

DEPARTMENT OF AGRICULTURE**Rural Housing Service****Rural Business—Cooperative Service****Rural Utilities Service****Farm Service Agency****7 CFR Parts 1940 and 3565**

RIN 0575-AC14

Guaranteed Rural Rental Housing Program

AGENCIES: Rural Housing Service, Rural Business—Cooperative Service, Rural Utilities Service, Farm Service Agency, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: The Rural Housing Service (RHS) is issuing new regulations for the Guaranteed Rural Rental Housing Program (GRRHP). This action is taken to implement the "Housing Opportunity Program Extension Act of 1996." The program is intended to increase the supply of affordable rural multifamily housing through partnerships between the Agency and major lending sources, including banks, state and local housing finance agencies, and bond issuers.

DATES: The effective date of this interim final rule is July 22, 1998. Written comments must be received on or before September 21, 1998. The comment period for information collection under the Paperwork Reduction Act of 1995 continues through September 21, 1998.

ADDRESSES: Submit written comments, *in duplicate*, to the Chief, Regulations and Paperwork Management Branch, Rural Housing Service, U.S. Department of Agriculture, Stop 0743, 1400 Independence Avenue, SW, Washington, DC 20250-0743. Also, comments may be submitted via the Internet by addressing them to "comments@rus.usda.gov" and must contain the word "Housing" in the subject line. All written comments will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Carl W. Wagner, Acting Division Director, Multi-Family Housing Processing Division, Rural Housing Service, USDA, STOP 0781, 1400 Independence Avenue, SW, Washington, DC 20250-0781, telephone: (202) 720-1604.

SUPPLEMENTARY INFORMATION:**Classification**

This rule has been determined to be significant for the purposes of Executive Order 12886 and therefore has been

reviewed by the Office of Management and Budget.

Discussion of Use of Interim Final Rule

The Rural Housing Service exercises its emergency authority pursuant to section 534(c) of the Housing Act of 1949 to issue interim regulations for the section 538 Guarantee Rural Rental Housing program. Rural areas have been particularly impacted by a series of major natural disasters over the past six months, including the tornado destruction in the central and southern states. Only by providing funding under this interim rule will critically needed multi-family rental projects be undertaken and completed as soon as possible this year. This is important because the Agency will give priority in guarantee approvals provided under this interim rule for housing developments in designated disaster areas. This will help ensure that low and moderate-income families served by these projects will have greater likelihood of securing safe, decent, affordable housing prior to winter. Further, the Agency finds the interim rule a reasonable step under the unusual circumstances since most interested parties have had ample opportunity to comment on the section 538 program from pilots conducted by the Agency over the past two years and since these same parties will have ample opportunity to comment on the interim rule prior to the publication of the final rule for Fiscal Year 1999 funding cycle. For the same reason, good cause is shown for publication of the rule without advance notice and opportunity for comment. However, comments will be accepted for 60 days after publication of this interim rule and will be considered when the rule is finalized.

Program funding levels are made public in a "Notice of Funds Availability" (NOFA) published concurrently with this interim final rule. Approximately \$38 million in guaranteed loans is available in this fiscal year. Potential applicants are encouraged to apply as soon as possible and specifically take note of the priority to be given to areas impacted by Presidentially-declared disasters.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this order: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11, must be exhausted before bringing suit in

court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Programs Affected

The affected program is listed in the Catalog of Federal Domestic Assistance under Number 10.415, Rural Rental Housing Loans.

Intergovernmental Consultation

The program is subject to Executive Order 12372 which requires intergovernmental consultation with state and local officials. Intergovernmental consultation has been conducted in accordance with RD Instruction 1940-J.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of the Agency that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities even though this rulemaking action does involve a new program. At current funding levels of approximately \$38 million, less than 30 applications are likely to be approved for guarantees. The requirements for participation will not affect small entities to a greater extent than large entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to

identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objections of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background

The "Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act, 1996", provided funds to the Department to implement a multifamily mortgage guarantee program subject to enactment of authorizing legislation. On March 28, 1996, President Clinton signed the "Housing Opportunity Program Extension Act of 1996," which authorized the section 538 Guaranteed Rural Rental Housing Program for the 1996 fiscal year. Appropriations acts have extended the program through the 1998 fiscal year. The program is intended to reach the needs of rural America by complementing the section 515 Rural Rental Housing direct loan program. It is anticipated that beneficiaries of the program will be rural residents with low and moderate incomes. The rural residents will be provided rental housing through borrowers who receive financing from lenders encouraged to support multifamily affordable housing by the use of loan guarantees. Participants are encouraged to utilize the section 538 program in conjunction with other affordable housing financing and equity sources.

The Agency has developed regulations which are based on information gathered during the implementation of the fiscal year (FY) 1996 and 1997 demonstration programs. The demonstration programs were based upon informal listening sessions that were conducted by the Agency which were attended by approximately fifty different stakeholders, primarily those individuals representing mortgage bankers, federal agencies, housing interest groups, secondary market institutions, commercial bankers, private developers and various government regulatory agencies. The Agency received numerous comments and suggestions that were instructive in designing and structuring the demonstration program. The four most significant suggestions that were instituted in the demonstration program were: (1) use of NOFA with one point

of contact, (2) simple application package, (3) no second underwriting review, and (4) compatibility with products already found in the secondary market. The Agency and stakeholders were clear about using the guarantee program to serve low and moderate-income families in strong markets. The Agency took many of the recommendations provided by the stakeholders for the demonstration programs, as well as for the regulation that follows.

In the first demonstration in FY 1996, the Agency sought to explore the optimum level of the initial guarantee fee, response to a 90 percent guarantee, and the need and receptiveness in rural markets to a guaranteed multifamily housing loan program. In that demonstration year, 50 proposals were received. Agency funding was sufficient for 10 proposals, two of which used tax exempt bonds permitted for the first-year demonstration. In most proposals, a combination of leverage and strong markets produced units that were affordable by low and moderate-income families. An initial guarantee fee of 1 percent and a limitation for the interest rate spread of 300 basis points (3 percent) over the 30 year bond rate were accepted in the marketplace. Of the proposals that are now built and renting, the rate of occupancy is above average, evidencing the need and demand for this housing in rural America.

In the FY 1997 demonstration, the Agency reduced the interest rate spread to 200 basis points (2 percent) and added a one-half percent annual renewal fee to the guarantee fee. Tax exempt bonds were not permitted for the FY 97 demonstration. It was also clear the demonstration program was completely viable without the use of tax exempt bonds. The Agency received 20 proposals and funded 16. The reduced number of proposals was determined to be the result of a late notice, short turnaround time for submission of the proposals, lack of formal regulations, and some confusion as to the availability of the program in States that received approval of a proposal the first year. In all other regards, though, the fact that feasible projects were developed on such short notice illustrated a strong interest and need for the program.

While the Agency is soliciting comments on all provisions of the regulation, the Agency is specifically looking for comments on the following areas:

(1) Occupancy Requirements

The Agency is capping rents (including any tenant-paid utilities) at 30 percent of 115 percent of the area median income (the maximum rent that can be charged and still have the unit affordable to a moderate income family). However, to assure longer-term affordability to moderate-income tenants, the Agency also requires the average rents for all units to not exceed 30 percent of 100 percent of area median income. This should be easily accomplished since many proposals include Low-Income Housing Tax Credits that would restrict tenant eligibility to those at 60 percent of median income or below. The Agency is specifically looking for comments on the following: Does this rule unduly restrict borrower participation in the program? Is it a practical step to assure long term affordability to intended low and moderate-income families? Does it affect the ability of developers to acquire other financing, or to rehabilitate complexes in the out years? Is this preferable to requiring tenant certifications to assure the complex is serving low-and moderate-income families?

(2) Competitive Process and Selection Criteria

The regulations are developed for a fully funded program where funding authority would be sufficient to meet demand. Therefore, the regulations do not include selection criteria and give the Agency Administrator the discretion to establish such criteria in NOFA that entails a competitive process. The Agency intends to review the potential demand for the program annually and use a competitive process when it appears that demand outweighs available funding.

Purpose and Program Summary

The program has been designed to increase the availability of affordable multifamily housing through partnerships between the Agency and lending sources, as well as state and local housing finance agencies and bond issuers. Qualified lenders will be authorized to originate, underwrite, and close loans for multifamily housing projects to be guaranteed under this program. Projects may be for new construction or acquisition with substantial rehabilitation. The Agency will guarantee such loans upon review of the lender's underwriting package, appraisal report, appropriate certifications, project information, and satisfactory completion of the appropriate level of environmental

review by the Agency. Lenders will be responsible for loan underwriting, management and servicing associated with these projects. The lender will be expected to provide servicing or contract for servicing of each loan it underwrites. In turn, RHS will guarantee the lender's loan up to 90 percent of total development cost and commits to pay up to a maximum of 90 percent of the outstanding principal and interest balance of such loan in the case of default of the loan and filing of a claim. In no event will the Agency pay more than 90 percent of the original principal amount. This means that the Agency will have a risk exposure under the GRRHP of approximately 80 percent of the total development cost. Any losses would be split on a pro-rata split between the lender and the Agency from the first dollar lost.

Program applicability and funding will be announced by NOFA published in the **Federal Register**. When program funding levels exceed \$100 million, funds are allocated to states based on the following criteria: (1) State's percentage of National rural population, 2) State's percentage of the National number of rural households between 50 and 115 percent of the area median income, and (3) State's percentage of National average cost per unit. These criteria for allocation of funds to the states are consistent with other Agency housing programs. The criteria will enable the Agency to allocate funds based on a state's population and available households with income sufficient to meet the proposed rents, and to adjust the allocation for per unit new construction cost. The purpose of having a cost factor is to assure units produced reflect criteria for need, especially for high cost states. Eighty percent of the weight will be divided equally between population and income and 20 percent based on cost. When the funding levels are under \$100 million, funds will all be held in a National office reserve and made available administratively in accordance with the NOFA and program regulations.

Subpart A—General Provisions

This subpart includes the purpose and legislative authority for GRRHP, definitions of terms found in the regulation, the general provisions and federal requirements applicable to the program, and the authority to issue a competitive NOFA in the event demand exceeds available funding. Key policies of this subpart are:

Section 3565.5 *Ranking and Selection Criteria*

The Agency intends to guarantee proposals that provide housing to the areas of greatest need. While a variety of financing packages is possible, the demand in the eligible market areas will determine the economic and market feasibility of the proposed development. In the event demand is projected to exceed available funds, the Agency reserves the option to establish selection criteria in an annual NOFA. This flexibility permits the Agency to create and modify the criteria to assure that facilities with guaranteed loans are geographically dispersed and ensure that the high need areas are served. Criteria used in the demonstration programs and under consideration may include the following:

(1) *Partnering and Leveraging*

In order to develop the maximum number of housing units and promote partnerships with states, local communities, and other partners with similar housing goals, participation loans and leveraging are encouraged.

(2) *Priority Based On Interest Rate*

Priority will be provided to the proposals that set the lowest interest rate spread (difference between the 30-year Treasury Bill rate and the note rate). However, the program will permit proposals that require up to 200 basis points (2 percent) over the 30 year Treasury Bill rate.

(3) *Preference for Proposals in a Colonia, Tribal Land or EZ/EC Community or State Identified Place.*

Those proposals to be developed in a colonia, tribal land, or EZ/EC community, or in a place identified in the State consolidated plan or State needs assessment as a high need community for multifamily housing, will receive preference.

(4) *Geographic Diversity*

Priority will be given for smaller rural communities versus larger rural communities.

(5) *Commitment to Maintain Low-and Moderate-Income Occupancy*

Preference will be given for commitments by the applicant to maintain occupancy throughout the term of the loan for neediest (based on income) of the target population, with a priority at initial occupancy for low-income families.

(6) *Preference for Family Proposals*

Proposals addressing a need for family units with large bedroom mixes (3–5 bedrooms) will receive preference.

(7) *Administrator's discretion*

The Agency reserves the Administrator's discretion to effectively use funding to best explore program structure and effectiveness consistent with the best interests of the Government.

Section 3565.6 *Exclusion of Tax-exempt Debt*

Tax-exempt financing is not eligible for a loan guarantee in this program. However, the Agency has structured the program to be compatible with other affordable housing programs such as the Low Income Housing Tax Credit, taxable bonds, HOME Investment Partnerships Program (HOME) funds, and other State or locally funded tenant assistance or grants. Reviewers will note that regulations addressing eligibility of lenders, lien position, and minimum reporting to the Agency are intended to foster compatibility with the secondary market and other lenders' standards.

