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(i) The debt to be refinanced was incurred for the sole purpose of purchasing the site;

(ii) The applicant is unable to acquire adequate housing without refinancing; and

(iii) The RHS loan will include funds to construct an appropriate dwelling on the site for the applicant's use.

(3) Debts incurred after the date of RHS loan application but before closing may be refinanced if the costs are incurred for eligible loan purposes and any construction work conforms to the standards specified in this part.

(c) *Refinancing RHS debt.* Under limited circumstances, an existing RHS loan may be refinanced in accordance with §3550.204 to allow the borrower to receive payment assistance.

(d) *Eligible costs.* Improvements financed with loan funds must be on land which, after closing, is part of the security property. In addition to acquisition, construction, repairs, or the cost of relocating a dwelling, loan funds may be used to pay for:

(1) Reasonable expenses related to obtaining the loan, including legal, architectural and engineering, technical, title clearance, and loan closing fees; and appraisal, surveying, environmental, tax monitoring, and other technical services; and personal liability insurance fees for Mutual Self-Help borrowers.

(2) The cost of providing special design features or equipment when necessary because of a physical disability of the applicant or a member of the household.

(3) Reasonable connection fees, assessments, or the pro rata installment costs for utilities such as water, sewer, electricity, and gas for which the borrower is liable and which are not paid from other funds.

(4) Reasonable and customary lender charges and fees if the RHS loan is being made in combination with a leveraged loan.

(5) Real estate taxes that are due and payable on the property at the time of closing and for the establishment of escrow accounts for real estate taxes, hazard and flood insurance premiums, and related costs.

(6) Fees to public and private non-profit organizations that are tax ex-

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empt under the Internal Revenue Code for the development and packaging of loan applications, except for loans related to the purchase of an RHS Real Estate Owned (REO) property.

(7) Purchasing and installing essential equipment in the dwelling, including ranges, refrigerators, washers or dryers, if these items are normally sold with dwellings in the area and if the purchase of these items is not the primary purpose of the loans.

(8) Purchasing and installing approved energy savings measures and approved furnaces and space heaters that use fuel that is commonly used, economical, and dependably available.

(9) Providing site preparation, including grading, foundation plantings, seeding or sodding, trees, walks, yard fences, and driveways to a building site.

(10) Reasonable fees for homeownership education as determined by the State Director under §3550.11 of this subpart. Such fees may be added to the loan amount in excess of the area loan limit and appraised value of the house.

(e) *Loan restrictions.* Loan funds may not be used to:

(1) Purchase an existing manufactured home, or for any other purposes prohibited in §3550.73(b).

(2) Purchase or improve income-producing land or buildings to be used principally for income-producing purposes.

(3) Pay fees, commissions, or charges to for-profit entities related to loan packaging or referral of prospective applicants to RHS.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78329, Dec. 24, 2002; 72 FR 5157, Feb. 5, 2007]

### § 3550.53 Eligibility requirements.

(a) *Income eligibility.* At the time of loan approval, the household's adjusted income must not exceed the applicable low-income limit for the area, and at closing, must not exceed the applicable moderate-income limit for the area (see §3550.544).

(b) *Citizenship status.* The applicant must be a United States citizen or a noncitizen who qualifies as a legal alien as defined in §3550.10.

(c) *Primary residence.* Applicants must agree to and have the ability to occupy the dwelling on a permanent basis.

(1) Because of the probability of transfer, loans will not be approved for military personnel on active duty unless the applicant will be discharged within a reasonable period of time.

(2) Because of the probability of moves after graduation, loans will not be approved for a full-time student unless the applicant intends to make the home a permanent residence and there are reasonable prospects that employment will be available in the area after graduation.

(3) If the home is being constructed or renovated an adult member of the household must be available to make inspections and authorize progress payments as the dwelling is being constructed.

(d) *Eligibility of current homeowners.* Current homeowners are not eligible for initial loans except as follows:

(1) Current homeowners may receive RHS loan funds to:

(i) Refinance an existing loan under the conditions outlined in § 3550.52(b);

(ii) Purchase a new dwelling if the current dwelling is deficient housing as defined in § 3550.10; or

(iii) Make necessary repairs to the property which is financed with an affordable non-RHS loan.

(2) Current homeowners with an RHS loan may receive a subsequent loan.

(e) *Legal capacity.* Applicants must have the legal capacity to incur the loan obligation, or have a court appointed guardian or conservator who is empowered to obligate the applicant in real estate matters.

(f) *Suspension or debarment.* Applications from applicants who have been suspended or debarred from participation in federal programs will be handled in accordance with 7 CFR part 3017.

(g) *Repayment ability.* Repayment ability means applicants must demonstrate adequate and dependably available income. The determination of income dependability will include consideration of the applicant's past history of annual income.

