

TO: State Directors  
Rural Development

ATTENTION: Multi-Family Housing Directors and Coordinators

FROM: Arthur A. Garcia     *(Signed by James C. Alsop)*     *for*  
Administrator  
Rural Housing Service

SUBJECT: Reporting, Authorization, Acceleration Requirements and  
Prepayment Tracking and Concurrence System (PRE-TRAC)  
For Multi-Family Housing Preservation Related Activities

PURPOSE/INTENDED OUTCOME:

To help standardize decision making during the prepayment process for Multi-Family Housing (MFH) projects, the Office of Rental Housing Preservation (ORHP) has issued several Administrative Notices (AN) to provide guidance. This AN consolidates that guidance. With the issuance of this AN, State and servicing offices will continue to use PRE-TRAC to process all Rural Rental and Farm Labor Housing prepayment requests to meet the requirements of RD Instruction 1965-E. Attachment A is general information about the PRE-TRAC system. Attachment B is a short summary of how paper based processing is now addressed by PRE-TRAC.

COMPARISON WITH PREVIOUS AN:

This AN is a re-issuance of preservation guidance previously provided in expired RD AN No. 3770, dated July 2, 2002.

IMPLEMENTATION RESPONSIBILITIES:

**1. Reporting, concurrence and authorization requirements.**

RD Instruction 1965-E requires State Offices to report all borrower requests to prepay MFH projects, including Rural Rental Housing (RRH) and both On-farm and Off Farm Labor Housing

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Preceding RD  
Instruction 1965-E

(FLH) projects. State Directors must obtain ORHP concurrence with any specific incentive offer, equity loan or nonprofit advance grant, and ORHP authorization prior to obligating or implementing any incentive, obligating an equity loan or a nonprofit advance grant, or accepting the final payment of any MFH loan. State Offices should discontinue the use of the existing process of Guide Letter 1965-E-1 when the reporting, concurrence and authorization process is replaced by the automated web-based PRE-TRAC application.

## **2. Considering the impact of acceleration actions on preservation.**

When the State Office is considering acceleration of a project loan, the problem case review should also consider the possibility that the borrower is forcing an acceleration to circumvent the prepayment process established by RD Instruction 1965-E. The review should consider the strength of the local housing market and the potential for conversion to conventional housing. If this is found to be a possible motivation, the State Office should work with the Office of the General Counsel (OGC) to determine if there are alternatives to acceleration, such as legal recourse for specific performance under loan and management documents.

## **3. Third-party equity loans in conjunction with preservation.**

RHS debt may be subordinated to allow for third-party equity loans in accordance with the provisions of RD Instruction 1965-B, section 1965.79. Third-party equity loans may also be in the form of junior liens established in accordance with section 1965.83. Tax-exempt or taxable bonds are an acceptable form of third-party equity.

Determination of the amount of any third-party equity loan will be in accordance with the general process established for determining Agency incentive equity loans. This process requires the use of an appraisal acceptable to the Agency and a review to assure that rents do not exceed comparable unsubsidized market rents. All appraisals will be developed using an “as-is” market value of the property as unsubsidized conventional rental housing.

Pursuant to RD Instruction 1965-B, section 1965.79(b)(2), the State Director or National Office may consider imposing a use restriction in exchange for granting the subordination, in order to further the MFH program objective of providing low-cost housing to as many eligible tenants as possible. Typically, the term of the use restriction will be 20 years for borrowers seeking 90 percent of equity value; 30 years for limited profit borrowers seeking up to 100 percent of equity at the time of a transfer; and for the “remaining useful life of the project” for nonprofit or public body borrowers seeking 100 percent or 102 percent of equity. Likewise, the National Office, pursuant to RD Instruction 1965-B, section 1965.83(b)(8), may consider adding comparable use restrictions as a part of its case-by-case review for authorizing junior liens.

State Directors should contact ORHP to request National Office authorization to use a third-party equity loan and either subordinate RHS debt or accept a junior lien. When Rental Assistance (RA) is necessary to allow for a third-party equity loan, National Office approval will be subject to the availability of RA.

## **4. General incentive offers.**

RD Instruction 1965-E, section 1965.213 and the Housing Act of 1949 require the Agency to offer an incentive to extend the restrictive-use when a borrower is eligible to receive incentives. If preliminary discussions with a borrower indicate that the borrower has no interest in receiving incentives to stay in the program, a general incentive offer may be made without the use of an appraisal.

The general incentive offer should reference RD Instruction 1965-E, section 1965.213(d), and list all of the incentives available including equity loans, rental assistance, increased return on investment, excess Section 8 rents, and conversion to or modification of interest credit. The general incentive offer notice must inform the borrower that a specific incentive offer will be provided at the borrower's request. If, as expected, the borrower rejects the general incentive offer, the Agency will proceed to the next steps under §1965.215.