Subpart B—Guarantee Requirements

This subpart describes loans eligible for guarantee, extent of the guarantee and the guarantee fees. This subpart includes the transferability of the guarantee and the procedures the Agency will follow in the event the guarantee is reduced, suspended, or terminated. Key policies of this subpart are:

Section 3565.51 *Eligible Loans and Advances*

The Agency will guarantee a permanent loan or a combination construction and permanent loan. The Agency will not guarantee a construction loan that will not be converted into a permanent loan with an Agency guarantee. The construction loan *may not exceed 12 months*. The Agency will guarantee construction contracts (not to exceed 90 percent of the work in place) which have credit enhancements, such as an acceptable irrevocable letter of credit or pledge of collateral or both, to protect the government's guarantee. The Agency believes that providing construction guarantees will foster greater participation in the program, especially in many rural areas which suffer from a lack of available mortgage credit.

Section 3565.52 *Extent of Guarantee*

The Agency will guarantee repayment of an amount not to exceed 90 percent of the total unpaid principal and

interest of the loan but, in all cases, not more than 90 percent of the original principal amount. Any losses would be based on a pro-rata sharing of the risk between the Agency and the lender. For example: assume the total development cost is \$1,000,000, with the original loan principal amount being 90 percent of the total development cost or \$900,000. The Agency guarantees 90 percent of \$900,000, providing a maximum guarantee equal to \$810,000. If this loan were liquidated and the property sold for \$600,000, the claim would be for \$270,000 (\$900,000-\$600,000=\$300,000 × 90 percent = \$270,000). The lender's loss would be \$30,000.

Section 3565.53 Guarantee Fees

At the time of issuance of a loan guarantee under this program, the Agency will collect an initial guarantee fee equal to 100 basis points (1 percent) of the guaranteed principal obligation of the loan from the lender. The Agency will also collect an annual servicing fee of 50 basis points (½ percent) based on the outstanding principal and interest of the guarantee portion of the loan on the first and each subsequent anniversary of the loan as long as the guarantee remains outstanding. These fees are fairly standard in the industry. They were used under the section 538 demonstration programs and found to be acceptable. They also significantly reduce the cost of the program.

Subpart C—Lender Requirements

This subpart provides the Agency policy on types of lenders and their eligibility requirements for participation in the program. Lender review and approval for participation in the program is covered in this subpart. A lender must be eligible and approved to participate in the program. This subpart also covers a lender's ongoing eligibility requirements and responsibilities.

§ 3565.101 Responsibility of lenders

A participating lender must originate and service a guaranteed loan in accordance with the regulation and program requirements throughout the life of a loan or guarantee, whichever is less. In exceptional circumstances the Agency, in its sole discretion, may permit the transfer of servicing from the originating lender to a servicer.

Section 3565.102 Lender Eligibility

Those lenders currently approved and considered eligible by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Bank Members, or the Department of Housing and Urban Development for

guaranteed loan programs supporting multifamily housing are included as eligible lenders for this program. In addition, State Housing Finance Agencies (HFAs) are also considered eligible to participate in the program provided they demonstrate they have the ability to underwrite, originate, process, close, service, manage, and dispose of multifamily housing loans in a prudent manner. Other lenders have the opportunity to enter into a correspondent bank relationship with approved lenders in order to participate in the program. The Agency is striving to have as broad a pool of eligible lenders as possible.

Section 3565.103 Approval Requirements

To become an approved lender, eligible lenders (see § 3565.102) must meet a set of requirements for ongoing participation in the program. The Agency will establish and maintain a "list of approved lenders." The Agency will establish threshold requirements for becoming an approved lender and then require annual certification to show compliance with the continuing requirements for retaining the status of approved lender. The Agency "approved lender" list and review procedures meet the legislative requirements without placing unnecessary burden on the lenders participating or wanting to participate in the program.

The Agency is also considering requiring that approved lenders have computer systems that comply with year 2000 technology. The Agency is specifically interested in comments on such an eligibility requirement, the potential vulnerability to the servicing of a guaranteed portfolio with systems that are not year 2000 compliant, the potential vulnerability to the Agency, and the requirement's impact on lenders participation in the program.

Subpart D—Borrower Eligibility Requirements

This subpart contains the basic eligibility and loan underwriting requirements for loans on which an Agency guarantee is requested. It also contains identity of interest requirements, limitations for borrowers, as well as required certifications. These reinforce the Agency's intention not to re-underwrite the loan when borrower thresholds are met. Subparts H and I of this part outline the Agency's broad oversight responsibilities of the lender, the borrower and the project.

Subpart E—Loan Requirements

This subpart provides the Agency's direction to the lender in evaluating loans for compatibility with GRRHP. Also provided in this subpart are acceptable loan rates and terms. Key policies of this subpart are:

Section 3565.202 Tenant Eligibility and Section 3565.203 Restrictions on rents.

The Agency recognizes that many of the proposals seeking a guarantee under this program may have alternate financing sources that will be more restrictive in terms of income limits for eligible tenants. The law establishes a mandate to serve low and moderate-income families. Therefore, the rent cap for initial occupancy corresponds to the maximum "affordable" rent (based on legislated standard of 30 percent of income for rent and utilities) for moderate-income families. After initial occupancy, a tenant's income may exceed these limits; however, the Agency plans to restrict the average rents, including utilities, for the overall project to no more than 30 percent of 100 percent of area median income for the term of the loan. This is intended to assure broader marketability and longer occupancy by low-and moderate-income families. Lenders will be required to provide an annual rent certification, and the Agency intends to monitor rents.

Section 3565.204 Maximum Loan Amount

The enabling legislation mandates that the maximum loan amount eligible for guarantee involve a principal amount (including initial service charges, appraisal, inspection, and other reasonable fees) not to exceed 97 percent of the development costs of the housing and related facilities or the value of the housing and facilities (whichever is less) for a borrower that is a nonprofit organization or an agency or body of any State or local government. For a borrower that is a for-profit entity, the principal amount eligible for guarantee may be up to 90 percent of the development costs of the housing and related facilities or the value of the housing and facilities (whichever is less). In order to contain costs and keep project units modest in design and amenities, the Agency has set a cap for such part of the property as may be attributable to dwelling use equal to the applicable maximum per unit dollar amount limitations under section 207(c) of the National Housing Act, which has built-in flexibility for high and low cost markets.

As with other multifamily housing programs, loans are subject to a review conducted in conjunction with the applicable tax credit administration entity to determine if the proposal is in conformance with the Agency's subsidy layering requirements under its rural rental housing direct loan program (see 7 CFR 1944.213). The Agency will not guarantee a loan which is for more than the minimum amount of assistance necessary to make the complex financially feasible.

Section 3565.207 Form of Lien

The enabling legislation mandates that loans guaranteed under this program shall be secured by a first mortgage on the housing and related facilities for which the loan is made, or be secured by a parity lien in the case where the loan upon which the Agency guarantee is requested is not the primary funding source.

Section 3565.208 Maximum Loan Term

The enabling legislation mandates that loans must be completely amortized by periodic payments for a term not to exceed 40 years. A fixed rate of interest must be agreed upon by the borrower and the lender that does not exceed the maximum allowable rate established by the Administrator.

Section 3565.210 Maximum Interest Rate

The maximum allowable rate will be set in the annual NOFA as a number of basis points over the 30-year Treasury Bond Rate as published in the "Wall Street Journal" as of the business day previous to the business day the rate is set. Priority may be given to proposals that have rates lower than the maximum, with the lowest number of basis points receiving the highest priority.

Section 3565.211 Interest Credit

The law provides that, for at least 20 percent of the loans made under this program, the Agency shall provide the borrower with assistance in the form of interest credits to the extent necessary to reduce the rate of interest to the Applicable Federal Rate (AFR), as such term is used in section 42(l)(2)(D) of the Internal Revenue Code of 1986. For the FY 1997 demonstration program, the AFR was 6.25 percent. The Agency intends to limit use of this authority to no more than a guarantee of \$1.5 million per complex in order to maximize available budget authority and assist more rural residents. This policy is also necessary for program management and

budgeting of the interest credit available in any fiscal year.

Section 3565.214 Release of Liability

The legislation imposes a restriction of non-assumability by a party other than the original borrower when any portion of the principal obligation or interest remains outstanding with a GRRHP loan. The borrower may not be relieved of liability with respect to the loan, notwithstanding the transfer of property for which the loan was made. Loans guaranteed under this program may be made on a recourse or non-recourse basis. The lender should make the decision about whether to make a recourse or non-recourse loan.

Subpart F—Property Requirements

The guidance in the section provides direction for the lender and the borrower on property requirements and contains the Agency's overall policy on housing design and standards. Flexibility is provided to meet needs of the rural communities in which the housing is to be located. Key policies of this subpart are:

Section 3565.251 Eligible Property

The Agency is required to guarantee loans on units located in rural areas as defined in 7 CFR 3550.10. Each State Director is responsible for designating the rural area for his or her state and providing such information to the public upon request. The definition of a rural area, in part, is one that is located in a place of 10,000 population or less; or a place of 20,000 population or less that is not associated with a Metropolitan Statistical Area. The Agency's direct rural rental housing program's requirements on prioritizing and designating most needy places are not applicable to the guarantee program.

Section 3565.252 Housing Types

Complexes may contain modular or manufactured units, that are attached, detached, semi-detached, row houses, or multifamily structures. The Agency proposes to guarantee proposals for new construction or acquisition with rehabilitation of at least \$15,000 per unit. Refinancing of existing housing and indebtedness is not an authorized purpose. The portion of the guaranteed funds for acquisition with rehabilitation is limited to 25 percent of the program authority. The Agency's objective, consistent with the enabling legislation, is to expand the housing stock. New construction is typically more cost effective in both the short and long term.

Subpart G—Processing Requirements

This subpart establishes the loan origination, underwriting and appraisal standards, as well as the allowable fees, processing steps, guarantee process, and closing requirements. The requirements for lender loan processing and project servicing, management and disposition are clearly listed in this subpart. Key policies of this subpart are:

Section 3565.303 Issuance of Loan Guarantee

In order to reduce the Agency risk and encourage the lender and borrower to provide the necessary housing as quickly as possible, the Agency will only issue the loan guarantee when a final certificate of occupancy and an acceptable level of occupancy has been reached. The Agency will require the lender, as part of the guarantee package for the permanent loan, to certify that the appropriate occupancy has been reached and that the final certificate of occupancy has been issued.

Subpart H—Project Management

This subpart contains the required project management thresholds. Key policies are:

Section 3565.351 Project Management

The enabling legislation requires the Agency to provide tenant protection. The Agency currently has regulations for tenant protection under the direct program and intends to provide tenants in units financed with a loan guarantee the same protections already contained in 7 CFR part 1944, subpart L. The borrower must inform tenants in writing of these rights.

Section 3565.352 Preservation of Affordable Housing

Enabling legislation requires the placement of "use restrictions" on the property so that the housing remains available for initial occupancy by low- and moderate-income households for the original term of the guaranteed loan. This requirement will be included in a deed restriction or other instrument acceptable to the Agency.

Subpart I—Servicing Requirements

The minimum requirements for servicing responsibilities are listed in this subpart. The Agency has divided the servicing into the lender's responsibilities and the borrower's responsibilities. While the Agency intends to maintain prudent oversight responsibility for the program, the rules attempt to balance the need for quality servicing while providing a reasonable impact on the lender. Key policies of this subpart are:

Section 3565.401 Servicing Objectives

The following four servicing objectives provide the foundation for all of the servicing on the guaranteed loan.

- (1) Protecting the interests of tenants,
- (2) Preserving the value of the loan and real estate,
- (3) Avoiding or limiting potential loss to the lender and Agency, and
- (4) Furthering program objectives.

Subpart J—Assignment, Conveyance and Claims

This subpart reflects the Agency's intent to make this product compatible with the other products that exist on the secondary market. The enabling legislation is silent on most of the areas under this subpart. Therefore, the Agency looked to guarantee programs of other Federal and government sponsored entities for guidance and models. Advice and recommendations in this area are welcome. Key policies of this subpart are:

Section 3565.453 Disposition of the Property

The lender is responsible for liquidation of the security in most cases prior to filing a claim for payment under the guarantee. Foreclosure action will be taken by the lender, under state law. The Agency provides direction in this subpart to the lender in coordinating the liquidation of the security with the Agency.

