see the Housing Assistance Council's Web site, www.ruralhome.org.

³ 7 C.F.R. § 3550.53 (2002).

⁴ *Id.* § 3550.53(g).

⁵ To confirm correctness of the calculations, consult *id.* § 3550.54 and USDA (U.S. Department of Agriculture), USDA Direct Single Family Programs Centralized Servicing Center (CSC) Handbook, attachment 4-D (1996) [hereinafter CSC Handbook].

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income is willing to join on the loan, or that another party is willing to cosign.

Applicants whom RHS finds eligible are assigned a priority level for funding.⁶ Advocates can help by seeing that their clients are assigned the highest possible priority level. For example, a homeowner who has a disability (or who has a family member with a disability) can receive a first-level priority if the homeowner's current housing lacks necessary accommodations.

Borrowers must verify their income and expenses annually and must report changes in adult household members' employment status, changes in household composition, and increases (if 10 percent or more) or decreases in income.⁷ Verification and other loan servicing were handled locally until 1997, when USDA began using a Centralized Servicing Center in St. Louis, Missouri. Now verification information necessary to calculate the subsidy level or eligibility for loan servicing is done by mail. Many borrowers, due to limited understanding or disabilities, have found this system difficult and have lost subsidies or been denied loan servicing because they failed to return necessary documentation in a timely manner. Reporting by phone or mail also means that reported changes may not be promptly or timely recorded and implemented.

Some Elements of the Loan Program.

The loan program has the following elements:

- *Interest credit and payment assistance:* the borrower may receive a subsidy, calculated at the loan's origin and recalculated annually, that reduces the monthly mortgage payment of principal, interest, taxes, and insurance to the greater of 20 percent of the borrower's adjusted family income or an amount cal-

culated at 1 percent interest.⁸ If clients have difficulty affording the payment, advocates should determine whether the subsidy amount is correct.

- *Deferred mortgage payments:* if a client is initially ineligible for a mortgage, consider inquiring about deferring future payments. RHS may defer up to 25 percent of the monthly principal and interest payment at 1 percent for up to fifteen years.⁹

- *Down payment:* families must contribute toward the down payment any assets they possess over the RHS asset limit.¹⁰

- *Refinancing with private credit:* RHS direct loan programs are not intended to compete with private credit sources, so borrowers must refinance with private credit sources when RHS determines that the borrower can qualify.¹¹

- *Recapture:* borrowers with loans approved or assumed on or after October 1, 1979, must repay subsidy amounts received on transfer of title or if the borrower ceases to occupy the property.¹²

- *Transfer of security and assumption of indebtedness:* RHS mortgages contain due-on-sale clauses that generally require agency consent before a borrower may transfer title to a security property with the indebtedness assumed.¹³

- *Actions requiring approval:* RHS must approve the following actions by the borrower: mineral leases, subordination, partial release of security, lease of security property.¹⁴

If Borrowers Experience Payment Difficulties. Several forms of loan servicing are available to prevent a borrower's default from leading to foreclosure:

⁶ 7C.F.R. § 3550.55(c) sets out the priorities.

⁷ *Id.* § 3550.157(a)(3).

⁸ *Id.* § 3550.68, CSC Handbook, *supra* note 5, ch. 4.

⁹ 7 C.F.R. § 3550.69 (2002).

¹⁰ *Id.* § 3550.64.

¹¹ *Id.* § 3550.160.

¹² *Id.* § 3550.162.

¹³ *Id.* § 3550.163.

¹⁴ *Id.* § 3550.159.

■ A *payment moratorium* is available when a borrower shows that “due to circumstances beyond his control, he is unable to continue making payments of such principal and interest when due without unduly impairing his standard of living.”¹⁵ A borrower’s monthly payments may be deferred for up to two years; the borrower must then make a lump payment of the deferred interest, or RHS will reamortize the loan.¹⁶ If RHS determines that the borrower is unable to afford the new payments, it may forgive all or part of the interest accrued during the moratorium. If it determines after two years that the borrower is unable to resume monthly payments, it will liquidate the loan. RHS must review eligibility for the moratorium every six months and give the borrower sixty days’ notice before terminating it.¹⁷

■ A *delinquency workout agreement* allows a borrower to make a delinquent account current by paying either a single lump sum or by making monthly payments toward the delinquent amount, scheduled over a period of up to two years, in addition to the scheduled mortgage payment.¹⁸

■ *Protective advances* can be used to repair property, pay off a senior lien holder who intends to foreclose in cases where RHS is a junior lien holder, pay past-due taxes or insurance premiums, or pay for local assessments. A borrower who is unable to repay the advance in a lump sum may use a payment plan.¹⁹