If the borrower indicates in writing to the Agency that he or she would consider a specific incentive offer, a specific offer must be fully developed in accordance with RD Instruction 1965-E, using an appraisal.

### **5. Prepayment Process for MFH Loans (both RRH and FLH) Made Between 1979-1989 and Others Which Have Unexpired Restrictive-Use Provisions**

This guidance is on how to process prepayment requests from MFH borrowers who received loans on which restrictive-use provisions are still in place. Note these include MFH loans made after December 21, 1979, and before December 15, 1989, FLH loans made after December 14, 1989, and all MFH loans which have restrictive-use provisions as a result of a servicing action. These loans will be referred to as "restricted" loans.

After receiving a completed application to prepay and determining that the borrower has the ability to prepay, the Agency must make a reasonable effort to enter into a new restrictive-use agreement with the borrower before accepting an offer to prepay from a borrower with a restricted loan. Under this agreement, the borrower would make a binding commitment to extend the low-income use of the housing and related facilities for not less than 20 years, beginning on the date on which the new agreement is executed. While the Agency is statutorily prohibited from offering the borrower any incentives, the servicing office is to use its best efforts to enter into an extension of the restrictions with the borrower.

If the borrower is willing to enter into such an agreement, the servicing office should have the borrower agree to the restrictive-use provision (RUP) of RD Instruction 1965-E, Exhibit A-3, and sign the restrictive-use agreement (RUA) outlined in Exhibit G-1. The servicing office should then take the appropriate steps to make the title of the real property subject to the RUP. When using Exhibits A-3 and G-1 for this purpose, the expiration date to be entered on these forms will be 20 years or more from the date on which the new RUP and RUA are executed, rather than the end of the original RUP and RUA, as described on the forms.

If the borrower is unwilling to enter into a new RUP and RUA, the servicing office should document this fact in writing, noting the date on which this information was obtained. The document should be included in the casefile. If the borrower is willing to extend the low income use of the housing and related facilities for not less than 20 years and at the end of that period offer to sell to a qualified non-profit organization or public body then the borrower must sign the RUP of Exhibit A-4 (paragraph A) and the RUA of Exhibit G-2.

The servicing office should then proceed to review the impact on minorities and the availability of affordable housing. Based on that review, borrowers may be permitted to prepay under the following conditions:

- A. If minorities will be adversely impacted, the borrowers must agree to sell the project to a nonprofit or public body at the expiration of the current restrictive-use period by signing the RUP of Exhibit A-4 (paragraph A) and the RUA of Exhibit G-2; or

- B. If there is no impact on minorities, but there is a need for the housing, borrowers must sign the RUPs of Exhibit A-3 to honor the remaining period of the current restrictive-use provisions and Exhibit A-4 (paragraph C) to protect tenants in the project at the end of the current restrictive-use period, and sign the RUAs of Exhibit G-1 and Exhibit G-4. The RUA of Exhibit G-4 will have an effective date beginning with the expiration of the Exhibit A-3 RUP; or
- C. If there is no impact on minorities and no need for the housing, the borrower must sign the RUP of Exhibit A-3 to honor the remaining period of the current restrictive use provisions and sign the RUA of Exhibit G-1.

Borrowers unwilling to sign additional restrictive-use provisions or agreements as outlined above will be required to either sell the property to a nonprofit organization or public body, or be denied their request to prepay.

### **Contacting ORHP.**

ORHP looks forward to working with you to make PRE-TRAC a success. If you have any questions regarding PRE-TRAC, suggestions to make PRE-TRAC more effective, or issues about MFH preservation, please contact ORHP at:

Laurence Anderson	(202) 720-1611	<a href="mailto:laurence.anderson@usda.gov">laurence.anderson@usda.gov</a>
Cynthia Reese-Foxworth	(202) 720-1940	<a href="mailto:cynthia.reesefoxworth@usda.gov">cynthia.reesefoxworth@usda.gov</a>

Attachments

### **What changes with PRE-TRAC?**

PRE-TRAC is a web-based database application. This means that the Agency enters prepayment tracking information once for use by all administrative levels. The functions of Guide Letter 1965-E-1 and ORHP concurrence and authorization memos will be replaced by PRE-TRAC capabilities.

### **What does not change with PRE-TRAC?**

Prepayment processing and documentation requirements remain as specified in RD Instruction 1965-E. ORHP will conduct post prepayment file reviews to assure compliance with regulatory requirements. State Directors will be advised when files have been selected for post review. ORHP is available to provide support, advice and guidance throughout the prepayment process.