Section 3565.455 Alternative Disposition Methods

The Agency authorizes alternative methods for disposition of the security, such as assignment or conveyance to the Agency, but these methods may be used at the Agency's sole discretion. At this time, the Agency would view these methods as unusual for disposition of the security.

Section 3565.456 Filing a Claim

The Agency will look to the lender to dispose of the property before filing a final claim for the guaranteed portion of allowable losses. This is consistent with other guarantee programs and industry standards.

Also included within this document is an amendment to 7 CFR part 1940, subpart L which establishes the formula for allocation of funds to Rural Development State Offices.

Paperwork Reduction Act

The reporting requirements contained in this regulation have received temporary emergency clearance by the Office of Management and Budget

(OMB) under Control Number 0575-0174. However, in accordance with the Paperwork Reduction Act of 1995, RHS will seek standard OMB approval of the reporting requirements contained in this regulation and hereby opens a 60-day public comment period.

On March 28, 1996, President Clinton signed the "Housing Opportunity Program Extension Act of 1996." One of the provisions of the Act was the authorization of the section 538 Guaranteed Rural Rental Housing Program, adding the program to the Housing Act of 1949. The program has been designed to increase the supply of affordable multifamily housing through partnerships between RHS and major lending sources, as well as State and local housing finance agencies and bond issuers. Qualified lenders will be authorized to originate, underwrite, and close loans for multifamily housing projects requiring new construction or acquisition with rehabilitation of at least \$15,000 per unit.

The housing must be available for occupancy only by low or moderate income families or persons, whose incomes at the time of initial occupancy do not exceed 115 percent of the median income of the area. After initial occupancy, a tenant's income may exceed these limits; however, rents, including utilities, are restricted to no more than 30 percent of the 115 percent of area median income for the term of the loan.

Units must be located in areas considered eligible as defined in 7 CFR 3550.10.

The Secretary is authorized under section 510(k) of the Housing Act of 1949 to prescribe regulations to ensure that these federally funded loans are made to eligible applicants for authorized purposes. The lender must evaluate the eligibility, cost, benefits, feasibility, and financial performance of the proposed project. The information submitted by the lender to the Agency is used by the Agency to manage, plan, evaluate, and account for Government resources. The reports are required to ensure the proper and judicious use of public funds.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .39 man hours per response.

Respondents: Profit and nonprofit organizations and public bodies.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 33.

Estimated Total Annual Burden on Respondents: 644.39 hours.

The subject regulation is published for public review and comment. Additional copies of the interim rule or copies of this information collection can be obtained from Tracy Gillin, Regulations and Paperwork Management Branch, Support Services Division, Rural Development, at (202) 692-0039.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses with regard to paperwork burden will be summarized, included in the request for OMB approval, and will become a matter of public record. Comments should be submitted to Tracy Gillin, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW, Washington, DC 20250-0742.

List of Subjects*7 CFR Part 1940*

Administrative practice and procedure, Agriculture, Grant programs—Housing and community development, Loan programs—Agriculture, Rural areas.

7 CFR Part 3565

Bankruptcy, Banks, banking Civil rights, Conflict of interests, Credit, Environmental impact statements, Fair housing, Government procurement, Guaranteed loans, Hearing and appeal procedures, Housing standards, Lobbying, Low and moderate income housing, Manufactured homes, Mortgages, Real property acquisition, Surety bonding.

Therefore, chapters XVIII and XXXV, title 7, Code of Federal Regulations are amended as follows:

CHAPTER XVIII—RURAL HOUSING SERVICE, RURAL BUSINESS-COOPERATIVE SERVICE, RURAL UTILITIES SERVICE, AND FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE

PART 1940—[Amended]

1. The authority citation for part 1940 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, and 42 U.S.C. 1480.

2. Section 1940.560 is added to read as follows:

§ 1940.560 Guarantee Rural Rental Housing Program.

When funding levels are under \$100,000,000, all funds will be held in a National Office reserve and made available administratively in accordance with the Notice of Funding Availability (NOFA) and program regulations. When program levels are sufficient for a nationwide program, funds are allocated based upon the following criteria and weights.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart.

Each factor will receive a weight respectively of 40%, 40% and 20%. The criteria used in the basic formula are:

(1) State's percentage of National rural population,

(2) State's percentage of the National number of rural households between 50 and 115 percent of the area median income, and

(3) State's percentage of National average cost per unit. Data source for the first two of these criterion are based on the latest census data available. The third criterion is based on the cost per unit data using the applicable maximum per unit dollar amount limitations under section 207(c) of the National Housing Act, which can be obtained from the Department of Housing and Urban Development. The percentage representing each criterion is multiplied by the weight assigned and totaled to arrive at a State factor.

State Factor = (criterion No. 1 × weight of 40%) + (criterion No. 1 × weight of 40%) + (criterion No. 1 × weight of 20%)

(c) *Basic formula allocation.* See § 1940.552(c).

(d) *Transition formula.* See § 1940.552(d).

(e) *Base allocation.* See § 1940.552(e). Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f). Jurisdictions receiving

formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g).

(h) *Pooling of funds.* See § 1940.552(h).

(i) *Availability of the allocation.* See § 1940.552(i).

(j) *Suballocation by the State Director.* See § 1940.552(j).

(k) *Other documentation.* Not applicable.

CHAPTER XXXV—RURAL HOUSING SERVICE, UNITED STATES DEPARTMENT OF AGRICULTURE

3. Part 3565 is added to read as follows:

PART 3565—Guaranteed Rural Rental Housing Program

Subpart A—General Provisions

Sec.

- 3565.1 Purpose.
- 3565.2 Applicability and authority.
- 3565.3 Definitions.
- 3565.4 Availability of assistance.
- 3565.5 Ranking and selection criteria.
- 3565.6 Exclusion of tax-exempt debt.
- 3565.7 Agency environmental requirements.
- 3565.8 Civil rights.
- 3565.9 Compliance with federal requirements.
- 3565.10 Conflict of interest.
- 3565.11–3565.12 [Reserved]
- 3565.13 Exception authority.
- 3565.14 Review and appeals.
- 3565.15 Oversight and monitoring.
- 3565.16 [Reserved]
- 3565.17 Demonstration programs.
- 3565.18–3565.49 [Reserved]
- 3565.50 OMB control number.

Subpart B—Guarantee Requirements

- 3565.51 Eligible loans and advances.
- 3565.52 Extent of the guarantee.
- 3565.53 Guarantee fees.
- 3565.54 Transferability of the guarantee.
- 3565.55 Participation loans.
- 3565.56 Suspension or termination of loan guarantee agreement.
- 3565.57 Modification, extension, reinstatement of loan guarantee.
- 3565.58–3565.99 [Reserved]
- 3565.100 OMB control number.

Subpart C—Lender Requirements

- 3565.101 Responsibility of lenders.
- 3565.102 Lender eligibility.
- 3565.103 Approval requirements.
- 3565.104 Application requirements.
- 3565.105 Lender compliance.
- 3565.106 Construction lender requirements.
- 3565.107 [Reserved]
- 3565.108 Responsibility for actions of agents and mortgage brokers.
- 3565.109 Minimum loan prohibition.
- 3565.110 Insolvency of lender.
- 3565.111 Lobbying activities.
- 3565.112–3565.149 [Reserved]
- 3565.150 OMB control number.

Subpart D—Borrower Eligibility Requirements

- 3565.151 Eligible borrowers.
- 3565.152 Control of land.
- 3565.153 Experience and capacity of borrower.
- 3565.154 Previous participation in state and federal programs.
- 3565.155 Identity of interest.
- 3565.156 Certification of compliance with federal, state, and local laws and with Agency requirements.
- 3565.157–3565.199 [Reserved]
- 3565.200 OMB control number.

Subpart E—Loan Requirements

- 3565.201 General.
- 3565.202 Tenant eligibility.
- 3565.203 Restrictions on rents.
- 3565.204 Maximum loan amount.
- 3565.205 Eligible uses of loan proceeds.
- 3565.206 Ineligible uses of loan proceeds.
- 3565.207 Form of lien.
- 3565.208 Maximum loan term.
- 3565.209 Loan amortization.
- 3565.210 Maximum interest rate.
- 3565.211 Interest credit.
- 3565.212 Multiple guaranteed loans.
- 3565.213 Geographic distribution.
- 3565.214 Release of liability.
- 3565.215 Special conditions.
- 3565.216–3565.249 [Reserved]
- 3565.250 OMB control number.

Subpart F—Property Requirements

- 3565.251 Eligible property.
- 3565.252 Housing types.
- 3565.253 Form of ownership.
- 3565.254 Property standards.
- 3565.255 Environmental requirements.
- 3565.256 Architectural services.
- 3565.257 Procurement actions.
- 3565.258–3565.299 [Reserved]
- 3565.300 OMB control number.

Subpart G—Processing Requirements

- 3565.301 Loan standards.
- 3565.302 Allowable fees.
- 3565.303 Issuance of loan guarantee.
- 3565.304 Lender loan processing responsibilities.
- 3565.305 Mortgage and closing requirements.
- 3565.306–3565.349 [Reserved]
- 3565.350 OMB control number.

Subpart H—Project Management

- 3565.351 Project management.
- 3565.352 Preservation of affordable housing.
- 3565.353 Affirmative fair marketing.
- 3565.354 Fair housing accommodations.
- 3565.355 Changes in ownership.
- 3565.356–3565.399 [Reserved]
- 3565.400 OMB control number.

Subpart I—Servicing Requirements

- 3565.401 Servicing objectives.
- 3565.402 Servicing responsibilities.
- 3565.403 Special servicing.
- 3565.404 Transfer of mortgage servicing.
- 3565.405–3565.449 [Reserved]
- 3565.450 OMB control number.

Subpart J—Assignment, Conveyance, and Claims

- 3565.451 Preclaim requirements.
- 3565.452 Decision to liquidate.
- 3565.453 Disposition of the property.
- 3565.454 [Reserved]
- 3565.455 Alternative disposition methods.
- 3565.456 Filing a claim.
- 3565.457 Determination of claim amount.
- 3565.458 Withdrawal of claim.
- 3565.459–3565.499 [Reserved]
- 3565.500 OMB control number.

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—General Provisions**§ 3565.1 Purpose.**

The purpose of the Guaranteed Rural Rental Housing Program (GRRHP) is to increase the supply of affordable rural rental housing, through the use of loan guarantees that encourage partnerships between the Rural Housing Service, private lenders and public agencies.

§ 3565.2 Applicability and authority.

The regulation prescribes the policies, authorizations, and procedures for the guarantee of multifamily loans under section 538 of the Housing Act of 1949.

§ 3565.3 Definitions.

Administrator. The Administrator of the Rural Housing Service, or his or her designee.

Agency. The Rural Housing Service, or a successor agency.

Allowable claim amount. The total losses incurred by the lender, as calculated pursuant to subpart J of this part.

Applicable Federal Rate (AFR). The interest rate set by the federal government for federal financing programs pursuant to section 42 of the Internal Revenue Code.

Approved lender. An eligible lender who has been authorized by the Agency to originate and service guaranteed multifamily loans under the program.

Assignment. The delivery by a lender to the Agency of the note and any other security instruments securing the guaranteed loan; and any and all liens, interest, or claims the lender may have against the borrower.

Assistance. Financial assistance in the form of a loan guarantee or interest credit received from the Agency.

Borrower. The individuals or entities responsible for repaying the loans.

Claim. The presentation to the Agency of a demand for payment for losses incurred on a loan guaranteed under the program.

Combination construction and permanent loan. The Agency may guarantee a construction contract which has credit enhancements to protect the

Government's interest. The construction guarantee will be converted to a permanent guarantee when construction is completed and the requirements contained in the conditional commitment are met.

Conditional commitment. The written commitment by the Agency to guarantee a loan subject to the stated terms and conditions.

Correspondent relationship. A contractual relationship between an approved lender and a non-approved lender or mortgage broker in which the correspondent performs certain origination, underwriting or servicing functions for the approved lender.

Default. Failure by a borrower to meet any obligation or term of a loan, grant, or regulatory agreement, or any program requirement.