In the event of default, RHS may accelerate the loan only when the delinquent amount is equal to three scheduled payments or where an amount equal to

Resources for the Homeownership and Home Repair Programs

- HB-1-3550 DLOS Field Office Handbook *and* HB-2-3550 DLOS Centralized Service Center Handbook, both *at* <http://rdinit.usda.gov/regs/hblist.html>.
- Rural Development Instruction, Procedural Notices, Administrative Notices, and RHS forms, *at* <http://rdinit.usda.gov/regs/>.
- USDA Departmental Directives, *at* www.usda.gov/ocio/directives/docs/usda/index.html.

two scheduled payments has been delinquent for at least three consecutive months.²⁰ When acceleration is based on nonpayment, the advocate should examine the account to verify that the delinquency meets these requirements. Be aware that RHS charges a fee to cover the cost to convert a cash payment to a money order and deducts the conversion fee from the payment.²¹ It assesses a late fee, currently 4 percent of the principal and interest due, when a full scheduled payment is not received within fifteen days after its due date.²² RHS may waive such fees under limited circumstances (e.g., when late payment is due to circumstances beyond the borrower’s control or waiver is necessary to service a delinquency). Of particular significance in determining if acceleration is proper is RHS’s practice of holding a partial payment in “suspense”—cashing the payment but not crediting it to the borrower’s account until the agency receives a subsequent amount that, combined with the partial payment, equals a full payment.²³

To accelerate the loan, RHS must send a notice to each borrower and any cosigner. If the borrower does not pay the full account balance and meet other

¹⁵ 42 U.S.C.A. § 1475(a).

¹⁶ 7 C.F.R. § 3550.207 (2002). On reamortization see *id.* § 3550.208 and Rural Development Forms 1951-33 and 3550-18 (visited July 1, 2002), <http://rdinit.usda.gov/regs/formtoc.html#1900>.

¹⁷ 7 C.F.R. § 3550.207 (2002).

¹⁸ *Id.* § 3550.205.

¹⁹ *Id.* § 3550.206

²⁰ *Id.* § 3550.202(b) (2002). See CSC Handbook, *supra* note 5, § 5.1.

²¹ 7 C.F.R. § 3550.152(a).

²² *Id.* § 3550.202(a), 3550.153.

²³ This practice is authorized by *id.* § 3550.152(b).

loan terms within thirty days, RHS may foreclose.²⁴ If a borrower's address differs from the property address, the acceleration notice must also be sent to property address.²⁵ A borrower who does not receive proper notice may challenge the acceleration and have the notice rescinded, opening the door to loan servicing.

The notice must contain a demand for full payment of the amount due, including unpaid principal and interest, protective advances, and any subsidy subject to recapture. It must notify the borrower of the reason for the acceleration, method of payment, opportunity for an informal discussion with the decision maker, and process for requesting an administrative hearing.²⁶ Once the mortgage is accelerated, the borrower is ineligible for loan servicing and may not cure unless such a right exists under state law.²⁷ The USDA Direct Single Family Programs Centralized Servicing Center Handbook does state that "the decision to accelerate the amount must not be made until the Service has made all reasonable efforts to help the borrower become successful."²⁸ A borrower may still make a due process argument to enforce the right to notice and an opportunity to be heard on eligibility for loan servicing.²⁹

To avoid foreclosure the borrower may, with RHS approval, refinance or sell the security property for at least net recovery value and apply the proceeds

to the account.³⁰ In some cases, if RHS accelerated the debt, it may accept a deed in lieu of foreclosure to convey title to the security property.³¹ If a junior lienholder or cosigner offers at least the net recovery value, RHS may assign the note and mortgage.³²

Appeals. To dispute a loan application denial, the first step is to seek reconsideration from the local field office. Otherwise clients may appeal denials of loan servicing or acceleration administratively without seeking reconsideration at the local level.³³ The applicant or borrower must file a request within thirty days to USDA's National Appeals Division.³⁴ The parties must submit short statements of their positions, copies of documentary evidence on which they plan to rely; and a list of anticipated witnesses with a brief description of their expected testimony; the judge must give the appellant fourteen days' notice of the date and time of a hearing. Relevant evidence is admissible "without regard to whether that evidence could be admitted in judicial proceedings."³⁵ The appellant bears the burden of proof by a preponderance of the evidence.

An unsuccessful appellant has thirty days to request review by the director, who in turn has thirty days to rule.³⁶ If the director's review is unfavorable, an appellant may request reconsideration within ten days.³⁷ Appellants may seek, in district

²⁴ *Id.* § 3550.211(c).