### **PRE-TRAC User's Manual.**

PRE-TRAC is designed to lead the user through the statutorily prescribed prepayment process. Released under separate cover, the PRE-TRAC User's Manual is written to follow and describe that process as well. It will be very helpful for your staff to review the User's Manual before working on PRE-TRAC.

In addition to providing a detailed description of system requirements, the User's Manual offers the following features: table of contents, prepayment requests and incentives flow chart, time line of prepayment requests and incentives, PRE-TRAC options and tabbed and labeled chapters.

### **Which Login ID to use?**

PRE-TRAC provides State Director's flexibility when assigning MFH preservation related responsibilities. PRE-TRAC allows either the State or servicing office to enter and modify prepayment requests. In either case, the State Office may review all entries within a State (see Chapter 15 of the PRE-TRAC User's Manual). The office that enters and modifies data is referred to as the "custodian of the records." Depending on how your State will process prepayments, use the following Login ID configurations:

- When the State Office will be the custodian of the records, the State Office will use their 2-digit Login ID.
- When the servicing office will be the custodian of the records, the servicing office will use their 5-digit Login ID and the State Office will use their 2-digit Login ID for review.

### **Required reporting to ORHP.**

State and servicing office reporting requirements of RD Instruction 1965-E and requests for concurrence and authorization described on RD Guide Letter 1965-E-1 will be met by entering data and selecting options on the PRE-TRAC "timeline" screen. See Attachment B for a short summary of how the requirements of Guide Letter 1965-E-1 are now processed under PRE-TRAC.

### **ORHP authorization and concurrence.**

**ORHP & the Deputy Administrator's Office will grant concurrence and authorizations for preservation actions through PRE-TRAC rather than through individual memorandums. The PRE-TRAC alert field on the "View Project Listing Screen" (See Chapter 6 of the PRE-TRAC User's Manual) will notify ORHP when State or Servicing Office action requires concurrence or authorization. Concurrence and authorizations will be issued as follows:**

#### Concurrence with specific incentive offers:

Concurrence is granted to make the specific incentive offer for the project as displayed in PRE-TRAC. The offer is to be made to the borrower, typically using the letter generated by PRE-TRAC. If deferred maintenance must be addressed, the incentive letter must include the requirement that any deferred maintenance must be addressed before any incentive may be received. To itemize the deferred maintenance, use the PRE-TRAC report "list of deferred maintenance items" which will be automatically generated when the offer letter is printed. All offers are made subject to the availability of funds and continued borrower eligibility.

#### Authorization of incentives:

Authorization of incentives by ORHP is made with the understanding that the borrower will sign the appropriate restrictive-use agreements (RUA) and that the appropriate restrictive-use provisions (RUP) will be inserted in a deed, declaration, or similar legal instrument that is not affected by the release of the deed of trust or mortgage. Unless otherwise noted, existing Agency debt will be reamortized. Any RA authorized as an incentive is added to your State's FY allocation. RA authorized may not be used for any other purpose. When working with AMAS transactions, be certain to complete the transactions in the following order:

1. Complete the M5A Screen
2. Complete the M5E Screen
3. Complete the M1A Screen
4. Complete the MRA Screen

Equity loans should be obligated as assistance code "014." The prepayment incentive code (PPI) is "IE" if no transfer is to take place simultaneously with the loan closing or "TE" if there will be a transfer. RA should be obligated with the correct "alpha" code for either elderly or family housing.

#### Authorization of prepayment:

Authorization of prepayment by ORHP is made with the understanding that the borrower will sign the appropriate RUAs and the appropriate RUPs will be inserted in a deed, declaration, or similar legal instrument that is not affected by the release of the deed of trust or mortgage.

### Actions not addressed by PRE-TRAC

It is important to note that several authorizations associated with prepayment will not be provided through PRE-TRAC, but will continue to be authorized by memorandum. These actions include waivers of the regulation, approvals of subordinations or junior liens, and the approval of the special nonprofit and public body advances and any other special conditions needed to facilitate the preservation action.

PRE-TRAC reporting is important to help the Agency understand and document preservation actions. Your continued cooperation is needed to ensure the accuracy of the Agency's data.