Delinquency. Failure to make a timely payment under the terms of the promissory note or regulatory agreement.

Department of Housing and Urban Development (HUD). A federal agency which may be a partner in some of the Agency guarantees.

Due diligence. The process of evaluating real estate in the context of a real estate transaction for the presence of contamination from release of hazardous substances, petroleum products, or other environmental hazards and determining what effect, if any, the contamination has on the regulatory status or security value of the property.

Eligible borrower. A borrower who meets the requirements of subpart D of this part.

Eligible lender. A lender who meets the requirements of subpart C of this part or any successor regulation.

Eligible loan. A loan that meets the requirements of subpart E of this part or any successor regulation.

Eligible rural area. An eligible rural area is an area which meets the requirements of part 3550 of this chapter or any successor regulation.

Fannie Mae. A Federally chartered—publicly owned enterprise created by Congress to purchase, sell or otherwise facilitate the purchase or sale of mortgages in the secondary mortgage market.

Federal Home Loan Bank System. A system of member savings and loans, banks and other lenders whose primary business is the making of housing loans.

Final claim payment. The amount due to the lender (or the Agency) after disposition of the collateral is complete and the proceeds from liquidation, as well as any other claim payments, are applied against the allowable claim amount.

Foreclosure. The process by which the ownership interest of a borrower in a mortgaged property is extinguished and the security is liquidated with the proceeds applied to the loan.

Freddie Mac. A Federally chartered, publicly owned enterprise created to purchase, sell or otherwise facilitate the purchase or sale of mortgages in the secondary mortgage market.

GRRHP. Guaranteed Rural Rental Housing Program.

Guarantee fees. The fees paid by the lender to the Agency for the loan guarantee.

(1) An initial guarantee fee is due at the time the guarantee is issued.

(2) An annual guarantee fee is due at the beginning of each year that the guarantee remains in effect.

Guaranteed loan. Any loan for which the Agency provides a loan guarantee.

Housing Finance Agency (HFA). A state or local government instrumentality authorized to issue housing bonds or otherwise provide financing for housing. Identity of interest. With respect to a project, an actual or apparent financial interest of any type, that exists or will exist among the borrower, contractor, lender, syndicator, management agent, suppliers of materials or services, including professional services, or vendors (including servicing and property disposal), in any combination of relationships which may result in an actual or perceived conflict of interest

Income eligibility. A determination that the income of a tenant at initial occupancy does not exceed 115 percent of the area median income as such area median income is defined by HUD or a successor agency.

Interest credit. A subsidy available to eligible borrowers that reduces the effective interest rate of the loan to the AFR.

Land lease. A written agreement between a landowner and a borrower for the possession and use of real property for a specified period of time.

Lease. A contract containing the rights and obligations of a tenant or cooperative member and a borrower, including the amount of the monthly occupancy charge and other terms under which the tenant will occupy the housing.

Lender. A bank or other financial institution, including a housing finance agency, that originates or services the guaranteed loan.

Lender Agreement. The written agreement between the Agency and the lender containing the requirements the lender must meet on a continuing basis to participate in the program.

Loan. A mechanism by which a lender funds the acquisition and development of a multifamily project. A loan in this context is secured by a mortgage executed by the lender and borrower.

Loan guarantee. A pledge to pay part of the loss incurred by a lender in the event of default by the borrower.

Loan guarantee agreement. The written agreement between the Agency and the lender containing the terms and conditions of the guarantee with respect to an individual loan.

Loan participation. A loan made by more than one lender wherein each lender funds an individual portion of the loan.

Loan-to-value ratio. The amount of the loan divided by the appraised market value of the project.

Maximum guarantee payment. The maximum payment by the Agency under the guarantee agreement computed by applying the guarantee percentage times the allowable claim amount, but not to exceed original principal amount.

Mortgage. A written instrument evidencing or creating a lien against real property for the purpose of providing collateral to secure the repayment of a loan. For program purposes, this may include a deed of trust or any similar document.

Multifamily project. A project designed with five or more living units.

NOFA. A "Notice of Funding Availability" published in the **Federal Register** to inform interested parties of the availability of assistance and other non-regulatory matters pertinent to the program.

Non-monetary default. A default that does not involve the payment of money.

Note. Any note, bond, assumption agreement, or other evidence of indebtedness pertaining to a guaranteed loan.

Office of Inspector General (OIG). The agency of USDA established under the Inspector General Act.

Payment effective date. For the month payment is due, the day of the month on which payment will be effectively applied to the account by the lender, regardless of the date payment is received.

Permanent loan. A loan that becomes effective upon Agency acceptance of a lender certification of an acceptable minimum level of occupancy.

Prepayment. The payment of the outstanding balance on a loan prior to the note's maturity date.

Project. The total number of rental housing units and related facilities subject to a guaranteed loan that are

operated under one management plan and one Regulatory Agreement.

Program requirements. Any requirements contained in any loan document, guarantee agreement, statute, regulation, handbook, or administrative notice.

Promissory Note. See "Note".

Qualified alien. For the purposes of this part, qualified alien refers to any person lawfully admitted into the country who meets the criteria of 42 U.S.C. 1436a.

Real Estate Owned. Denotes real estate that has been acquired by the lender or the Agency (often known as "inventory property").

Recourse. The lender's right to seek satisfaction from the borrower's personal financial resources or other resources for monetary default.

Regulatory Agreement. The agreement that establishes the relationship among the Agency, the lender, and the borrower; and contains the borrower's responsibilities with respect to all aspects of the management and operation of the project.

RHS. The Rural Housing Service within the Rural Development mission area, or a successor agency, which administers section 538 guarantees.

Rural area. A geographic area as defined in section 520 of the Housing Act of 1949.

Rural Development. A mission area within USDA which includes RHS, Rural Utilities Service, and Rural Business-Cooperative Service.

Servicing. The broad scope of activities undertaken to manage the performance of a loan throughout its term and to assure compliance with the program requirements.

Single asset ownership. A borrower who owns only one project.

Surplus cash. The borrower's remaining funds at the project's fiscal year end, after making all required payments, excluding required reserves and escrows.

Tenant. The individual that holds the right to occupy a unit in accordance with the terms of a lease executed with the project owner.

U.S. citizen. An individual who resides as a citizen in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands.

USDA. The United States Department of Agriculture.

§ 3565.4 Availability of assistance.

The Agency's authority to enter into commitments, guarantee loans, or

provide interest credits is limited to the extent that appropriations are available to cover the cost of the assistance. The Agency will publish a NOFA in the **Federal Register** to notify interested parties of the availability of assistance.

§ 3565.5 Ranking and selection criteria.

(a) **Threshold criteria.** Applications for loan guarantee submitted by lenders must include a loan request for a project that meets all of the following threshold criteria:

(1) The project must involve an owner and a development team with qualifications and experience sufficient to carry out development, management, and ownership responsibilities, and the owner and development team must not be under investigation or suspension from any government programs;

(2) The project must involve the financing of a property located in an eligible rural area;

(3) Demonstrate a readiness, for the project to proceed, including submission of a complete application for a loan guarantee and evidence of financing;

(4) Demonstrate market and financial feasibility; and

(5) Include evidence that the credit risk is reasonable, taking into account conventional lending practices, and factors related to concentration of risk in a given market and with a given borrower.

(b) **Priority projects.** The Agency may, at its sole discretion, set aside assistance for or rank projects that meet important program goals. Assistance will include both loan guarantees and interest credits. Priority projects must compete for set-aside funds. The Agency will announce any assistance set aside and selection criteria in the NOFA.

§ 3565.6 Exclusion of tax-exempt debt.

Consistent with Administration Policy, tax-exempt financing cannot be used as a source of capital for the guaranteed loan.

§ 3565.7 Agency environmental requirements.

The Agency will take into account potential environmental impacts of proposed projects by working with applicants, other federal agencies, Indian tribes, State and local governments, and interested citizens and organizations in order to formulate actions that advance the program goals in a manner that will protect, enhance, and restore environmental quality. Actions taken by the Agency under this subpart are subject to an environmental review conducted in accordance with the requirements of 7 CFR part 1940, subpart G or any successor regulations.

§ 3565.8 Civil rights.

(a) All actions taken by the Agency, or on behalf of the Agency, by a lender or borrower, will be conducted without regard to race, color, religion, sex, familial status, marital status, national origin, age, or disability, pursuant to 7 CFR part 15 (1998). This includes any actions in the sale, rental or advertising of the dwellings; in the provision of brokerage services; or in making available residential real estate transactions involving Agency assistance. See the Fair Housing Act, as amended, 42 U.S.C. 3601–3619 (1994); see also the Equal Credit Opportunity Act, 42 U.S.C. 1691–1691(f) (1994 and Supp. I, 1995). It is unlawful for a lender or borrower participating in the program to:

(1) Refuse to make accommodations in rules, policies, practices, or services if such accommodations are necessary to provide a person with a disability an opportunity to use or continue to use a dwelling unit and all public and common use areas; and

(2) Refuse to allow an individual with a disability to make reasonable modifications to a unit at his or her expense, if such modifications may be necessary to afford the individual full enjoyment of the unit.

(b) Any resident or prospective resident seeking occupancy or use of a unit, property or related facility for which a loan guarantee has been provided, and who believes that he or she is being discriminated against may file a complaint with the lender, the Agency or the Department of Housing and Urban Development. A written complaint should be sent to the Secretary of Agriculture or of the Department of Housing and Urban Development in Washington, DC.

(c) Lenders and borrowers that fail to comply with the requirements of title VIII of the Civil Rights Act of 1968, as amended (the Fair Housing Act), are liable for those sanctions authorized by law.

§ 3565.9 Compliance with federal requirements.

The Agency and the lender are responsible for ensuring that the application is in compliance with all applicable federal requirements, including the following specific statutory requirements:

(a) *Intergovernmental review.* 7 CFR part 3015, subpart V, “Intergovernmental Review of Department of Agriculture Programs and Activities”, or successor regulation, including the Agency supplemental administrative instruction, RD

Instruction 1940–J (available in any Rural Development Office).

(b) *National flood insurance.* The National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973; the National Flood Insurance Reform Act of 1994; and 7 CFR part 1806, subpart B, or successor regulation.

(c) *Clean Air Act and Water Pollution Control Act Requirements.* For any contract, all applicable standards, orders or requirements issued under section 306 of the Clean Air Act; section 508 of the Clean Water Act; Executive Order 11738; and EPA regulations at part 32, of title 40.

(d) *Historic preservation requirements.* The provisions of 7 CFR part 1901, subpart F or successor regulation.

(e) *Section 504 of the Rehabilitation Act of 1973; the Fair Housing Act; and the Americans with Disabilities Act.*

(f) *Lead-based paint requirements.* The provisions of 7 CFR part 1924, subpart A, or successor regulation.

§ 3565.10 Conflict of interest.

(a) *Objective.* It is the objective within the Rural Development mission area to maintain the highest standards of honesty, integrity, and impartiality by employees.

(b) *Rural Development requirement.* To reduce the potential for employee conflict of interest, all Rural Development activities will be conducted in accordance with 7 CFR part 1900, subpart D, or successor regulation by Rural Development employees who:

- (1) Are not themselves a beneficiary;
- (2) Are not family members or known relatives of any beneficiary; and
- (3) Do not have any business or personal relationship with any beneficiary or any employee of a beneficiary.

(c) *Rural Development employee responsibility.* Rural Development employees must disclose any known relationship or association with a lender or borrower or their agents, regardless of whether the relationship or association is known to others. Rural Development employees or members of their families may not purchase a Real Estate Owned property, security property from a borrower, or security property at a foreclosure sale.

(d) *Loan closing agent responsibility.* Loan closing agents (or members of their families) who have been involved with a particular property are precluded from purchasing such properties.

(e) *Lender and borrower responsibility.* Lenders, borrowers, and their agents must identify any known

relationship or association with a Rural Development employee.

§§ 3565.11–3565.12 [Reserved].**§ 3565.13 Exception authority.**

An Agency official may request and the Administrator or designee may make an exception to any requirement or provision, or address any omission of this part if the Administrator determines that application of the requirement or provision, or failure to take action, would adversely affect the government's interest or the program objectives.

§ 3565.14 Review and appeals.