(1) A very low-income applicant is considered to have repayment ability when the monthly amount required for

payment of principal, interest, taxes, and insurance (PITI) does not exceed 29 percent of the applicant's repayment income, and the monthly amount required to pay PITI plus recurring monthly debts does not exceed 41 percent of the applicant's repayment income.

(2) A low-income applicant is considered to have repayment ability when the monthly amount required for payment of PITI does not exceed 33 percent of the applicant's repayment income, and the monthly amount required to pay PITI plus recurring monthly debts does not exceed 41 percent of repayment income.

(3) Repayment ratios may exceed the percentages specified in paragraphs (g)(1) and (g)(2) of this section if the applicant has demonstrated an ability to meet higher debt obligations, or if RHS determines, based on other compensating factors, that the household has a higher repayment ability.

(4) If an applicant does not meet the repayment ability requirements, the applicant can have another party join the application as a cosigner.

(5) If an applicant does not meet the repayment ability requirements, the applicant can have other household members join the application.

(h) *Credit qualifications.* Applicants must be unable to secure the necessary credit from other sources on terms and conditions that the applicant could reasonably be expected to fulfill. Applicants must have a credit history that indicates reasonable ability and willingness to meet debt obligations. An applicant with an outstanding judgment obtained by the United States in a federal court, other than the United States Tax Court, is not eligible for a loan or grant from RHS.

(1) Indicators of unacceptable credit include:

(i) Payments on any account where the amount of the delinquency exceeded one installment for more than 30 days within the last 12 months.

(ii) Payments on any account which was delinquent for more than 30 days on two or more occasions within a 12-month period.

(iii) A foreclosure which has been completed within the last 36 months.

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(iv) An outstanding Internal Revenue Service tax lien or any other outstanding tax liens with no satisfactory arrangement for payment.

(v) A court-created or court-affirmed obligation or judgment caused by non-payment that is currently outstanding or has been outstanding within the last 12 months, except for those excluded in paragraph (i)(2) of this section.

(vi) Two or more rent payments paid 30 or more days late within the last 2 years. If the applicant has experienced no other credit problems in the past 2 years, only 1 year of rent history will be evaluated. Rent payment history requirements may be waived if the RHS loan will reduce shelter costs significantly and contribute to an improved repayment ability.

(vii) Outstanding collection accounts with a record of irregular payment with no satisfactory arrangements for repayment, or collection accounts that were paid in full within the last 6 months.

(viii) Non-agency debts written off within the last 36 months unless paid in full at least 12 months ago.

(ix) Agency debts that were debt settled within the last 36 months or are being considered for debt settlement.

(x) Delinquency on a federal debt.

(2) The following will not be considered indicators of unacceptable credit:

(i) A bankruptcy in which debts were discharged more than 36 months prior to the date of application or where an applicant successfully completed a bankruptcy debt restructuring plan and has demonstrated a willingness to meeting obligations when due for the 12 months prior to the date of application.

(ii) A judgment satisfied more than 12 months before the date of application.

(3) When an application is rejected because of unacceptable credit, the applicant will be informed of the reason and source of information.

(i) *Homeownership education.* Applicants who are first-time homebuyers must agree to provide documentation, in the form of a completion certificate or letter from the provider, that a homeownership education course from a certified provider under §3550.11 has been successfully completed as defined

by the provider prior to loan closing. Requests for exceptions to the homeowner education requirement will be reviewed and granted on an individual case-by-case basis. The State Director may grant an exception the homeownership education requirement for individuals in geographic areas within the State where the State Director verifies that certified homeownership education is not reasonably available in the local area in any of the formats listed in §3550.11(b). Whether such homeownership education is reasonably available will be determined based on factors including, but not limited to: Distance, travel time, geographic obstacles, and cost. On a case-by-case basis, the State Director also may grant an exception, provided the applicant borrower documents a special need, such as a disability, that would unduly impede completing a homeownership course in a reasonably available format.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78330, Dec. 24, 2002; 72 FR 5157, Feb. 5, 2007]

**§ 3550.54 Calculation of income and assets.**

(a) *Repayment income.* Repayment income is the annual amount of income from all sources that are expected to be received by those household members who are parties to the promissory note, except for any student financial aid received by these household members for tuition, fees, books, equipment, materials, and transportation. Repayment income is used to determine the household's ability to repay a loan.

(b) *Annual income.* Annual income is the income of all household members from all sources except those listed in (b)(1) through (b)(12) of this section:

(1) Earned income of persons under the age of 18 unless they are a borrower or a spouse of a member of the household;

(2) Payments received for the care of foster children or foster adults;

(3) Amounts granted for or in reimbursement of the cost of medical expenses;

(4) Earnings of each full-time student 18 years of age or older, except the head of household or spouse, that are in excess of any amount determined