### **Helpful hints.**

- Read the PRE-TRAC User's Manual. The manual is a complete and useful description of PRE-TRAC written by the Agency staff who designed and developed the system.
- The timeline screen is the "backbone" of PRE-TRAC. After you enter the basic borrower and project information on pages 1 and 2 of the borrower information screens, your next stop should be the timeline screen. It has been designed to not only lead you through the prepayment process, you can also call other data entry screens based on the current processing step. By working from the timeline screen you can be sure that you are entering the right information at the right time.
- Do not close a "message box" by pressing the small "x" in the upper right-hand corner of the box. Always answer the question in the message box by pressing the appropriate "answer" button. Due to a non-system software bug, using the small "x" will close PRE-TRAC rather than just the message box. The Agency is working with the software vender and will fix this bug shortly.
- Entering multiple projects for the same borrower. PRE-TRAC allows for multiple projects owned by the same borrower to be entered under a single borrower record. Please read and follow the instructions found in chapter 7 of the PRE-TRAC User's Manual. Section 7.6 describes, in detail, the steps to follow.
- Entering multiple loans for the same project. Enter summarized information for projects with multiple loans on page 2 of the "Borrower Information Screen." In the "loan amount" field, enter the sum of the original plus all subsequent loans. In the "closing date" field, enter the date the last loan was closed. In the "payoff date" field, enter the date when all loans have been paid off.
- Viewing PRE-TRAC letters and reports. Sometimes you may not see the letter on your screen. The letter will appear in a separate browser window running the Adobe Acrobat Reader that stays hidden behind the window running the PRE-TRAC application. When this happens, tap "Alt + Tab" to bring the letter/report window to the front.

**Please share this information with your Multi-Family Housing staff.**

ATTACHMENT B  
RURAL HOUSING SERVICE  
OFFICE OF RENTAL  
HOUSING PRESERVATION (ORHP)  
Exh. 1965-E-1 Link to PRE-TRAC

1965-E-1 Actions	Link to PRE-TRAC User's Manual	What Happens
RD Places Borrower On List	Ch. 7, Borrower Information Screen	Establish borrower record; enter project information
	Ch. 8, Timeline Screen	Enter actions on Timeline Screen
	Ch. 9, Application Checklist Screen	ORHP recognizes complete applications when all items on page 1 of the Application Checklist Screen have an item submitted date.
RD Requests ORHP's Concurrence w/Incentive Offer	Ch. 8, Timeline Screen & Ch. 11, Incentive Calculation Worksheet	Complete pages 1 & 2 of worksheet. Review incentives on pages 3 through 9. Select incentives to offer on page 10 & 11. Complete actions on Timeline Screen and set alert flag to ORHP.
ORHP Concurs w/Incentive Offer	Ch. 8, Timeline Screen	You'll be prompted to set the alert flag to ORHP when you reach an activity that requires approval from ORHP. ORHP will set the alert flag to RD once they have given approval so that you can continue with the prepayment process. ORHP also updates amount approved and date on page 11 of the incentive calculation worksheet. <a href="#">This is ORHP's official concurrence; there will be no written correspondence from ORHP.</a>
RD Requests ORHP to Authorize Funds for Incentives Accepted by the Borrower	Ch. 8, Timeline Screen	Once specific incentives have been accepted, RD requests authorization of funds and sets the alert flag to ORHP.
ORHP Authorizes Funds for Incentives	Ch. 8, Timeline Screen	ORHP authorizes the funds on the Timeline Screen and sets the alert flag to RD so that you can continue with the prepayment process. <a href="#">ORHP's official concurrence will be followed by written correspondence from The Deputy Administrator's Office.</a>
RD Requests ORHP Concurrence with Prepayment Acceptance	Ch. 8, Timeline Screen, Ch. 9, Application Checklist Screen & Ch. 10, Prepayment Information Screen	RD shows proof of borrower's ability to prepay on the Prepayment Screen. RD enters needed information on Page 2 of the Application Checklist. RD completes actions on the Timeline Screen & sets alert flag to ORHP. <a href="#">NOTE: Setting RD/ORHP indicates which office needs to respond.</a>
ORHP Concurs with Prepayment Acceptance	Ch. 8, Timeline Screen & Ch. 10, Prepayment Screen	ORHP concurs with prepayment acceptance with applicable restrictions by updating the Timeline Screen. <a href="#">NOTE: Generate Letters. When the loan is prepaid, update actions on the Timeline Screen; update prepayment information on page 2 of the Prepayment Screen.</a>
Borrower Rejects Incentives & Offers to Sell to Nonprofit/Public Body	Ch. 8, Timeline Screen & Ch. 11, Incentive Calculation Worksheet Screen	RD updates actions on Timeline Screen and purchase agreement block on Page 11 of Incentive Calculation Worksheet Screen.
Ready to Process Transfer to Nonprofit/Public Body	Ch. 7, Borrower Information Screen, Ch. 8, Timeline Screen & Ch. 10, Prepayment Screen	Follow instructions referenced in Section 7.7. <a href="#">RD updates are required on the Timeline, Prepayment &amp; Borrower Information Screens.</a>
Remove From List	Ch. 8, Timeline Screen	If request is withdrawn, update activity and borrower status on the Timeline Screen.
<small>RECALL: securityblanket.xls</small>		