Whenever RHS makes a decision that is adverse to a lender or a borrower, RHS will provide written notice of such adverse decision and of the right to a USDA National Appeals Division hearing in accordance with 7 CFR part 11 or successor regulations. The lender or borrower may request an informal review with the decision maker and the use of available alternative dispute resolution or mediation programs as a means of resolution of the adverse decision. Any adverse decision, whether appealable or non-appealable may also be reviewed by the next level RHS supervisor. Adverse decisions affecting project tenants or applicants for tenancy will be handled in accordance with 7 CFR part 1944, subpart L or successor regulations.

§ 3565.15 Oversight and monitoring.

The lender, borrower, and all parties involved in any manner with any guarantee under this program must cooperate fully with all oversight and monitoring efforts of the Agency, Office of Inspector General, the U.S. General Accounting Office, and the U.S. Department of Justice or their representatives including making available any records concerning this transaction. This includes the annual eligibility audit and any other oversight or monitoring activities. If the Agency implements a requirement for an electronic transfer of information, the lender and borrower must cooperate fully.

§ 3565.16 [Reserved]**§ 3565.17 Demonstration programs.**

To test ways to expand the availability or enhance the effectiveness of the guarantee program, or for similar purposes, the Agency may, from time to time, propose demonstration programs that use loan guarantees or interest credit. Toward this end, the Agency may enter into special partnerships with lenders, financial intermediaries, or others to carry out one or more elements

of a demonstration program. Demonstration programs will be publicized by notices in the **Federal Register**.

§§ 3565.18–3565.49 [Reserved]

§ 3565.50 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0174.

Subpart B—Guarantee Requirements

§ 3565.51 Eligible loans and advances.

Upon approval of an application from an approved lender, the Agency will commit to providing a guarantee for a permanent loan or a combination construction and permanent loan, subject to the availability of funds. The Agency will not guarantee a construction loan that is not a combination construction and permanent loan.

§ 3565.52 Extent of the guarantee.

A guarantee of a permanent loan will be made once the project has attained a minimum level of acceptable occupancy as determined by the lender with Agency concurrence. The required occupancy level must be reached before the commitment for a loan guarantee, including any extensions, expires. For combination construction and permanent loans, the Agency will guarantee advances during the construction loan period (which can not exceed 12 months). The guarantee of construction loan advances will convert to a permanent loan guarantee once the required level of occupancy has been reached.

(a) *Maximum guarantee amount.* The maximum guarantee for a permanent loan will be 90 percent of the unpaid principal and interest of the loan. The Agency liability under any guarantee will decrease or increase, in proportion to any increase or decrease in the amount of the unpaid portion of the loan, up to the maximum amount specified in the guarantee document. The Agency will guarantee construction contracts not to exceed 90 percent of the work in place which have credit enhancements to protect the Government's guarantee. Acceptable credit enhancements include:

- (1) Surety bonding or performance and payment bonding are the preferred credit enhancement;
- (2) An irrevocable letter of credit acceptable to the Agency; and

(3) A pledge by the lender of acceptable collateral.

(b) *Lesser guarantee amount.* The Agency may provide a lesser guarantee based upon its evaluation of the credit quality of the loan.

(c) *Cancellation or reduction to the guarantee amount.* In cases of fraud, misrepresentation, abuse, negligence, or failure to follow the terms of the guarantee or the note, the Agency may cancel the guarantee.

§ 3565.53 Guarantee fees.

As a condition of receiving a loan guarantee, the Agency will charge the following guarantee fees to the lender.

(a) *Initial guarantee fee.* The Agency will charge an initial guarantee fee equal to 100 basis points (1 percent) of the principal amount of the loan. The fee will be collected at the time of commitment.

(b) *Annual guarantee fee.* An annual guarantee fee of at least 50 basis points (one-half percent) of the outstanding principal amount of the loan will be charged each year or portion of a year that the guarantee is in effect. Each calendar year, this fee will be collected in advance, beginning on the first anniversary of the loan.

(c) *Surcharge for guarantees on construction advances.* The Agency may, at its sole discretion, charge an additional fee on the portion of the loan advanced during construction. This fee will be charged in advance at the start of construction and will be announced in NOFA before loan approval.

§ 3565.54 Transferability of the guarantee.

A lender must receive the Agency's approval prior to any sale or transfer of the loan guarantee.

§ 3565.55 Participation loans.

Loans involving multiple lenders are eligible for a guarantee when one of the lenders is an approved lender and agrees to act as the lead lender with responsibility for the loan under the loan guarantee agreement.

§ 3565.56 Suspension or termination of loan guarantee agreement.

A guarantee agreement will terminate when one of the following actions occurs: (In accordance with subpart H of this part, use restrictions on the property will remain if the following actions take place prior to the term of the loan and RHS determines the restrictions apply.)

- (a) *Voluntary termination.* A lender and borrower voluntarily request the termination of the loan guarantee.
- (b) *Agency withdrawal of guarantee.* The Agency withdraws the loan guarantee in the event of fraud,

misrepresentation, abuse, negligence, or failure to meet the program requirements.

(c) *Mortgage pay-off.* The loan is paid.

(d) *Settlement of claim.* Final settlement of the claim.

§ 3565.57 Modification, extension, reinstatement of loan guarantee.

To protect its interest or further the objectives of the program, the Agency may, at its sole discretion, modify, extend, or reinstate a loan guarantee. In making this decision the Agency will consider potential losses under the program, impact on the tenants and the public reaction that may be received regarding the action. Further, the Agency may authorize a guarantee on a new loan that is originated as a part of a workout agreement.

§§ 3565.58–3565.99 [Reserved]

§ 3565.100 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0174.

Subpart C—Lender Requirements

§ 3565.101 Responsibility of lenders.

A participating lender must originate and service a guaranteed loan in accordance with the regulation and program requirements throughout the life of a loan or guarantee, whichever is less. When it is in the best interests of the Agency, the Agency may permit the transfer of servicing from the originating lender to a servicer.

§ 3565.102 Lender eligibility.

An eligible lender must be a licensed business entity or HFA in good standing in the state or states where it conducts business; be approved by the Agency; and meet at least one of the criteria contained below. Lenders who are not eligible may participate in the program if they maintain a correspondent relationship with a lender who is eligible. An eligible lender must:

- (a) Meet the qualifications of, and be approved by, the Secretary of HUD to make multifamily housing loans that are to be insured under the National Housing Act;
- (b) Meet the qualifications and be approved by Fannie Mae or Freddie Mac to make multifamily housing loans that are to be sold to such corporations;
- (c) Be a state or local HFA, or a member of the Federal Home Loan Bank system, with a demonstrated ability to underwrite, originate, process, close,

service, manage, and dispose of multifamily housing loans in a prudent manner;

(d) Be a lender who meets the requirements for Agency approval contained in this subpart and has a demonstrated ability to underwrite, originate, process, close, service, manage, and dispose of multifamily housing loans in a prudent manner; or

(e) Be a lender who meets the following requirements in addition to the other requirements of this subpart and of subpart I of this part:

(1) Have qualified staff to perform multifamily housing servicing and asset management;

(2) Have facilities and systems that support servicing and asset management functions; and

(3) Have documented procedures for carrying out servicing and asset management responsibilities.

§ 3565.103 Approval requirements.

The Agency will establish and maintain a "list of approved lenders". To be an approved lender, eligible lenders must meet the following requirements and maintain them on a continuing basis at a level consistent with the nature and size of their portfolio of guaranteed loans.

(a) *Commitment.* A lender must have a commitment for a guaranteed loan or an agreement to purchase a guaranteed loan.

(b) *Audited statement.* A lender must provide the Agency with an annual audited financial statement conducted in accordance with generally accepted government auditing standards.

(c) *Previous participation.* A lender may not be delinquent on a federal debt or have an outstanding finding of deficiency in a federal housing program.

(d) *Ongoing requirements.* A lender must meet the following requirements at initial application and on a continuing basis thereafter:

(1) Overall financial strength, including capital, liquidity, and loan loss reserves, to have an acceptable level of financial soundness as determined by a lender rating service (such as Sheshunoff, Inc.); or to be an approved Fannie Mae, Freddie Mac or HUD Federal Housing Administration multifamily lender; or, if a state housing finance agency, to have a top tier rating by a rating agency (such as Standard and Poor's Corporation);

(2) Bonding and insurance to cover business related losses, including directors and officers insurance, business income loss insurance, and bonding to secure cash management operations;

(3) A minimum of two years experience in originating and servicing multifamily loans;

(4) A positive record of past performance when participating in RHS or other federal loan programs;

(5) Adequate staffing and training to perform the program obligations; the head underwriter must have 3 years of experience and all staff must receive annual multifamily training;

(6) Demonstrated overall financial stability of the business over the past five years;

(7) Evidence of reasonable and prudent business practices for management of the program; and

(8) No negative information on Dunn & Bradstreet or similar type report.

§ 3565.104 Application requirements.

Eligible lenders must submit a lender approval application, in a format prescribed by the Agency. The lender approval application submission must occur at the time the lender submits its first application for a loan guarantee, or its first application to purchase a guaranteed loan. The application must include documentation of lender compliance with § 3565.103. A non-refundable application fee will be charged for each review of a lender's application. The amount of the fee will be announced in NOFA.

§ 3565.105 Lender compliance.

A lender will remain an approved lender unless terminated by the Agency. To maintain approval, the lender must comply with the following requirements.

(a) Maintain eligibility in accordance with §§ 3565.102 and 3565.103;

(b) Comply with all applicable statutes, regulations, and procedures;

(c) Inform the Agency of any material change in the lender's staffing, policies and procedures, or corporate structure;

(d) Cooperate fully with all program or Agency monitoring and auditing policies and procedures, including the Agency's annual audit of approved lenders; and

(e) Maintain active participation in the multifamily guaranteed loan program by initiating a new loan guarantee or holding a loan guaranteed under this program.

§ 3565.106 Construction lender requirements.

A lender making a construction loan, as part of a combination construction and permanent loan, must demonstrate an ability to originate and service construction loans, in addition to meeting the other requirements of this subpart.

§ 3565.107 [Reserved].

§ 3565.108 Responsibility for actions of agents and mortgage brokers.

An approved lender is responsible for the actions of its agents and mortgage brokers.

§ 3565.109 Minimum loan prohibition.

A lender must not establish a minimum loan amount for loans under this program.

§ 3565.110 Insolvency of lender.

The Agency may require a lender to transfer a guaranteed loan or loans to another approved lender prior to a determination of insolvency by the lender. If the lender fails to transfer a loan when required, the guarantee will be considered null and void.

§ 3565.111 Lobbying activities.

An approved lender must comply with RD Instruction 1940-Q (available in any Rural Development Office) regarding lobbying activities.

§§ 3565.112–3565.149 [Reserved]

§ 3565.150 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0174.

Subpart D—Borrower Eligibility Requirements

§ 3565.151 Eligible borrowers.

Guaranteed loans must be made to an eligible borrower whose intention is to provide and maintain rural rental housing. The ownership entity must be a valid entity in good standing under the laws of the jurisdiction in which it is organized. Eligible borrowers shall include individuals, corporations, state or local public agencies or an instrumentality thereof, partnerships, limited liability companies, trusts, Indian tribes, or any organization deemed eligible by the Agency. Eligible borrowers must be U.S. citizens or permanent legal residents; a U.S. owned corporation, or a limited liability company, or partnership in which the principals are U.S. citizens or permanent legal residents.

§ 3565.152 Control of land.

At time of application, the lender must have evidence of site control by the borrower (option to purchase, lease, deed or other evidence acceptable to the Agency). At the time of loan closing, the lender's closing docket must provide documentary evidence that the borrower

owns or has a long-term lease on the land on which the housing is or will be located. The form of ownership or the leasehold agreement must meet Agency requirements. Notwithstanding any investment in the site, the site may not be accepted based on the Agency's environmental assessment.

§ 3565.153 Experience and capacity of borrower.

At the time of application, the lender must certify that the borrower:

- (a) Has the ability and experience to construct or rehabilitate multifamily housing that meets the requirements established by the Agency, the lender and the loan agreement;
- (b) Has the legal and financial capacity to meet all of the obligations of the loan; and
- (c) Has the ability and experience to meet the property management requirements established by the Agency, the lender, and the loan agreement.

§ 3565.154 Previous participation in state and federal programs.