²⁵ CSC Handbook, *supra* note 5, § 6.5(B).

²⁶ *Id.* § 6.5(B).

²⁷ 7 C.F.R. § 3550.211(h) (2002). Georgia and Vermont are examples of states with court orders that require loan servicing after acceleration. *See* United States v. Shields, 733 F. Supp. 776 (D. Vt. 1989).

²⁸ CSC Handbook, *supra* note 5, § 6.5.

²⁹ Johnson v. USDA, 734 F.2d 774, 782 (11th Cir. 1984).

³⁰ 7 C.F.R. § 3550.211(d)(1).

³¹ *Id.* § 3550.211(d)(2).

³² *Id.* § 3550.211(d)(3).

³³ *Id.* § 3550.211(d)(2). For appeal procedures generally, see *id.* § 3550.4 & pt. 11.

³⁴ Information on the Appeals Division can be found at www.nad.usda.gov; its directives on procedures are at www.nad.usda.gov/directives.htm (visited July 1, 2002).

³⁵ *Id.*; 7 C.F.R. § 11.8(c)(5)(ii).

³⁶ *Id.* § 11.9(a)(1).

³⁷ *Id.* § 11.11(a).

Mobile Homes in Rural Areas

Mobile homes historically have constituted a significant portion of the housing stock in rural areas, but they have been plagued by poor craftsmanship.¹ In response to complaints of inadequate construction, Congress passed the National Manufactured Housing Construction and Safety Standards Act of 1974.² The U.S. Department of Housing and Urban Development (HUD) enforces the Act's standards through its Manufactured Housing Program and conducts inspections and investigations through private and state inspection organizations.³

Several other federal statutes protect owners of mobile homes. The Depository Institutions Deregulation and Monetary Control Act of 1980 expressly preempts all state laws that limit interest rates on loans creating first liens on residential real property and mobile homes, provided that the terms and conditions of the loans comply with regulations promulgated by the Federal Home Loan Bank Board.⁴ Many state laws incorporate the Act's protections but do not explicitly restate them; they merely refer to the Act and state that its protections are applicable. The Act establishes the right to the refund of precomputed finance charge, prohibits prepayment penalties, limits late charges and deferral fees, and requires notice before repossession, foreclosure, or acceleration. Both the Truth in Lending Act and the Real Estate Settlement Procedures Act apply to sales of mobile homes and require disclosure of the terms and cost of credit.⁵ The former also gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling.

State law governs registration, tag, and title issues for mobile or manufactured homes. Many states classify these as motor vehicles and require a certificate of title as proof of ownership just as they do for cars or trucks. In some states if the same person has title to a mobile or manufactured home and land to which it is permanently affixed, the home is treated and taxed as "real property." If a mobile or manufactured home is on land that is rented, state landlord tenant laws may regulate the rental of the land.

¹ See the National Consumer Law Center's Guide to Mobile Homes (www.nclc.org/manuals) for practical advice on buying and owning a mobile home.

² 42 U.S.C. § 5401 (2002).

³ 24 C.F.R. §§ 3280, 3282 (2002). The procedures for investigations and investigational proceedings are set forth in *id.* pt. 3800. For information about the Manufactured Housing program, see www.hud.gov/offices/hsg/sfh/mhs/mhshome.crm. For information about filing complaints, see www.hud.gov/offices/hsg/sfh/mhs/mhssaa.cfm.

⁴ 12 U.S.C. § 1735f-7; 12 C.F.R. § 590.4 (2002).

⁵ Truth in Lending Act, 15 U.S.C. §§ 1601 *et seq.* (2002), 12 C.F.R. §§ 266 *et seq.* (2002); Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601 *et seq.* (2002), 24 C.F.R. §§ 3500.1 *et seq.* (2002).

court, judicial review of any National Appeals Division final determinations.³⁸

Section 504 Home Repair Program

Section 504 loans and grants help very low-income owner-occupants in rural areas repair their property. Only the elderly are

eligible for grants. If an applicant is eligible for a grant but is able to repay a loan, the agency requires the applicant to accept a loan up to the limit of the repayment ability and the remainder in the form of a grant.

Grants, which are taxable income, are provided to remove health and safety haz-

³⁸ *Id.* § 11.13.