Loans to borrowers who are delinquent on a federal debt may not be guaranteed. Furthermore, borrowers or principals thereof who have defaulted on state or local government loans will not be eligible for a guarantee unless the Agency determines that the default was beyond the borrower's control, and that the identifiable reasons for the default no longer exist. At the time of application, the lender must obtain from the borrower a certification that the borrower is not under any state or federal order suspending or debaring participation in state or federal loan programs and that the borrower is not delinquent on any non-tax obligation to the United States.

§ 3565.155 Identity of interest.

At the time of application, the lender must certify that it has disclosed any and all identity of interest relationships and preexisting conditions with respect to its relationships and that of the borrower, or that no identity of interest relationships exists. Identity of interest relationships include any financial or other relationship that exists or will exist between a lender, borrower, management agent, supplier, or any agent of any of these entities, that could influence, give the appearance of influencing or have the potential to influence the actions of the parties in carrying out their responsibilities under the program. Disclosure will be in a form and manner established by the Agency.

§ 3565.156 Certification of compliance with federal, state, and local laws and with Agency requirements.

At the time of application, the lender must obtain from the borrower a certification of compliance with all applicable federal, state, and local laws, and with Agency requirements regarding discrimination and equal opportunity in housing, including title VIII of the Civil Rights Act of 1968, and the Fair Housing Amendments Act of 1988. The borrower must also certify that it is not the subject of any federal, state, or local sanction or punitive action.

§§ 3565.157–3565.199 [Reserved]

§ 3565.200 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0174.

Subpart E—Loan Requirements

§ 3565.201 General.

To be eligible for a guarantee, a loan must comply with the provisions of this subpart and be originated by an approved lender.

§ 3565.202 Tenant eligibility.

(a) *Limits on income of tenants.* The housing units subject to a guaranteed loan must be available for occupancy only by low or moderate-income families or individuals whose incomes at the time of initial occupancy do not exceed 115 percent of the area median income. After initial occupancy, a tenant's income may exceed these limits.

(b) *Citizenship status.* A tenant must be a United States citizen or a noncitizen who is a qualified alien as defined in § 3565.3.

§ 3565.203 Restrictions on rents.

The rent for any individual housing unit, including any tenant-paid utilities, must not exceed an amount equal to 30 percent of 115 percent of area median income, adjusted for family size. In addition, on an annual basis, the average rent for a project, taking into account all individual unit rents, must not exceed 30 percent of 100 percent of area median income, adjusted for family size.

§ 3565.204 Maximum loan amount.

(a) *Section 207(c) limits and exceptions.* For that part of the property that is attributable to dwelling use, the principal obligation of each guaranteed

loan must not exceed the applicable maximum per-unit limitations under section 207(c) of the National Housing Act.

(b) *Loan-to-value limits.* (1) In the case of a borrower that is a nonprofit organization or an agency or body of any State, local or tribal government, each guaranteed loan must involve a principal obligation that does not exceed the lesser of 97 percent of:

- (i) The development costs of the housing and related facilities, or
- (ii) The lender's determination of value not to exceed the appraised value of the housing and facilities.

(2) In the case of a borrower that is a for-profit entity or other entity not referred to in paragraph (b)(1) of this section, each guaranteed loan must involve a principal obligation that does not exceed the lesser of 90 percent of:

- (i) The development costs of the housing and related facilities, or
- (ii) The lender's determination of value not to exceed the appraised value of the housing and facilities.

(3) To protect the interest of the Agency or to further the objectives of the program, the Agency may establish lower loan-to-value limits or further restrict the statutory maximum limits based upon its evaluation of the credit quality of the loan.

(c) *Necessary assistance review.* (1) A lender requesting a loan guarantee must review all loans to determine the appropriate amount of assistance necessary to complete and maintain the project. The lender shall recommend to the Agency an adjustment in the loan amount if appropriate as a result of this review.

(2) Where the project financing combines a guaranteed loan with Low-Income Housing Tax Credits or other Federal assistance, the project must conform to the policies regarding necessary assistance in 7 CFR part 1944, subpart E or successor provision.

§ 3565.205 Eligible uses of loan proceeds.

Eligible uses of loan proceeds must conform with standards and conditions for housing and facilities contained in 7 CFR part 1924, subpart A or successor provision, except that the Agency, at its sole discretion, may approve, in advance, a higher level of amenities, construction, and fees for projects proposed for a guaranteed loan provided the costs and features are reasonable and customary for similar housing in the market area.

(a) *Use of loan proceeds.* The proceeds of a guaranteed loan may be used for the following purposes relating to the project.

(1) New construction costs of the project;

(2) Moderate or substantial rehabilitation of buildings and acquisition costs when related to the rehabilitation of a building as described in paragraph (b) of this section;

(3) Acquisition of existing buildings, when approved by the Agency, for projects that serve a special housing need;

(4) Acquisition and improvement of land on which housing will be located;

(5) Development of on-site and off-site improvements essential to the use of the property;

(6) Development of related facilities such as community space, recreation, storage or maintenance structures, except that any high cost recreational facility, such as swimming pools and exercise clubs or similar facilities, must be specifically approved in advance by the Agency;

(7) Construction of on-site management or maintenance offices and living quarters for operating personnel for the property being financed;

(8) Purchase and installation of appliances and certain approved decorating items, such as window blinds, shades, or wallpaper;

(9) Development of the surrounding grounds, including parking, signs, landscaping and fencing;

(10) Costs associated with commercial space provided that:

(i) The project is designed primarily for residential use;

(ii) The commercial use consists of essential tenant service type facilities, such as laundry rooms, that are not otherwise conveniently available;

(iii) The commercial space does not exceed 10 percent of the gross floor area of the residential units and common areas, unless a higher level is specifically approved in writing by the Agency; and

(iv) The commercial activity is compatible with the use of the project and that the income is not more than 10 percent of the total annual operating income of the project.

(11) Costs for feasibility determination, loan application fees, appraisals, environmental documentation, professional fees or other fees determined by the Agency to be necessary to the development of the project;

(12) Technical assistance to and by non-profit entities to assist in the formation, development, and packaging of a project, or formation or incorporation of a borrower entity;

(13) Education programs for a board of directors, both before and after incorporation of a cooperative that will serve as the borrower;

(14) Construction interest accrued on the construction loan;

(15) Relocation assistance in the case of rehabilitation projects;

(16) Developers' fees; and

(17) Repaying applicant debts in the following cases:

(i) When the Agency authorizes in writing in advance the use of loan funds to pay debts for work, materials, land purchase, or other fees and charges before the loan is closed; or

(ii) When the Agency concurs in writing with a determination by the lender that costs for work, fees and charges incurred prior to loan application are integral to development of the guarantee application and project.

(b) *Rehabilitation requirements.* Rehabilitation work must be classified as either moderate or substantial as defined in exhibit K of 7 CFR part 1924, subpart A or a successor document. In all cases, the building or project must be structurally sound, and improvements must be necessary to meet the requirements of decent, safe, and sanitary living units. Applications must include a structural analysis, along with plans and specifications describing the type and amount of planned rehabilitation. The project as rehabilitated must meet the applicable development standards contained in 7 CFR part 1924, subpart A or a successor regulation, as well as any applicable historic preservation requirements. All proposed rehabilitation projects are subject to an environmental review completed in accordance with 7 CFR part 1940, subpart G or a successor regulation.

§ 3565.206 Ineligible uses of loan proceeds.

Loan proceeds must not be used for the following:

(a) Specialized equipment for training and therapy;

(b) Housing in military impact areas;

(c) Housing that serves primarily temporary and transient residents;

(d) Nursing homes, special care facilities and institutional type homes that require licensing as a medical care facility;

(e) Operating capital for central dining facilities or for any items not affixed to the real estate, such as special portable equipment, furnishings, kitchen ware, dining ware, eating utensils, movable tables and chairs, etc.;

(f) Payment of fees, salaries and commissions or compensation to borrowers (except developers' fees); or

(g) Refinancing of an outstanding debt, except in the case of an existing guaranteed loan where the Agency determines that the refinancing is in the

government's interest or furthers the objectives of the program. The term and amount of any loan for refinancing must not exceed the maximum loan amount or term limits.

§ 3565.207 Form of lien.

The loan originated by the lender for a guarantee must be secured by a first lien against the property.

§ 3565.208 Maximum loan term.

(a) *Statutory term limit.* The lender may set the term of the loan, but in no instance may the term of a guaranteed loan exceed the lesser of 40 years or the remaining economic life of the project.

(b) *Prepayment of loans.* A guaranteed loan may be prepaid in whole or in part at the determination of the lender, and upon the lender's written notice to the Agency at least 30 days prior to the expected date of prepayment. The Agency will not pay any lockout or prepayment penalty assessed by the lender. The lender must certify the following in the notice of prepayment:

(1) The lease documents used by the borrower or its agent prohibit the abrogation of tenant leases in the event of prepayment; and

(2) The borrower has notified tenants of the request to prepay the loan, including notice of the prohibition against abrogation of the lease and the policy and procedure for handling complaints regarding compliance with the long-term use restriction as contained in subpart H of this part.

§ 3565.209 Loan amortization.

Each guaranteed loan must contain provisions for the complete amortization of the loan by periodic payments. The Agency will not guarantee a loan that comes due before expiration of its full amortization period, such as a balloon loan.

§ 3565.210 Maximum interest rate.

The interest rate for a guaranteed loan must not exceed the maximum allowable rate specified by the Agency in NOFA. Such rate must be fixed over the term of the loan.

§ 3565.211 Interest credit.

(a) *Limitation.* For at least 20 percent of the loans made during each fiscal year, the Agency will provide assistance in the form of interest credit, to the extent necessary to reduce the agreed-upon rate of interest to the AFR as such term is used in section 42(l)(2)(D) of the Internal Revenue Code of 1986, 26 U.S.C. 7805, § 1.42-1T.

(b) *Selection criteria.* The Agency will select projects to receive interest credits using any of such criteria as the Agency

may establish for priority projects as contained in subpart A of this part.

§ 3565.212 Multiple guaranteed loans.

The Agency may guarantee more than one loan on any project if all guaranteed loans, in the aggregate, comply with these regulations, including without limitation:

(a) In the aggregate, loans do not exceed the maximum guaranteed loan amount and loan-to-value limits, as contained in § 3565.204;

(b) In the aggregate, loans are all to be secured equally by a first lien as the Agency may, at its sole discretion, determine necessary to ensure repayment of the loans; and

(c) If different lenders originate the loans, each lender has executed an intercreditor agreement in form and substance acceptable to the Agency; and

(d) The loans do not contain tax exempt financing.

§ 3565.213 Geographic distribution.

The Agency may refuse to guarantee a loan in an area where there is undue risk due to a concentration in the market of properties subject to a Agency guaranteed loan. The Agency will consider the credit quality of the loan and overall market conditions in making a determination of undue risk. If any of the Agency guaranteed loans in the market are experiencing vacancy rates in excess of 15% and the vacancy is due to market conditions, the Agency will invoke this provision and not guarantee the loan.

§ 3565.214 Release of liability.

Notwithstanding the transfer of the property for which the loan was made, borrowers may not be relieved of liability for a guaranteed loan if any portion of the principal or interest or any protective advance made on behalf of the borrower is outstanding.

§ 3565.215 Special conditions.

(a) Use of third party funds. As a condition of receiving a guaranteed loan, the Agency, or the lender if designated by the Agency, must review the terms and conditions of any secondary financing or funding of projects, including loans, capital grants or rental assistance.

(b) *Recourse*. If required by the lender, loans guaranteed under this program may be made on a recourse or nonrecourse basis, or with any personal or special borrower guarantees on collateralization.

§§ 3565.216–3565.249 [Reserved]

§ 3565.250 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is

required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0174.

Subpart F—Property Requirements

§ 3565.251 Eligible property.

To be eligible for a guaranteed loan, a property must be used primarily for residential dwelling purposes and must meet the following requirements or the requirements of this subpart:

(a) *Property location*. All the property must be located in a rural area.

(b) *Minimum size of development*.

The property must consist of at least five rental dwelling units.

(c) *Non-contiguous sites*. For a loan secured by two or more non-contiguous parcels of land, all sites must meet each of the following requirements:

(1) Located in one market area;

(2) Managed under one management plan with one loan agreement or resolution for all of the sites; and

(3) Consist of single asset ownership.

(d) *Compliance with Statutes*. All properties must comply with the applicable requirements in section 504 of the Rehabilitation Act of 1973, the Fair Housing Act, the Americans with Disabilities Act, and other applicable statutes.

§ 3565.252 Housing types.

The property may include new construction or substantially rehabilitated existing structures. The units may be attached, detached, semi-detached, row houses, modular or manufactured houses, or multifamily structures. Manufactured housing must meet Agency requirements contained in 7 CFR part 1924, subpart A or a successor regulation. The Agency proposes to guarantee proposals for new construction or acquisition with rehabilitation of at least \$15,000 per unit. The portion of the guaranteed funds for acquisition with rehabilitation is limited to 25 percent of the program authority.

§ 3565.253 Form of ownership.

The property must be owned in fee simple or be subject to a ground lease or other legal right in land acceptable to the Agency.

§ 3565.254 Property standards.

(a) *Housing quality and site and neighborhood standards*. The property must meet the site and neighborhood requirements established by the state or locality, and those standards contained under 7 CFR part 1924, subparts A and C or any successor regulations.

(b) *Third party assessments*. As part of the application for a guaranteed loan, the lender must provide documentation of qualified third parties' assessments of the property's physical condition and any environmental conditions or hazards which may have a bearing on the market value of the property. These assessments must include:

(1) An acceptable property appraisal.

(2) A Phase I Environmental Site Assessment (American Society of Testing and Materials).

(3) A Standard Flood Hazard Determination.

(4) In the case of the purchase of an existing structure, rehabilitation or refinancing, a physical needs assessment.

§ 3565.255 Environmental requirements.

Under the National Environmental Policy Act, the Agency is required to assess the potential impact of the proposed actions on protected environmental resources. Measures to avoid or at least mitigate adverse impacts to protected resources may require a change in site or project design. A site will not be approved until the Agency has completed the environmental review in accordance with 7 CFR part 1940, subpart G or successor regulation.

§ 3565.256 Architectural services.

Architectural services must be provided for the project in accordance with 7 CFR part 1924, subpart A or successor regulation, including plan certifications.

§ 3565.257 Procurement actions.

All construction procurement actions, whether by sealed bid or by negotiation, must be conducted in a manner that provides maximum open and free competition.

§§ 3565.258–3565.299 [Reserved]

§ 3565.300 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0174.

Subpart G—Processing Requirements

§ 3565.301 Loan standards.

An approved lender must originate and underwrite the loan and appraise the subject property in accordance with prudent lending practices and Agency criteria addressing the following factors:

(a) Borrower qualifications and creditworthiness;

- (b) Property, vacancy, market vacancy or collection loss;
- (c) Rental concessions and rent levels;
- (d) Tenant demand and housing supply;
- (e) Property operating and maintenance expense;
- (f) Property requirements as contained in subpart F of this part;
- (g) Debt coverage ratio;
- (h) Operating and long-term capital requirements;
- (i) Loan-to-value ratio;
- (j) Return on borrower equity; and
- (k) Estimated long-term marketability of the project.

§ 3565.302 Allowable fees.

(a) *Lender fees.* The lender is authorized to charge reasonable and necessary fees in connection with a borrower's application for a guaranteed loan.

(b) *Agency fees.* The Agency will charge one or more types of fees deemed appropriate as reimbursement for reasonable and necessary costs incurred in connection with applications received from lenders for monitoring or annual renewal fees. These fees will be published in NOFA. Agency fees may include, but are not limited to the following:

(1) *Site Assessment and Market Analysis or preliminary feasibility fee.* A fee for review of an application for a determination of preliminary feasibility.

(2) *Application fee.* A fee submitted in conjunction with the application for a loan guarantee.

(3) *Inspection fee.* A fee for inspection of the property in conjunction with a loan guarantee.

(4) *Transfer fee.* A fee in connection with a request for approval of a transfer of physical assets or a change in the composition of the ownership entity.

(5) *Extension or reopening fees.* A fee to extend the guarantee commitment or to reopen an application when a commitment has expired.

§ 3565.303 Issuance of loan guarantee.

(a) *Preliminary feasibility review.* During the initial processing of a loan, the lender may request a preliminary feasibility review by the Agency when required loan documentation is submitted.

(b) *Conditional commitment to guarantee a loan.* The Agency will issue a conditional commitment to guarantee a loan. This commitment will be good for such time frame as the Agency deems appropriate based on project requirements. The commitment to guarantee a loan, will specify any conditions necessary to obtain a determination by the Agency that all

program requirements have been met. A conditional commitment can be issued, subject to the availability of funds, after:

(1) Completion by the Agency of an environmental review in accordance with 7 CFR part 1940, subpart G or successor regulation, and the National Environmental Policy Act; and

(2) Selection of the proposed project for funding by the Agency in accordance with ranking and selection criteria.

(c) *Guarantee during construction.* For combination construction and permanent loans, the Agency will issue an initial guarantee to an approved construction lender.

(1) This guarantee will be subject to the limits contained in subpart B of this part and in the loan closing documentation.

(2) In all cases, the lender must obtain a payment and performance bond covering contract work or acceptable credit enhancement as discussed in § 3565.52(a).

(3) The lender must verify amounts expended prior to each payment for completed work and certify that an independent inspector has inspected the property and found it to be in conformance with Agency standards. The lender must provide verification that all subcontractors have been paid and no liens have been filed against the property.

(d) *Permanent loan guarantee.* The guarantee on the permanent loan will be issued once the following items have been submitted to and approved by the Agency.

(1) An updated appraisal of the project as built;

(2) A certificate of substantial completion;

(3) A certificate of occupancy or similar evidence of local approval;

(4) A final inspection conducted by a qualified Agency representative;

(5) A final cost certification in a form acceptable to the Agency;

(6) A submission to the Agency of the complete closing docket;

(7) A certification by the lender that the project has reached an acceptable minimum level occupancy;

(8) A recordable, executed regulatory agreement.

(9) The Lender certifies that it has approved the borrower's management plan and assures that the borrower is in compliance with Agency standards regarding property management, contained in subparts E and F of this part;

(10) Necessary information to complete an updated necessary assistance review by the Agency; and

(11) Compliance with all conditions contained in the conditional commitment for guarantee.

(e) *Modification of guarantee amount after commitment.* The Agency may modify the guarantee amount or decline to issue a loan guarantee when a lender fails to honor obligations or to fulfill representations made under the guarantee commitment.

§ 3565.304 Lender loan processing responsibilities.

(a) *Application.* The lender will be responsible for submitting an application for a loan guarantee in a format prescribed by the Agency. Lenders may submit an application at the feasibility stage or when they request a conditional commitment.

(b) *Project servicing, management and disposition.* Unless otherwise permitted by the Agency, the originating lender must perform all loan functions during the period of the guarantee. These functions include servicing, asset management, and, if necessary, property disposition. The lender must maintain and service the loan in accordance with the provisions of subpart I of this part and Agency servicing procedures.

§ 3565.305 Mortgage and closing requirements.

It is the lender's responsibility to ensure that the loan closing statement and required loan documents are in a form acceptable to the Agency and included in the closing docket. The lender is responsible for resolving any underwriting and loan closing deficiencies that are found. The Agency's review of the lender's loan closing documentation does not constitute a waiver of fraud, misrepresentation, or failure of judgment by the lender.

§ 3565.306–3565.349 [Reserved]

§ 3565.350 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0174.

Subpart H—Project Management

§ 3565.351 Project management.

As a condition of the guarantee, the lender must certify annually to the Agency that the borrower is in compliance with the regulatory agreement and program requirements with respect to all aspects of project management.

(a) *Regulatory agreement.* A regulatory agreement between the borrower and lender which will be filed in the real estate records of the

appropriate jurisdiction must be executed at the time of loan closing and contain the following covenants:

(1) That it is binding upon the borrower and any of its successors and assigns, as well as upon the lender and any of its successors and assigns, for the duration of the guaranteed loan;

(2) That the borrower makes all payments due under the note and to the required escrow and reserve accounts;

(3) That the borrower maintains the project as affordable housing in accordance with the purposes and for the duration defined in the statute;

(4) That the borrower maintains the project in good physical and financial condition at all times;

(5) That the borrower obtains and maintains property insurance and any other insurance coverage required to protect the security;

(6) That the borrower maintains complete project books and financial records, and provides the Agency and the lender with an annual audited financial statement after the end of each fiscal year;

(7) That the borrower makes project books and records available for review by the Office of Inspector General, Rural Development staff, General Accounting Office, and the Department of Justice, or their representatives or successors upon appropriate notification;

(8) That the borrower prepares and complies with the Affirmative Fair Housing Marketing Plan and all other Fair Housing requirements;

(9) That the borrower operates as a single asset ownership entity, unless otherwise approved by the Agency;

(10) That the borrower complies with applicable federal, state and local laws; and

(11) That the borrower provides management satisfactory to the lender and to the Agency and complies with an approved management plan for the project.

(b) *Management plan.* The lender must approve the borrower's management plan and assure that the borrower is in compliance with Agency standards regarding property management, including the requirements contained in subparts E and F of this part.

(c) *Tenant protection and grievance procedures.* Tenants in properties subject to a guaranteed loan are entitled to the grievance and appeal rights contained in 7 CFR part 1944, subpart L or successor regulation. The borrower must inform tenants in writing of these rights.

(d) *Financial management—(1) Borrower reporting requirements.* At a minimum, the lender must obtain, on an

annual basis, an audited annual financial statement conducted in accordance with generally accepted government auditing standards.

(2) *Lender reporting requirements.* The lender must review the financial reports to assure that the property is in sound fiscal condition and the borrower is in compliance with financial requirements. The lender must report findings to the Agency as follows:

(i) *Annual reports.* The lender must submit to the Agency a copy of the annual financial audit of the project and must report on the nature and status of any findings. To the extent that outstanding findings or issues remain, the lender must submit to the Agency a copy of a plan of action for any unresolved findings.

(ii) *Monthly reports.* The lender must submit monthly reports to the Agency on all loans that are either in default, delinquent, or not in compliance with program requirements. This report must provide information on the financial condition of each loan, the physical condition of the property, the amount of delinquency, any other non-compliance with program requirements and the proposed actions and timetable to resolve the delinquency, default or non-compliance.

(3) *Reserve releases.* The lender is responsible for approving or disapproving all borrower requests for release of funds from the reserve and escrow accounts. Security deposit accounts will not be considered a reserve or escrow account.

(4) *Insurance requirements.* At loan closing, the borrower will provide the lender with documentary evidence that Agency insurance requirements have been met. The borrower must maintain insurance in accordance with Agency requirements until the loan is repaid and the lender must be named as the insurance policy's beneficiary. The lender must obtain insurance on the secured property if the borrower is unable or unwilling to do so and charge the cost as an advance.

(5) *Distribution of surplus cash.* Prior to the distribution of surplus cash to the owner, the lender must certify that the property is in good financial and physical condition and in compliance with the regulatory agreement. Such compliance includes payment of outstanding obligations, debt service, and required funding of reserve and escrow accounts.

(e) *Physical maintenance.* The lender must annually inspect the property to ensure that it is in compliance with state and local codes and program requirements. The lender must certify to the Agency that a property is in such

compliance, or report to the Agency on any non-compliance items and proposed actions and timetable for resolution. Failure to provide responsive corrective action can result in reduction or cancellation of the guarantee by the Agency.

§ 3565.352 Preservation of affordable housing.

(a) *Original purpose.* During the period of the guarantee, owners are prohibited from using the housing or related facilities for any purpose other than an approved program purpose.

(b) *Use restriction.* For the original term of the guaranteed loan, the housing must remain available for occupancy by low and moderate income households, in accordance with subpart E of this part. This requirement will be included in a deed restriction or other instrument acceptable to the Agency. The restriction will apply unless the housing is acquired by foreclosure or an instrument in lieu of foreclosure, or the Agency waives the applicability of this requirement after determining that each of the following three circumstances exist.

(1) There is no longer a need for low- and moderate-income housing in the market area in which the housing is located;

(2) Housing opportunities for low-income households and minorities will not be reduced as a result of the waiver; and

(3) Additional federal assistance will not be necessary as a result of the waiver.

§ 3565.353 Affirmative fair housing marketing.

As a condition of the guarantee, the lender must ensure that the lender and borrower are in compliance with the approved Affirmative Fair Housing Marketing Plan. This plan must be reviewed annually by the lender to ensure that the borrower remains in compliance and to recommend modifications, as necessary.