Resources for the Section 515 Multifamily Housing Program

- 7 C.F.R. Part 1930, Subpart C, Exhibit B, prescribes the regulations, policies, and procedures for management of Rural Rental Housing (RRH). The most significant sections are the following: *Definitions*, *id.*, para. 1; *Management Operations*, *id.* para. 5; *Renting Procedures*: *id.*, para. 6; *Certification and Verification of Income and Employment Information*, *id.*, para. 7; *Lease Agreements, Occupancy Agreements, Rules, and Other Tenant Information*, *id.*, para. 8; *Rent or Occupancy Charge Collection and Account Servicing*, *id.*, para. 9.
- HB-1-3565 Guaranteed Rural Rental Housing Program Origination and Servicing Handbook, at <http://rdint.usda.regs/hblst.html>.
- USDA Fact Sheet on Rural Rental Housing Loans, www.rur-dev.usda.gov/rhs/ProgramBriefs/brief_mfh_rrh.htm.

ards or to make the home accessible for household members with disabilities and must be repaid only if the property is sold within three years.³⁹ The lifetime limit on grants is \$7,500.⁴⁰ Borrowers may use loan funds for general repairs and improvements or to remove health and safety hazards; the sum of all loans may not exceed \$20,000.⁴¹ Loans are limited to an amount the borrower can repay at 1 percent with a twenty-year term.⁴² For amounts over \$2,500, the debt must be secured.⁴³

Repairs need not bring a dwelling up to the agency's minimum property standards, nor must all existing hazards be removed. However, the dwelling may not continue to have major health or safety hazards, and all work must comply with local construction codes and standards.⁴⁴

An eligible applicant must be the owner-occupant. A grant applicant must be at least 62 years old, have an adjusted household income that does not exceed the applicable very low-income limit, be

a U.S. citizen or a noncitizen who qualifies as a legal alien, be unable to obtain private credit (in most cases), have legal capacity, demonstrate adequate repayment ability, and possess a credit history that indicates reasonable ability and willingness to meet debt obligations.⁴⁵

Applications to remove health and safety hazards receive priority. Applications are accepted even when funds are not available. Applicants must receive a written decision; if applications are denied reasons must be given for the rejection. As under Section 502, the applicant may appeal a denial by requesting review by the local office and, if the denial is not reversed, using the appeal process.

Section 515 Multifamily Housing

The Section 515 program makes loans available to fund multifamily housing in rural areas.⁴⁶ RHS also offers two rental subsidies: interest credit that effectively reduces to 1 percent the interest rate the owner pays, thereby reducing the rent charged to tenants; and rental assistance that reduces a household's rent, including utilities, to 30 percent of household income.

A lease may be terminated only for material noncompliance or other good cause; its expiration is not grounds for eviction.⁴⁷ Conduct can be "other good cause" only if the tenant had prior notice that the conduct would result in termination. The tenant may continue in occupancy through the termination date or the specified date in a court order for eviction. If termination is due to a lease violation, rental assistance continues. If failure to recertify is the grounds for termination and the tenant is at fault, the landlord may charge rent at an unsubsidized rate during the period of occupancy. Tenants must receive, if re-

³⁹ On grants as taxable income see 7 C.F.R. §§ 3550.102(a), .114.

⁴⁰ *Id.* § 3550.112(c).

⁴¹ *Id.* §§ 3550.102(b), .112(a).

⁴² *Id.* § 3550.112(b).

⁴³ *Id.* § 3550.108.

⁴⁴ *Id.* § 3550.106.

⁴⁵ For eligibility criteria generally, see *id.* § 3550.103. See also *id.* §§ 3550.107(g) (must be owner-occupant), 3550.54 (income limit), 3550.10 (citizen/legal alien).

⁴⁶ 42 U.S.C. § 1485 (2002).

⁴⁷ 7 C.F.R. pt. 1930, subpart C, exhibit B, para. 14.

quired by state law, prior notice of lease violations in a form that the regulations require.⁴⁸ Tenants must receive a termination notice that states the basis for the termination and the location and regular office hours during which they may view their file and copy relevant information. The RHS local servicing office must review termination notices for technical compliance with federal and state requirements.

The Section 515 program has been the principal funding program for rural multifamily housing serving low-income persons, and many owners of this housing are now eligible to prepay their loans. With a portfolio of some 17,500 properties, RHS estimates that some 11,000 are at or nearing eligibility for prepayment and are at risk of sale or removal from the program.⁴⁹

⁴⁸ *Id.*

⁴⁹ For more information, see the National Housing Law Project Fact Sheet on Rural Rental Housing Preservation, at www.nhlp.org/html/rhs/rentpres.htm, or the National Affordable Housing Preservation Associates Inc. (NAHPA), www.nahpa.org/abouttheneed.htm.