§ 3565.354 Fair housing accommodations.

The lender must ensure that the borrower is in compliance with the applicable fair housing laws in the development of the property, the selection of applicants for housing, and ongoing management. See subpart A of this part.

§ 3565.355 Changes in ownership.

Any change in ownership, in whole or in part, must be approved by the lender and the

Agency before such change takes effect.

§§ 3565.356–3565.399 [Reserved]**§ 3565.400 OMB control number.**

According to the Paperwork Reduction Act of 1995, no party is required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0174.

Subpart I—Servicing Requirements**§ 3565.401 Servicing objectives.**

The participating lender is responsible for servicing the guaranteed loan throughout the term of the loan or guarantee, whichever is less. In all cases, the lender remains responsible for liquidation of the property in accordance with the Loan Note Agreement, unless otherwise determined by the Agency. A lender-servicing plan must be designed and implemented to achieve the following objectives.

- (a) To preserve the value of the loan and the real estate;
- (b) To avoid a loss to the lender or the Agency and to limit exposure to potential loss;
- (c) To protect the interests of the tenants; and
- (d) To further program objectives.

§ 3565.402 Servicing responsibilities.

The lender must service the loan in accordance with this subpart and perform the services contained in this section in a reasonable and prudent manner. The lender is responsible for the actions of its agents and representatives.

(a) *Funds management.* The lender must have a funds management system to receive and process borrower payments, including the following.

(1) All principal and interest (P&I) funds and guarantee fees collected and deposited into the appropriate custodial accounts.

(2) Payments to custodial escrow accounts for taxes and insurance premiums, assessments that might impair the security (such as ground rent), and reserve accounts for repair and capital improvement of the property.

(b) *Asset management.* The lender must ensure that the property securing the guaranteed loan remains in good physical and financial condition, in accordance with project management requirements contained in subpart H of this part.

(c) *Management of delinquencies and defaults.* Each month the lender must report to the Agency any delinquencies and defaults in accordance with subpart H of this part.

§ 3565.403 Special servicing.

Special servicing must be initiated when regular servicing actions are insufficient to resolve borrower default or property deficiencies.

(a) *Responsibility of lender.* It is the lender's responsibility during special servicing to make a special effort to ensure that maintenance of the property meets Agency requirements and the tenants' rights are protected, until such time that the property is liquidated by the lender, the loan is paid in full, or the loan is assigned to the Agency. The lender must update the Agency monthly until the default is cured or a claim is filed. The lender must maintain adequate records of any and all efforts to cure the default or to foreclose.

(b) *Initiating special servicing.* When special servicing is initiated, the lender must submit for Agency review a special servicing plan that includes proposed actions to cure the deficiencies and a timeframe for completion. The special servicing plan will specify the proposed terms of any workout agreement recommended by the lender. The lender must obtain Agency approval of the terms of any workout agreement with the borrower. The workout agreement may include a loan modification, transfer of physical assets, or partial payment of claim and reamortization of the loan. Failure to comply with terms contained in the executed workout agreement will be considered a default of the guaranteed loan.

(1) *Loan modification.* The borrower and lender may agree to a loan modification when such action will improve the financial viability of the project and its operations, and when a circumstance exists that is beyond the borrower's control. The Agency must approve in advance any loan modification that extends the life of the loan or requires an increase in the amount of the guarantee. All changes must be within the requirements of section 538 of the Housing Act of 1949.

(2) *Change in ownership and transfer of physical assets.* A default or delinquency may be resolved by a change of the ownership entity in whole or in part. The Agency must approve all changes in ownership prior to the effective date of the transfer, and may require additional resources from the lender or borrower to resolve project deficiencies. A change in the ownership entity, including a transfer of physical assets, will not relieve the original borrower of liability for the loan, pursuant to the provisions regarding release of liability contained in subpart E of this part.

(3) *Partial payment of claims.* The lender may request a partial payment of

claim as a result of a loss experienced by the lender as a means to work out a troubled loan. The Agency will accept such claim if it determines that it is in the best interest of the government. In applying the partial payment, the lender must assign the obligation covered by the partial payment to the Agency, and, if required by the Agency, reamortize the obligation using the amount of the remaining obligation over an agreed-upon term.

(c) *Claims processing.* In the event of a loss, the lender must submit claims under the guarantee in accordance with subpart J of this part. Prior to submitting a claim, the lender must exhaust all possibilities of collection on the loan.

(d) *Displacement prevention.* The actions of the lender must not harm the property's tenants through displacement.

§ 3565.404 Transfer of mortgage servicing.

Transfer of servicing is prohibited unless the Agency determines that circumstances warrant such action, the proposed lender is an eligible lender approved by the Agency, and the transfer of servicing is approved by the Agency in advance.

§§ 3565.405–3565.449 [Reserved]**§ 3565.450 OMB control number.**

According to the Paperwork Reduction Act of 1995, no party is required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0174.

Subpart J—Assignment, Conveyance, and Claims**§ 3565.451 Preclaim requirements.**

(a) *Lender certifications.* After borrower default and before filing a claim or assignment of the loan to the Agency, the lender must make every reasonable and prudent effort to resolve the default. The lender must provide the Agency with an accounting of all proposed and actual actions taken to cure the default. The lender must certify that all reasonable efforts to cure the default have been exhausted. Where the lender fails to comply with the terms of the loan guarantee agreement and the corresponding regulations and guidance with regard to liquidating the property, the Agency, at its option, may take possession of the security collateral and dispose of the property.

(b) *Due diligence by lender.* For all loan servicing actions where a market, net recovery or liquidation value determination is required, guaranteed lenders shall perform due diligence in

conjunction with the appraisal and submit it to the Agency for review. The Phase I Environmental Site Assessment published by the American Society of Testing and Materials is considered an acceptable format for due diligence.

(c) *Environmental review.* The Agency is required to complete an environmental review under the National Environmental Policy Act, in accordance with 7 CFR part 1940, subpart G or a successor regulation, prior to disposition of inventory property, if title is held by the Agency, and prior to any authorization to the guaranteed lender to foreclose and dispose of property, and for any other servicing action requiring Agency approval or consent.

§ 3565.452 Decision to liquidate.

A decision to liquidate shall be made when it is determined that the default cannot be cured through actions contained in § 3565.403 of subpart I or it has been determined that it is in the best interest of the Agency and the lender to liquidate.

§ 3565.453 Disposition of the property.

(a) *Liquidation plan.* The lender will, within 30 days after a decision to liquidate, submit to the Agency in writing its proposed detailed plan of liquidation. Upon approval by the Agency of the liquidation plan, the lender will proceed to liquidate. At a minimum, this plan must contain the following information:

(1) Such proof as the Agency requires to establish the lender's ownership of the guaranteed loan promissory note and related security instruments and a copy of the payment ledger if available which reflects the current loan balance and accrued interest to date and the method of computing the interest.

(2) A full and complete list of all collateral including any personal and corporate guarantees.

(3) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including recommended actions for:

- (i) Acquiring and disposing of all collateral;
- (ii) Collecting from guarantors;
- (iii) Obtaining an appraisal of the collateral;
- (iv) Setting the proposed date of foreclosure; and
- (v) Setting the proposed date of liquidation.

(4) Necessary steps for protection of the tenants and preservation of the collateral.

(5) Copies of the borrower's latest available financial statements.

(6) Copies of the guarantor's latest available financial statements.

(7) An itemized list of estimated liquidation expenses expected to be incurred along with justification for each expense.

(8) A schedule to periodically report to the Agency on the progress of liquidation.

(9) Estimated protective advance amounts with justification.

(b) *Filing an estimated loss claim.* Upon Agency concurrence in the liquidation plan and when the lender owns any or all of the guaranteed portion of the loan, the Agency may, in accordance with program guidance, pay an estimated loss payment based on an Agency determined percentage of the approved estimate of the loss. The estimated loss payment will be based in the liquidation value of the collateral. If such payment is made, it will be applied to the outstanding principal balance owed on the guaranteed debt. The lender will discontinue interest accrual on the defaulted loan in accordance with Agency procedures.

(c) *Property disposition.* Once the liquidation plan has Agency approval, the lender must make every effort to liquidate the property in a manner that will yield the highest market value consistent with the protections afforded to tenants contained in 7 CFR part 1944, subpart L or successor regulation. This liquidation process must be completed within 9 months from the lender's decision to liquidate, unless otherwise approved by the Agency.

(d) *Transmitting payments and proceeds to the Agency.* When the Agency is the holder of a portion of the guaranteed loan, the lender will transmit to the Agency its pro rata share of any payments received from the borrower, liquidation, or other proceeds.

§ 3565.454 [Reserved].

§ 3565.455 Alternative disposition methods.

The Agency, in its sole discretion, may choose to obtain an assignment of the loan from the lender or conveyance of title obtained by the lender through foreclosure or a deed-in-lieu of foreclosure.

(a) *Assignment.* In the case of an assignment of the loan, the assignment of the security instruments or the security must be in written and recordable form. Completion of the assignment will occur once the following transactions are completed to the Agency's satisfaction.

(1) Conveyance to the Agency of all the lender's rights and interests arising under the loan.

(2) Assignment to the Agency of all claims against the borrower or others arising out of the loan transactions, including:

(i) All collateral agreements affecting financing, construction, use or operation of the property; and

(ii) All insurance or surety bonds, or other guarantees, and all claims under them.

(3) Certification that the collateral has been evaluated for the presence of contamination from the release of hazardous substances, petroleum products or other environmental hazards which may adversely impact the market value of the property and the results of that evaluation.

(b) *Conveyance of title.* In the case of a conveyance of title to the property, the lender must inform the Agency in advance of how it plans to acquire title and a timetable for doing so. The Agency will accept the conveyance upon receipt of an assignment to the Agency of all claims of the lender against the property and assignment of the lender's rights to any operating funds and any reserves or escrows established for the maintenance of the property or the payment of property taxes and insurance.

§ 3565.456 Filing a claim.

Once the lender has disposed of the property or the Agency has agreed to accept an assignment of the loan or conveyance of title to the property, the lender may file a claim for the guaranteed portion of allowable losses. All claim amounts must be calculated in accordance with this subpart and be approved by the Agency.

§ 3565.457 Determination of claim amount.

(a) *Maximum guarantee payment.* The maximum guarantee payment will not exceed the amount of guarantee percentage as contained in the guarantee agreement (but in no event more than 90%) times the allowable loss amount.

(b) *Date of loss.* The date of loss is the earliest of the date on which the property is foreclosed or acquired or the proposed date of foreclosure or acquisition in the liquidation plan, unless an alternative date is approved by the Agency. Where the Agency chooses to accept an assignment of the loan or conveyance of title, the date of loss will be the date on which the Agency accepts assignment of the loan or conveyance of title.

(c) *Allowable claim amount.* The allowable claim amount must be calculated by:

(1) Adding to the unpaid principal and interest on the date of loss, an amount approved by the Agency for

payments made by the lender for amounts due and owing on the property, including:

(i) Property taxes and other protective advances as approved by the Agency;

(ii) Water and sewer charges and other special assessments that are liens prior to the guaranteed loan;

(iii) Insurance on the property;

(iv) Loan guarantee fees paid after default; and

(v) Reasonable liquidation expenses.

(2) And by deducting the following items:

(i) Any amount received by the lender on the account of the guaranteed loan after the date of default;

(ii) Any net income received by the lender from the secured property after the date of default; and

(iii) Any cash items retained by the lender, except any amount representing a balance of the guaranteed loan not advanced to the borrower. Any loan amount not advanced will be applied by the lender to reduce the outstanding principal on the loan.

(d) *Lender certification.* The lender must certify that all possibilities of collection have been exhausted and that all of the items specified in paragraph (c) of this section have been identified and reported to the Agency as a condition for payment of claim.

§ 3565.458 Withdrawal of claim.

If the lender provides timely written notice to the Agency of withdrawal of the claim, the guarantee will continue as if the default had not occurred if the

borrower cures the default prior to foreclosure or prior to acceptance of a deed-in-lieu of foreclosure.

§ § 3565.459–3565.499 [Reserved]

§ 3565.500 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0174.

Dated: July 16, 1998.

Inga Smulkstys

Acting Under Secretary Rural Development.

[FR Doc. 98–19558 Filed 7–21–98; 8:45 am]

BILLING CODE 3410–XV–P